

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREENMART OF NEVADA NLV LLC,
a Nevada limited liability company; and
NEVADA ORGANIC REMEDIES, LLC,
Appellants/Cross-Respondents,

vs.

MM DEVELOPMENT COMPANY INC.,
a Nevada Corporation; and LIVFREE
WELLNESS, LLC, D/B/A THE
DISPENSARY, a Nevada limited liability
company,

Respondents/Cross-Appellants,

and

THE STATE OF NEVADA
DEPARTMENT OF TAXATION,
Respondent.

Electronically Filed
Nov 22 2019 11:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO:
79670

DISTRICT COURT CASE NO.:
A-18-785818-W

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XIV
County Clark Judge Adriana Escobar
District Ct. Case No. A-18-786357-W

2. Attorney filing this docketing statement:

Attorney Margaret McLetchie and Alina M. Shell Telephone 702-728-5300

Firm McLetchie Law

Address 701 E. Bridger Ave., Suite 520
Las Vegas, NV 89101

Client(s) GreenMart of Nevada NLV, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Daniel S. Simon Telephone 702-364-1650

Firm Simon Law

Address 810 S. Casino Center Blvd.
Las Vegas, NV 89101

Client(s) Compassionate Team of Las Vegas LLC

Attorney Aaron D. Ford Telephone 702-486-3420

Firm Office of the Attorney General

Address Ketan D. Bhirud, Steve Shevorski, David J. Pope, and Theresa M. Haar
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Client(s) State of Nevada of Nevada, Department of Taxation

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRC 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- (1) GREENMART OF NEV. NLV LLC et al. v. NEV. WELLNESS CTR., LLC, Case No. 79673
- (2) GREENMART OF NEV. NLV LLC v. HIGH SIERRA HOLISTICS LLC, Case No. 79672
- (3) GREENMART OF NEV. NLV LLC v. SERENITY WELLNESS CENTER LLC, Case No. 79668
- (4) GREENMART OF NEV. NLV LLC et al. v. ETW MANAGEMENT GROUP LLC et al., Case No. 79669
- (5) GREENMART OF NEV. NLV LLC et al. v. COMPASSIONATE TEAM OF LAS VEGAS, LLC et al., Case No. 79671

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
See, ATTACHMENT A.

8. Nature of the action. Briefly describe the nature of the action and the result below:

After the State of Nevada, Department of Taxation (the "Department") received and graded applications for licenses to open recreational marijuana establishments and allocated conditional licenses to winning applicants pursuant to NRS 453D.210, several losing applicants brought suit against the Department in several different cases under a number of different claims, and several successful applicants intervened.

When the plaintiffs in the various cases filed motions for preliminary injunctions, the cases were coordinated in front of a single court for the purpose of holding an evidentiary hearing. At the conclusion of the evidentiary hearing, the district court held that the Department violated NRS 453D.200(6) by failing to conduct background checks on nominal owners with an ownership interest of less than 5% in some successful applicants based on NAC 453D.255(1). The court then enjoined the Department from conducting necessary final inspections on certain marijuana establishments based on the potential application of the background check statute and regulations.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The principal issue presented to the Court is whether the district court properly enjoined the Department from conducting final inspections for certain marijuana establishments based upon the requirement to conduct a background check on "each prospective owner" of a recreational marijuana license applicant. This principal issue is further broken down in ATTACHMENT B to this docketing statement.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☒ A ballot question

If so, explain: The appeal raises questions regarding a government agency's discretion in interpreting the statute it is tasked with implementing and whether or not certain parties have standing to challenge the agency's interpretation. It asks whether an agency has its discretion limited in interpreting a statute passed as the result of a ballot initiative under Article 19, Section 2(3) of the Nevada State Constitution. It raises issues of public policy regarding the separation of powers between branches of government made more prescient by the subject matter of appeal, which revolves around the allocation of licenses to open recreational marijuana establishments.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is presumptively retained by the Supreme Court under several subsections of NRAP 17(a). It is a matter involving a ballot question and the discretion in interpreting statutes created by ballot question under subsection (2), it is an administrative agency case involving Department of Taxation determinations under subsection (8), it is a matter decided by a business court under subsection (9), and it is a matter raising as a principal issue a question of statewide public importance under subsection (12) as the resolution of the appeal will have a statewide impact over the state of recreational marijuana in Nevada.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? n/a _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Aug 23, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Aug 27, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 19, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: NEVADA ORGANIC REMEDIES, LLC filed its notice of appeal on September 19, 2019. GREENMART OF NEVADA NLV, LLC filed its notice of appeal on September 19, 2019.

MM DEVELOPMENT COMPANY LLC and LIVFREE WELLNESS LLC D/B/A THE DISPENSARY filed their notice of cross-appeal in the District Court on October 3, 2019.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The principal issue on appeal is whether the district court erred in granting a preliminary injunction against the State of Nevada, Department of Taxation that directly affects the Appellants. As this is an appeal of an order granting an injunction, the order is appealable under NRAP 3A(b)(3), which states that an appeal may be taken from "[a]n order granting or refusing to grant an injunction ..."

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

See, ATTACHMENT C.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Each of the Defendant-Intervenors besides Appellants; LONE MOUNTAIN PARTNERS, LLC; and HELPING HANDS WELLNESS CENTER, INC. were not directly affected by the preliminary injunction because the district court did not enjoin the State from conducting final inspections on their establishments. CLEAR RIVER LLC was not affected by the order. HELPING HANDS WELLNESS CENTER, INC. was subject to the injunction for reasons that may be unrelated to the appeal. LONE MOUNTAIN PARTNERS LLC has only filed a single appeal on the relevant issues in GREEN MART OF NEVADA NLV LLC v. SERENITY WELLNESS CENTER LLC, Case No. 79668.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

(1) All Plaintiffs to the district court proceedings brought claims for violation of constitutional rights, writs of mandamus, declaratory relief, and judicial review against the State of Nevada, Department of Taxation seeking either to obtain one or more of the licenses at issue or damages.

(2) NEVADA ORGANIC REMEDIES, LLC brought a counterclaim against MM DEVELOPMENT COMPANY, LLC and LIVFREE WELLNESS, LLC seeking a declaration that NEVADA ORGANIC REMEDIES, LLC has valid conditional licenses to open marijuana establishments.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Because the appeal only challenges a preliminary injunction, all relevant claims remain pending before the district court.

