

**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; LIVFREE  