(b) Specify the parties remaining below:

All parties remain in the pending claims before the district court.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The order is independently appealable under NRAP 3A(b)(3).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION


I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

GreenMart of Nevada NLV, LLC
Name of appellant

11/22/2019
Date

State of Nevada, County of Clark
State and county where signed

Alina M. Shell
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 22nd day of November, 2019, I served a copy of this completed docketing statement upon all counsel of record:


- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Will Kemp and Nathanael R. Rulis
Kemp, Jones, & Coulthard LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

David R. Koch, Steven B. Scow,
Daniel G. Scow, and Brody R. Wight
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Aaron Ford, Ketan Bhirud, Steve Shevorski, David Pope, and Theresa Haar
NEVADA OFFICE OF ATTORNEY GENERAL
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Dated this 22nd day of November, 2019


Signature

ATTACHMENT A

7. Pending and prior proceedings in other courts

- (1) SERENITY WELLNESS CENTER, LLC et al. v. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Case No. A-19-786962-B, brought before the Nevada Eighth Judicial District Court Department 11. The Findings of Fact and Conclusions of Law granting the preliminary injunction at issue on this appeal was filed on August 23, 2019.
- (2) ETW MANAGEMENT GROUP, LLC et al. v. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Case No. A-19-787004-B, brought before the Nevada Eighth Judicial District Court Department 11. The Findings of Fact and Conclusions of Law granting the preliminary injunction at issue on this appeal was filed on August 23, 2019.
- (3) MM DEVELOPMENT COMPANY, INC. et al. v. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Case No. A-18-785818-W, brought before the Nevada Eighth Judicial District Court Department 8 and coordinated in front of Department 11 to consider the various motions for preliminary injunctions. The Findings of Fact and Conclusions of Law granting the preliminary injunction at issue on this appeal was filed on August 23, 2019.
- (4) NEVADA WELLNESS CENTER, LLC v. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Case No. A-19-787540-W, brought before the Nevada Eighth Judicial District Court Department 18 and coordinated in front of Department 11 to consider the various motions for preliminary injunctions. The Findings of Fact and Conclusions of Law granting the preliminary injunction at issue on this appeal was filed on August 23, 2019.
- (5) COMPASSIONATE TEAM OF LAS VEGAS LLC v. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Case No. A-18-786357-W, brought before the Nevada Eighth Judicial District Court Department 14. There have been no relevant dates of disposition in this action.
- (6) D.H. FLAMINGO, INC. et al. v. THE STATE OF NEVADA, DEPARTMENT OF TAXATION et al., Case No. A-19-787035-C, brought before the Nevada Eighth Judicial District Court Department 6. There have been no relevant dates of disposition in this action.

(7)HIGH SIERRA HOLISTICS, LLC v. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Case No. A-19-787726-C, brought before the Nevada Eighth Judicial District Court Department 14. There have been no relevant dates of disposition in this action.

ATTACHMENT B

9. Issues on appeal

The principal issue presented to the Court is whether the district court properly enjoined the Department from conducting final inspections on the marijuana establishments of four of the successful applicants for marijuana licenses including Appellants. The issues the Court must resolve in deciding the principal issue include:

- (1) Whether the Respondents have standing to sue the State of Nevada, Department of Taxation (the “Department”) for violations of NRS 453D.200(6);
- (2) Whether the Department reasonably interpreted NRS 453D.200(6) not to require the Department to conduct owners of applicants for licenses to open marijuana establishments with ownership interests of less than 5% pursuant to NAC 453D.255(1);
- (3) Whether the district court erred by substituting the Department’s interpretation of NRS 453D.200(6) with its own;
- (4) Whether the district court abused its discretion and deprived Appellants of due process by ordering the Department to provide information about Appellants’ compliance with NRS 453D.200(6) but not requiring the Department to provide the same information about Respondents’ compliance with NRS 453D.200(6);
- (5) Whether Respondents are prevented from challenging the regulations found in NAC 453D.255(1) under the defenses of laches, estoppel, or waiver;
- (6) Whether the district court properly found that Appellants did not list each of their prospective owners in their applications for licenses to open marijuana establishments sufficient to conduct the background checks required by NRS 453D.200(6);
- (7) Whether the district court abused its discretion in failing to articulate the irreparable harm that Respondents would suffer if the preliminary injunction was denied; and

///

(8) Whether the district court erred in failing to balance the hardships Appellants would suffer were the injunction to be imposed with the irreparable harm Respondents would suffer if the injunction was denied.

ATTACHMENT C

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs:

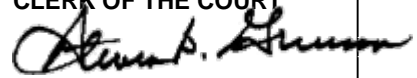
SERENITY WELLNESS CENTER, LLC; TGIG, LLC; NULEAF INCLINE DISPENSARY, LLC; NEVADA HOLISTIC MEDICINE, LLC; TRYKE COMPANIES SO NV, LLC; TRYKE COMPANIES RENO, LLC; PARADISE WELLNESS CENTER, LLC; GBS NEVADA PARTNERS, LLC; FIDELIS HOLDINGS, LLC; GRAVITAS NEVADA, LLC; NEVADA PURE, LLC; MEDIFARM, LLC; ETW MANAGEMENT GROUP, LLC; GLOBAL HARMONY, LLC; GREEN LEAF FARMS HOLDINGS, LLC; GREEN THERAPEUTICS, LLC; HERBAL CHOICE, INC.; JUST QUALITY, LLC; LIBRA WELLNESS CENTER, LLC; ROMBOUGH REAL ESTATE, INC. DBA MOTHER HERB; NEVCANN, LLC; RED EARTH, LLC; THC NEVADA, LLC; ZION GARDENS, LLC; MMOF VEGAS RETAIL, INC.; MM DEVELOPMENT COMPANY, INC.; LIVFREE WELLNESS, LLC; and NEVADA WELLNESS CENTER, LLC.

Defendant:

STATE OF NEVADA, DEPARTMENT OF TAXATION

Defendant-Intervenors:

NEVADA ORGANIC REMEDIEC, LLC; GREENMART OF NEVADA NLV LLC; LONE MOUNTAIN PARTNERS, LLC; HELPING HANDS WELLNESS CENTER, INC.; INTEGRAL ASSOCIATES LLC; ESSENCE TROPICANA, LLC; ESSENCE HENDERSON, LLC; CPCMHOLDINGS, LLC; COMMERCE PARK MEDICAL, LLC; CHEYENNE MEDICAL, LLC; and CLEAR RIVER, LLC



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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-785818-W

Dept. No.: XVIII

**FIRST AMENDED COMPLAINT AND
PETITION FOR JUDICIAL REVIEW OR
WRIT OF MANDAMUS**

Arbitration Exemption Claimed:

- *Involves Declaratory Relief*
- *Presents Significant Issue of Public Policy*
- *Involves Equitable or Extraordinary Relief*

COMES NOW Plaintiffs, MM DEVELOPMENT COMPANY, INC., and LIVFREE
WELLNESS LLC, dba The Dispensary, by and through their counsel of record, Kemp, Jones &
Coulthard, LLP, and hereby complains against Defendants STATE OF NEVADA, DEPARTMENT
OF TAXATION, and Does I through X, and petitions this Court for Writ of Mandamus as follows:

I.
PARTIES & JURISDICTION

1. Plaintiff, MM DEVELOPMENT COMPANY, LLC., is a Nevada corporation duly
licensed under the laws of the State of Nevada.

2. Plaintiff, LIVFREE WELLNESS, LLC, dba The Dispensary, is a Nevada limited
liability company duly licensed under the laws of the State of Nevada.

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

4 8. The application period for those licenses, including thirty-one (31) licenses in Clark
5 County, seven (7) licenses in Washoe County, one (1) license in Elko County, and one (1) license in
6 Nye County, opened on September 7, 2018 and closed on September 20, 2018.

7 9. If the Department received more than one application for a license for a recreational
8 marijuana retail store and the Department determined that more than one of the applications was
9 complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department was required to
10 rank the applications within each applicable locality for any applicants in a jurisdiction that limits the
11 number of retail marijuana stores in order from first to last. Ranking is based on compliance with the
12 provisions of R092-17 Sec. 80, NRS 453D and on the content of the applications relating to:

- 13 a. Operating experience of another kind of business by the owners, officers or
14 board members that has given them experience which is applicable to the
15 operation of a marijuana establishment.
16 b. Diversity of the owners, officers or board members.
17 c. Evidence of the amount of taxes paid and other beneficial financial
18 contributions.
19 d. Educational achievements of the owners, officers or board members.
20 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
21 sale.
22 f. The financial plan and resources of the applicant, both liquid and illiquid.
23 g. The experience of key personnel that the applicant intends to employ.
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h. Direct experience of the owners, officers or board members of a medical marijuana establishment or marijuana establishment in this State.

10. No later than December 5, 2018, the Department was responsible for issuing conditional licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one of the allocated licenses.

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

12. Prior to the application process with the Department, Plaintiffs were previously scored and ranked in the 2015 licensing procedure, pursuant to NRS 453A, in conjunction with a medical marijuana establishment permit application.

13. At that time, Plaintiff MM Development Company, Inc. received a score of 203.58 and was ranked as the fourth-highest applicant for a medical marijuana dispensary in unincorporated Clark County, Nevada. Plaintiff Livfree Wellness, LLC dba The Dispensary was ranked as the highest applicant for Henderson, Nevada with a score of 208.3; the highest applicant for Reno, Nevada with a score of 207; and the fifth-highest applicant in unincorporated Clark County, Nevada with a score of 201.64.

14. The factors used for the 2015 rankings were substantially similar to the factors to be used by the Department for the 2018 rankings for the allocated licenses.

15. The only major difference between the factors assessed for the 2015 rankings and the 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners, officers, board members) to the existing merit criteria.

1 16. Plaintiff MM Development Company, Inc. submitted applications for recreational
2 marijuana retail store licenses to own and operate recreational marijuana retail stores in the following
3 jurisdictions: unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada;
4 Mesquite, Nevada; Reno, Nevada; and Nye County, Nevada.

5 17. Plaintiff Livfree Wellness, LLC dba The Dispensary submitted applications (i.e., RD
6 292, RD 293, RD 294, RD 295, RD 296, and RD 297) for recreational marijuana retail store licenses
7 to own and operate recreational marijuana retail stores in the following jurisdictions: unincorporated
8 Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Reno, Nevada; Elko County,
9 Nevada; and Nye County, Nevada.

10 18. On or about December 5, 2018, despite their prior exceptional ranking, Plaintiffs was
11 informed by the Department that all of their applications to operate recreational marijuana retail stores
12 were denied.

13 19. Plaintiffs are informed and believe that the Department improperly granted
14 “conditional” licenses to applicants that were ranked substantially lower than Plaintiffs on the 2015
15 rankings.

16 20. Plaintiffs are informed and believe that the Department improperly granted more than
17 one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership
18 groups.

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22 **III.**
23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**
25 **(Declaratory Relief)**

26 21. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

27 22. A justiciable controversy exists that warrants a declaratory judgment pursuant to
28 Nevada’s Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.

1 23. Plaintiffs and the Defendant have adverse and/or competing interests as the
2 Department, through its Marijuana Enforcement Division, has denied the applications that violate
3 Plaintiffs' Constitutional Rights, Nevada law, and State policy.

4 24. The Department's refusal to issue Plaintiffs any "conditional" licenses affects
5 Plaintiffs' rights afforded them by NRS 453D, NAC 453D, R092-17, and other Nevada laws and
6 regulations.
7

8 25. Further, the Department's improper ranking of the other applicants for a recreational
9 marijuana establishment license and the Department's subsequent, improper issuance to each of a
10 "conditional" license also affects the rights of Plaintiffs afforded them by NRS 453D, NAC 453D,
11 R092-17, and other Nevada laws and regulations.

12 26. The Department's actions and/or inactions also have created an actual justiciable
13 controversy ripe for judicial determination between Plaintiffs and the Department with respect to the
14 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17 as to
15 Plaintiffs. Plaintiffs have been harmed, and will continue to be harmed, by the Defendants' actions.
16

17 27. The Department's actions and/or inactions failed to appropriately address the necessary
18 considerations and intent of NRS 453D.210, designed to restrict monopolies.

19 28. Accordingly, Plaintiffs seek a declaration from this Court that, *inter alia*:

20 a. That the Department improperly denied each Plaintiff six (6) "conditional"
21 licenses for the operation of a recreational marijuana establishment in the
22 following jurisdictions: unincorporated Clark County, Nevada; Las Vegas,
23 Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; Elko
24 County, Nevada; and Nye County, Nevada.

25 b. The denial of a "conditional" license to Plaintiffs is void *ab initio*;
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- c. The procedures employed in the denial violated Plaintiffs' procedural due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- d. The denial violates Plaintiffs' substantive due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- e. The denial is void for vagueness and therefore unenforceable;
- f. Defendant acted arbitrarily and capriciously or in contravention of a legal duty and Plaintiffs are therefore entitled to a writ of mandamus;
- g. Plaintiffs are entitled to judicial review; and
- h. The Department's denial lacked substantial evidence.

29. Plaintiffs also seek a declaration from this Court that the Department must issue each Plaintiff six (6) "conditional" license for the operation of a recreational marijuana establishment in unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; Elko County, Nevada; and Nye County, Nevada since Plaintiffs' scores issued by the Department would have ranked high enough to entitle them to a "conditional" license had the Department properly applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

30. Plaintiffs assert and contend that a declaratory judgment is both necessary and proper at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of the Plaintiffs afforded them by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and regulations.

31. Plaintiffs have found it necessary to retain the legal services of Kemp, Jones & Coulthard, LLP, to bring this action, and Plaintiffs are entitled to recover their reasonable attorneys' fees and costs therefor.

SECOND CLAIM FOR RELIEF
(Injunctive Relief)

32. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

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

34. The purpose of this refusal was and is to unreasonably interfere with Plaintiffs' business and causing Plaintiffs to suffer irreparable harm.

35. The Department will suffer no harm by following the law with respect to issuing "conditional" licenses.

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

37. The public interest favors Plaintiffs because in the absence of injunctive relief, the consumers who would have benefitted will have less available options from which they can receive recreational marijuana.

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

THIRD CLAIM FOR RELIEF
(Violation of Procedural Due Process)

39. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

40. The procedures employed by the Department in denying Plaintiffs' applications have deprived Plaintiffs of due process of law as guaranteed by the Nevada Constitution and the United States Constitution.

1 41. The process in which denial was considered, noticed to the public, and passed failed to
2 provide Plaintiffs any meaningful opportunity to be heard at a consequential time and was
3 fundamentally unfair and violated the due process requirements of the Nevada and United States
4 Constitutions.

5 42. The Constitutional infirmity of this entire process renders the denial void and
6 unenforceable, and Plaintiffs are entitled to a declaration as to the denials' ineffectiveness and an order
7 enjoining its enforcement.
8

9 43. Plaintiffs are also entitled to damages for these due process violations.

10 44. As the action of the Department necessitated that Plaintiffs retain the legal services of
11 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiffs are also
12 entitled to attorneys' fees and costs of suit.
13

14 45. Plaintiffs have found it necessary to bring this action, and Plaintiffs are entitled to
15 recover their reasonable attorneys' fees and costs therefor.
16

17 **FOURTH CLAIM FOR RELIEF**
18 **(Violation of Substantive Due Process)**

19 46. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

20 47. The denial violates Plaintiffs' substantive due process rights guaranteed by the Nevada
21 Constitution and the United States Constitution.

22 48. The Constitutional infirmity of this entire process and the Department's denial renders
23 the denials void and unenforceable, and Plaintiffs are entitled to a declaration as to the denials'
24 ineffectiveness and an order enjoining its enforcement.
25

26 49. Plaintiffs are also entitled to damages for these due process violations.
27
28

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

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

7
8 61. Accordingly, Plaintiffs petition this Court for judicial review of the record on which the
9 Department's denial was based, including but not limited to:

- 10 a. A determination that the decision lacked substantial evidence;
11 b. A determination that the denial is void *ab initio* for non-compliance with NRS
12 453D, NAC 453D, R092-17, and other Nevada state laws or regulations; and
13 c. Other relief consistent with those determinations.

14 62. Plaintiffs have found it necessary to retain the legal services of Kemp, Jones &
15 Coulthard, LLP, to bring this action, and Plaintiffs are entitled to recover their reasonable attorneys'
16 fees and costs therefor.

17
18 **SEVENTH CLAIM FOR RELIEF**
19 **(Petition for Writ of Mandamus)**

20 63. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

21 64. When a governmental body fails to perform an act "that the law requires" or acts in an
22 arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev. Rev. Stat. §
23 34.160.

24 65. The Department failed to perform various acts that the law requires including but not
25 limited to:

- 26 a. Providing proper pre-hearing notice of the denial; and
27 b. Arbitrarily and capriciously denying the application for no legitimate reason.
28

1 66. The Department acted arbitrarily and capriciously in the denial by performing or failing
2 to perform the acts enumerated above and because, *inter alia*:

3 a. The Board lacked substantial evidence to deny the application; and

4 b. The Board denied the application solely to approve other competing applicants
5 without regard to the merit of Plaintiffs' application.
6

7 67. These violations of the Defendants' legal duties were arbitrary and capricious actions
8 that compel this Court to issue a Writ of Mandamus directing the Department to review the application
9 on its merits and/or approve it.

10 68. As a result of the Defendants' unlawful and arbitrary and capricious actions, Plaintiffs
11 have been forced to retain legal counsel to prosecute this action and are therefore also entitled to their
12 damages, costs in this suit, and an award of attorneys' fees pursuant to NRS 34.270.
13

14 IV.
15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiffs pray for judgment as follows:

- 17 1. For declaratory relief as set forth above;
- 18 2. For a preliminary and permanent injunction enjoining the enforcement of the denial;
- 19 3. For judicial review of the record and history on which the denial was based;
- 20 4. For the issuance of a writ of mandamus;
- 21 5. For compensatory and special damages as set forth herein;
- 22 6. For attorneys' fees and costs of suit; and
- 23 7. For all other and further relief as the Court deems just and proper.
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V.
JURY DEMAND

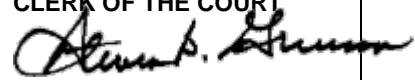
Trial by jury is hereby demanded on all claims and issues so triable.

DATED this December 18, 2018

KEMP, JONES & COULTHARD LLP



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Nevada Organic Remedies, LLC

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

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

Plaintiff,

vs.

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

Defendants,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

NEVADA ORGANIC REMEDIES, LLC,

Counterclaimant,

vs.

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

Counter-Defendants

Case No. A-18-785818-W
Dept. No. 9

**ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT
AND COUNTERCLAIM**

1 Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") files its Answer
2 to Plaintiff's Complaint as follows:

3 **I. PARTIES & JURISDICTION**

4 1. NOR does not have sufficient knowledge or information as to the truth or
5 falsity of these allegations and on that basis denies these allegations.

6 2. NOR does not have sufficient knowledge or information as to the truth or
7 falsity of these allegations and on that basis denies these allegations.

8 3. NOR admits the allegations of paragraph 3.

9 4. NOR does not have sufficient knowledge or information as to the truth or
10 falsity of these allegations and on that basis denies these allegations.

11 **II. GENERAL ALLEGATIONS**

12 5. To the extent this paragraph contains legal conclusions or statements
13 regarding the content of the laws or regulations referenced, no response is necessary. To
14 the extent the allegations accurately state the laws or regulations referenced, NOR admits
15 the allegations.

16 6. To the extent this paragraph contains legal conclusions or statements
17 regarding the content of the laws or regulations referenced, no response is necessary. To
18 the extent the allegations accurately state the laws or regulations referenced, NOR admits
19 the allegations.

20 7. To the extent this paragraph contains legal conclusions or statements
21 regarding the content of the laws or regulations referenced, no response is necessary. To
22 the extent the allegations accurately state the laws or regulations referenced, NOR admits
23 the allegations.

24 8. To the extent this paragraph contains legal conclusions or statements
25 regarding the content of the laws or regulations referenced, no response is necessary. To
26 the extent the allegations accurately state the laws or regulations referenced, NOR admits
27 the allegations.

1 9. To the extent this paragraph contains legal conclusions or statements
2 regarding the content of the laws or regulations referenced, no response is necessary. To
3 the extent the allegations accurately state the laws or regulations referenced, NOR admits
4 the allegations.

5 10. To the extent this paragraph contains legal conclusions or statements
6 regarding the content of the laws or regulations referenced, no response is necessary. To
7 the extent the allegations accurately state the laws or regulations referenced, NOR admits
8 the allegations.

9 11. NOR does not have sufficient knowledge or information as to the truth or
10 falsity of these allegations and on that basis denies these allegations.

11 12. NOR does not have sufficient knowledge or information as to the truth or
12 falsity of these allegations and on that basis denies these allegations.

13 13. NOR does not have sufficient knowledge or information as to the truth or
14 falsity of these allegations and on that basis denies these allegations.

15 14. NOR does not have sufficient knowledge or information as to the truth or
16 falsity of these allegations and on that basis denies these allegations.

17 15. NOR does not have sufficient knowledge or information as to the truth or
18 falsity of these allegations and on that basis denies these allegations.

19 16. NOR does not have sufficient knowledge or information as to the truth or
20 falsity of these allegations and on that basis denies these allegations.

21 17. NOR does not have sufficient knowledge or information as to the truth or
22 falsity of these allegations and on that basis denies these allegations.

23 18. NOR denies the allegations contained in this paragraph to the extent such
24 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
25 NOR does not have sufficient knowledge or information as to the truth or falsity of these
26 allegations and on that basis denies these allegations.

27 19. NOR denies the allegations contained in this paragraph to the extent such
28 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,

1 NOR does not have sufficient knowledge or information as to the truth or falsity of these
2 allegations and on that basis denies these allegations.

3 20. NOR denies the allegations contained in this paragraph to the extent such
4 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
5 NOR does not have sufficient knowledge or information as to the truth or falsity of these
6 allegations and on that basis denies these allegations.

7 **FIRST CLAIM FOR RELIEF**

8 **(Declaratory Relief)**

9 21. NOR repeats and reasserts all prior responses as though fully set forth
10 herein.

11 22. This paragraph contains legal conclusions, and no response is necessary. To
12 the extent a response is necessary, NOR denies the allegations.

13 23. This paragraph contains legal conclusions, and no response is necessary. To
14 the extent a response is necessary, NOR denies the allegations.

15 24. This paragraph contains legal conclusions, and no response is necessary.
16 To the extent a response is necessary, NOR denies the allegations.

17 25. NOR denies the allegations contained in this paragraph to the extent such
18 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
19 this paragraph contains legal conclusions, and no response is necessary. To the extent a
20 response is necessary, NOR denies the allegations.

21 26. This paragraph contains legal conclusions, and no response is necessary. To
22 the extent a response is necessary, NOR denies the allegations.

23 27. This paragraph contains legal conclusions, and no response is necessary. To
24 the extent a response is necessary, NOR denies the allegations.

25 28. This paragraph does not contain factual allegations or legal conclusions, and
26 no response is necessary. To the extent a response is necessary, NOR denies the allegations.

27 29. This paragraph does not contain factual allegations or legal conclusions, and
28 no response is necessary. To the extent a response is necessary, NOR denies the allegations.

1 30. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 31. NOR does not have sufficient knowledge or information as to the truth or
4 falsity of these allegations and on that basis denies these allegations.

5
6 **SECOND CLAIM FOR RELIEF**
7 **(Injunctive Relief)**

8 32. NOR repeats and reasserts all prior responses as though fully set forth
9 herein.

10 33. This paragraph contains legal conclusions, and no response is necessary.

11 34. NOR does not have sufficient knowledge or information as to the truth or
12 falsity of these allegations and on that basis denies these allegations.

13 35. NOR admits the allegations contained in this paragraph.

14 36. This paragraph contains legal conclusions, and no response is necessary. To
15 the extent a response is necessary, NOR denies the allegations.

16 37. This paragraph contains legal conclusions, and no response is necessary. To
17 the extent a response is necessary, NOR denies the allegations.

18 38. This paragraph contains legal conclusions, and no response is necessary.
19 To the extent a response is necessary, NOR denies the allegations.

20 **THIRD CLAIM FOR RELIEF**
21 **(Violation of Procedural Due Process)**

22 39. NOR repeats and reasserts all prior responses as though fully set forth
23 herein.

24 40. This paragraph contains legal conclusions, and no response is necessary. To
25 the extent a response is necessary, NOR denies the allegations.

26 41. This paragraph contains legal conclusions, and no response is necessary. To
27 the extent a response is necessary, NOR denies the allegations.

28 42. This paragraph contains legal conclusions, and no response is necessary. To
the extent a response is necessary, NOR denies the allegations.

1 43. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 44. NOR does not have sufficient knowledge or information as to the truth or
4 falsity of these allegations and on that basis denies these allegations.

5 45. This paragraph contains legal conclusions, and no response is necessary. To
6 the extent a response is necessary, NOR denies the allegations.

7
8 **FOURTH CLAIM FOR RELIEF**
9 **(Violation of Substantive Due Process)**

10 46. NOR repeats and reasserts all prior responses as though fully set forth
11 herein.

12 47. This paragraph contains legal conclusions, and no response is necessary. To
13 the extent a response is necessary, NOR denies the allegations.

14 48. This paragraph contains legal conclusions, and no response is necessary. To
15 the extent a response is necessary, NOR denies the allegations.

16 49. This paragraph contains legal conclusions, and no response is necessary. To
17 the extent a response is necessary, NOR denies the allegations.

18 50. This paragraph contains legal conclusions, and no response is necessary. To
19 the extent a response is necessary, NOR denies the allegations.

20 **FIFTH CLAIM FOR RELIEF**
21 **(Equal Protection Violation)**

22 51. NOR repeats and reasserts all prior responses as though fully set forth
23 herein.

24 52. This paragraph contains legal conclusions, and no response is necessary. To
25 the extent a response is necessary, NOR denies the allegations.

26 53. This paragraph contains legal conclusions, and no response is necessary. To
27 the extent a response is necessary, NOR denies the allegations.

28 54. This paragraph contains legal conclusions, and no response is necessary. To
the extent a response is necessary, NOR denies the allegations.

1 55. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 56. This paragraph contains legal conclusions, and no response is necessary. To
4 the extent a response is necessary, NOR denies the allegations.

5
6 **SIXTH CLAIM FOR RELIEF**
7 **(Petition for Judicial Review)**

8 57. NOR repeats and reasserts all prior responses as though fully set forth
9 herein.

10 58. This paragraph contains legal conclusions, and no response is necessary. To
11 the extent a response is necessary, NOR denies the allegations.

12 59. This paragraph contains legal conclusions, and no response is necessary. To
13 the extent a response is necessary, NOR denies the allegations.

14 60. This paragraph contains legal conclusions, and no response is necessary. To
15 the extent a response is necessary, NOR denies the allegations.

16 61. This paragraph does not contain factual allegations or legal conclusions, and
17 no response is necessary.

18 62. This paragraph contains legal conclusions, and no response is necessary. To
19 the extent a response is necessary, NOR denies the allegations.

20 **SEVENTH CLAIM FOR RELIEF**
21 **(Petition for Writ of Mandamus)**

22 63. NOR repeats and reasserts all prior responses as though fully set forth
23 herein.

24 64. This paragraph contains legal conclusions, and no response is necessary. To
25 the extent a response is necessary, NOR denies the allegations.

26 65. This paragraph contains legal conclusions, and no response is necessary. To
27 the extent a response is necessary, NOR denies the allegations.

28 66. This paragraph contains legal conclusions, and no response is necessary. To
the extent a response is necessary, NOR denies the allegations.

1 67. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 68. This paragraph contains legal conclusions, and no response is necessary. To
4 the extent a response is necessary, NOR denies the allegations.

5 **GENERAL DENIAL**

6 To the extent a further response is required to any allegation set forth in the
7 Complaint, NOR denies such allegation.

8
9 **AFFIRMATIVE DEFENSES**

10 **AFFIRMATIVE DEFENSE NO. 1**

11 The First Amended Complaint and each claim for relief fails to state a claim upon
12 which relief can be granted.

13 **AFFIRMATIVE DEFENSE NO. 2**

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

17 **AFFIRMATIVE DEFENSE NO. 3**

18 Plaintiffs' claims are barred because Plaintiff has failed to exhaust administrative
19 remedies.

20 **AFFIRMATIVE DEFENSE NO. 4**

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

25 **AFFIRMATIVE DEFENSE NO. 5**

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

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AFFIRMATIVE DEFENSE NO. 6

The Defendants the State of Nevada and Nevada Department of Taxation are immune from suit when performing the functions at issue in this case.

AFFIRMATIVE DEFENSE NO. 7

Plaintiffs have no constitutional rights to obtain privileged licenses.

AFFIRMATIVE DEFENSE NO. 8

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

AFFIRMATIVE DEFENSE NO. 9

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

AFFIRMATIVE DEFENSE NO. 10

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

AFFIRMATIVE DEFENSE NO. 11

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

AFFIRMATIVE DEFENSE NO. 12

Because this case is in its infancy, NOR has not yet discovered all relevant facts. Additional facts may support the assertion of additional affirmative defenses, including, but not limited to, those enumerated in NRCP 8(c). NOR reserves the right to assert such affirmative defenses as discovery proceeds.

PRAYER FOR RELIEF

WHEREFORE, Defendant-Intervenor prays for judgment as follows:

1. That Plaintiffs take nothing by way of their First Amended Complaint and that the same be dismissed with prejudice;
2. For costs of suit and reasonable attorneys' fees; and

///
///

1 3. For any other such relief as this Court deems just and proper under the
2 circumstances.

3
4 DATED: March 15, 2019

KOCH & SCOW, LLC

5 By: /s/ David R. Koch
6 David R. Koch, Esq.
7 *Attorneys for Nevada Organic*
8 *Remedies, LLC*

9
10 **COUNTERCLAIM**

11 Nevada Organic Remedies, LLC (“NOR”) asserts its Counterclaim against MM
12 Development Company, Inc. (“MM”) and Livfree Wellness, LLC, dba The Dispensary
13 (“Livfree”) and alleges as follows:

14 **PARTIES**

15 1. NOR is, and at all relevant times was, a Nevada limited liability
16 company doing business in Clark County.

17 2. NOR is informed and believes, and on that basis alleges that MM is, and
18 at all relevant times was, a Nevada corporation doing business in Clark County.

19 3. NOR is informed and believes, and on that basis alleges that Livfree is,
20 and at all relevant times was, a Nevada limited liability company doing business in
21 Clark County.

22 **JURISDICTION**

23 4. Jurisdiction is proper in this Court as this Counterclaim is brought in
24 response to an action presently pending before this Court, and pursuant to NRCP
25 8(a)(1), no new jurisdictional support is needed.

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GENERAL ALLEGATIONS

NOR Applies for and Is Awarded Conditional Licenses

5. On August 16, 2018, the Department issued notice for an application period within which the Department sought applications from qualified applicants for recreational marijuana retail store licenses throughout various jurisdictions in Nevada.

6. The application period for those licenses opened on September 7, 2018 and closed on September 20, 2018.

7. The Department allocated 10 licenses for Unincorporated Clark County, Nevada; 10 licenses for Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5 licenses for North Las Vegas, Nevada; 6 licenses for Reno, Nevada; 1 license for Sparks, Nevada; and 1 license for Nye County, Nevada. The Department stated that it would issue conditional licenses to successful applicants on or before December 5, 2018.

8. NOR timely submitted applications for 8 recreational marijuana retail store licenses during the September 2018 application period in the following Nevada jurisdictions: Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of Henderson, City of Reno, Nye County, Carson City, and City of Sparks.

9. On December 5, 2018, the Department sent letters to NOR indicating that the Department intended to conditionally approve NOR's applications for licenses in Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of Henderson, City of Reno, Carson City and Nye County.

10. NOR is informed and believes that the Department issued NOR seven conditional licenses because NOR scored second highest among overall applicants in six jurisdictions and had the highest score for any applicant in Nye County.

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1 *Current Regulations Require NOR to Receive*

2 *Final Inspections Within 12 Months*

3 11. Pursuant to current regulations, NOR has 12 months to receive a final
4 inspection for a marijuana establishment under its conditional licenses. As provided
5 in R092-17, Sec. 87, "If a marijuana establishment has not received a final inspection
6 within 12 months after the date on which the Department issued a license to the
7 marijuana establishment, the marijuana establishment must surrender the license to
8 the Department. The Department may extend the period specified in this subsection if
9 the Department, in its discretion, determines that extenuating circumstances prevented
10 the marijuana establishment from receiving a final inspection within the period
11 specified in this subsection."
12

13 12. Accordingly, NOR intends to proceed with obtaining a final inspection of
14 a marijuana establishment no later than December 4, 2019, in each jurisdiction in which
15 it was awarded a license.

16 *MM and Livfree File the Present Action to Impede*

17 *Licensees' Rights to Open a Marijuana Establishment*

18 13. The present lawsuit is an attempt by MM and Livfree to delay or hinder
19 the process and timing for licensees, such as NOR, of opening a marijuana establishment
20 under their approved conditional licenses. MM and Livfree contend that they had
21 received high scores for medical marijuana establishments during the 2015 application
22 review process, and that the "Department improperly granted 'conditional' licenses to
23 applicants who were ranked substantially lower than Plaintiffs on the 2015 rankings," as
24 if the 2015 rankings should be simply transferred over to the new 2018 application
25 process.
26

27 14. The wholly unfounded claims made by MM and Livfree in this action are
28 an attempt to manufacture a dispute in the hope of undermining the rights of NOR and

1 other successful applicants. MM and Livfree have asserted factually deficient
2 allegations that they should have received one or more of the licenses that were awarded
3 to NOR (or other licensees) without any substantive facts that demonstrate any
4 impropriety or issue with the granting of the licenses to NOR.

5 15. MM and Livfree have not asserted (nor can they assert) any facts specific to
6 NOR to demonstrate that NOR should not have received the conditional licenses that it
7 was granted, yet MM and Livfree have sought relief that might limit or preclude NOR
8 from being able to move forward with obtaining final inspections for marijuana
9 establishments under current regulations.

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Relief)**

12 16. NOR repeats and reincorporates by reference all previous allegations of
13 this Counterclaim.

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

16 18. NOR has received conditional licenses from the Department of Taxation to
17 open marijuana establishments in seven jurisdictions in the State pursuant to statute and
18 regulation.

19 19. MM and Livfree contend that the Department of Taxation "must" issue a
20 conditional license to each of them in at least six jurisdictions, which would necessarily
21 deprive NOR of a license in one or more of the jurisdictions in which it has received a
22 license.

23 20. MM and Livfree have asserted no facts specific to NOR that would provide
24 any valid basis to receive the relief requested as it relates to NOR.

25 21. NOR requests a declaratory judgment to determine its rights, status, or
26 other legal relations under the applicable statutes and regulations with respect to the
27
28

1 unfounded dispute brought by MM and Livfree. Such a declaratory judgment will
2 eliminate any false and untenable impediments that might otherwise potentially delay
3 the opening of a marijuana establishment within the specified regulatory time period.

4 22. NOR has been required to retain counsel to bring these claims and is
5 entitled to recover its fees and costs incurred in pursuit of these claims.

6 **PRAYER FOR RELIEF**

7 Wherefore, NOR prays for relief as follows:

8 1. A declaratory judgment from the Court that NOR has a valid conditional
9 license under applicable statutes and regulations and may proceed with opening and
10 obtaining a final inspection for a marijuana establishment,

11 2. Costs and fees incurred in bringing and pursuing its claims herein, and

12 3. Any further and additional relief that the Court may award.
13
14

15 DATED: March 15, 2019

KOCH & SCOW, LLC

16 By: /s/ David R. Koch
17 David R. Koch, Esq.
18 *Attorneys for Counterclaimant*
19 *Nevada Organic Remedies, LLC*
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CERTIFICATE OF SERVICE

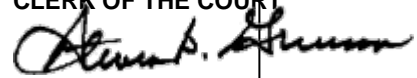
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 15, 2019, I caused the foregoing document entitled: **ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND COUNTERCLAIM** to be served as follows:

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

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Executed on March 15, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



1 ANEO

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

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

Plaintiffs,

vs.

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

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

SERENITY WELLNESS CENTER, LLC, et
al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,
Defendant,

and

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

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

Case No.: A-18-785818-W

Dept. No.: VIII

**AMENDED NOTICE OF ENTRY OF
ORDER**

Case No.: A-19-786962-B

Dept. No.: XI

**AMENDED NOTICE OF ENTRY
OF ORDER**

Case No.: A-19-787004-B

Dept. No.: XI

AMENDED NOTICE OF ENTRY OF

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

Plaintiffs,

vs.

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

Defendants.

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

Defendant-Intervenor.

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

Plaintiff,

vs.

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

Defendants;

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

Intervenor Defendant.

HIGH SIERRA HOLISTICS, LLC,

Plaintiff,

vs.

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

ORDER

Case No.: A-18-786357-W

Dept. No.: XIV

AMENDED NOTICE OF ENTRY OF ORDER

Case No.: A-19-787726-C

Dept. No.: XIV

AMENDED NOTICE OF ENTRY OF ORDER

CORPORATIONS 1-10,
Defendants.

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

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

vs.

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

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

Case No.: A-19-787540-W

Dept. No.: XVIII

**AMENDED NOTICE OF ENTRY OF
ORDER**

TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
PLEASE TAKE NOTICE that on the 23rd day of August, 2019, the Findings of
Fact and Conclusions of Law Granting Preliminary Injunction was entered in the above-
captioned action. A copy of the Findings of Fact and Conclusions of Law Granting
Preliminary Injunction is attached hereto as **Exhibit 1**.

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

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Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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CERTIFICATE OF SERVICE

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

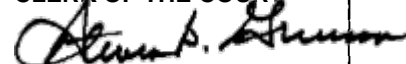
This document applies to Case Nos. A-19-786962-B; A-19-785818-W; A-19-787004-B; A-19-787540-W; A-18-786357-W; and A-19-787726-C.

/s/ Pharan Burchfield

An Employee of McLetchie Law

INDEX OF EXHIBITS TO AMENDED NOTICE OF ENTRY	
Exhibit	Description
1	August 23, 2019 Findings of Fact and Conclusions of Law Granting Preliminary Injunction

EXHIBIT 1



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant(s).

and

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

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

CLERK OF THE COURT

RECEIVED
AUG 23 2019

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

Intervenors.

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

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

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

PROCEDURAL POSTURE

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

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

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

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

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

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

8 ***PRELIMINARY STATEMENT***

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

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

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

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

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

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

9 FINDINGS OF FACT

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

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

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

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

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

- 21 (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana
22 establishment;
- 23 (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana
24 establishment;
- 25 (c) Requirements for the security of marijuana establishments;
- 26 (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21
27 years of age;
- 28 (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-
resistant packaging;
- (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana
establishments including a numerical indication of potency based on the ratio of THC to the weight of a product
intended for oral consumption;
- (g) Requirements for record keeping by marijuana establishments;
- (h) Reasonable restrictions on signage, marketing, display, and advertising;
- (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
- (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another
qualified person and to enable a licensee to move the location of its establishment to another suitable location;
- (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and
marijuana establishments at the same location;
- (l) Procedures to establish the fair market value at wholesale of marijuana; and
- (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any
violation of the provisions of NRS 453D.300.

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

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

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

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

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

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

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

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

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

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

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

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

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

NRS 453D.020(3).

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

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

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

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

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

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

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

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

The second recommendation of concern is:

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

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

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

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

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

14. The Regulations for licensing were to be "directly and demonstrably related to the operation of a marijuana establishment." NRS 453D.200(1)(b). The phrase "directly and demonstrably related to the operation of a marijuana establishment" is subject to more than one interpretation.

*Use the marijuana establishments governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory documents.

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

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

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

2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS 453D.300, a marijuana establishment may require the person to submit to the Department a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

1 15. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.⁹
4

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

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

8 ***

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

- 10 (a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation
11 facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail
12 marijuana store;
13 (b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment
14 registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed
15 with the Secretary of State;
16 (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability
17 company, association or cooperative, joint venture or any other business organization;
18 (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business,
19 and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;
20 (e) The physical address where the proposed marijuana establishment will be located and the physical address of
21 any co-owned or otherwise affiliated marijuana establishments;
22 (f) The mailing address of the applicant;
23 (g) The telephone number of the applicant;
24 (h) The electronic mail address of the applicant;
25 (i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License
26 prescribed by the Department;
27 (j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during
28 which the retail marijuana store plans to be available to sell marijuana to consumers;
 (k) An attestation that the information provided to the Department to apply for the license for a marijuana
 establishment is true and correct according to the information known by the affiant at the time of signing; and
 (l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC
 453D.250 and the date on which the person signed the application.

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

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

- 5 (a) An organizational chart showing all owners, officers and board members of the proposed marijuana
6 establishment;
7 (b) A list of all owners, officers and board members of the proposed marijuana establishment that contains the
8 following information for each person:
9 (1) The title of the person;
10 (2) The race, ethnicity and gender of the person;
11 (3) A short description of the role in which the person will serve for the organization and his or her
12 responsibilities;
13 (4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to
14 the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a
15 marijuana establishment agent at the proposed marijuana establishment;
16 (5) Whether the person has served or is currently serving as an owner, officer or board member for another
17 medical marijuana establishment or marijuana establishment;
18 (6) Whether the person has served as an owner, officer or board member for a medical marijuana establishment
19 or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as
20 applicable, revoked;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 30. An applicant was permitted to submit a single application for all jurisdictions in which it
14 was applying, and the application would be scored at the same time.
15

16 31. By September 20, 2018, the DoT received a total of 462 applications.

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

20 33. When decisions were made on who to hire, the individuals were notified that they would
21 need to register with "Manpower" under a pre-existing contract between the DoT and that company.
22 Individuals would be paid through Manpower, as their application-grading work would be of a
23 temporary nature.
24

25 34. The DoT identified, hired, and trained eight individuals to grade the applications,
26 including three to grade the identified portions of the applications, three to grade the non-identified
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1 portions of the applications, and one administrative assistant for each group of graders (collectively the
2 “Temporary Employees”).

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

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

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

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

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

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

27
28 ¹¹ Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional
evidentiary proceedings in the assigned department.

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

3 41. NRS 453D.200(6) provides that “[t]he DoT shall conduct a background check of each
4 prospective owner, officer, and board member of a marijuana establishment license applicant.” The
5 DoT departed from this mandatory language in NAC 453D.255(1) and made no attempt in the
6 application process to verify that the applicant’s complied with the mandatory language of the BQ2 or
7 even the impermissibly modified language.
8

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

14 43. The limitation of “unreasonably impracticable” in BQ2¹² does not apply to the
15 mandatory language of BQ2, but to the Regulations which the DoT adopted.
16

17 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
18 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
19 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT’s decision to adopt regulations in
20 direct violation of BQ2’s mandatory application requirements is violative of Article 19, Section 2(3) of
21 the Nevada Constitution.
22

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

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

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

28 ¹⁴ That provision states:

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

¹⁶ The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BO2.

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

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

61. The purpose of a preliminary injunction is to preserve the *status quo* until the matter can be litigated on the merits.

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

63. Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent part:

"1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, **the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.**

...

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

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

7 (Emphasis added.)

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

14 65. BQ2 provides, “the Department shall adopt all regulations necessary or convenient to
15 carry out the provisions of this chapter.” NRS 453D.200(1). This language does not confer upon the
16 DoT unfettered or unbridled authority to do whatever it wishes without constraint. The DoT was not
17 delegated the power to legislate amendments because this is initiative legislation. The Legislature itself
18 has no such authority with regard to NRS 453D until three years after its enactment under the
19 prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.
20

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

23 67. NRS 453D.200(1) provides that “the Department shall adopt all regulations necessary or
24 convenient to carry out the provisions of this chapter.” The Court finds that the words “necessary or
25 convenient” are susceptible to at least two reasonable interpretations. This limitation applies only to
26 Regulations adopted by the DoT.
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

21 80. The DoT made licensure conditional for one year based on the grant of power to create
22 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a
23 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's
24 discretion.
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28 ¹⁷ The Court makes no determination as to the extent which the grading errors alleged by MM and Live Free may be
subject to other appropriate writ practice related to those individualized issues by the assigned department.

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

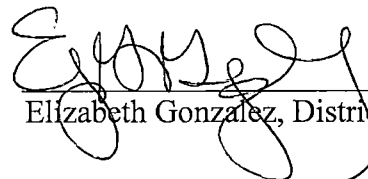
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

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

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

DATED this 23rd day of August 2019.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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


Dan Kutinac

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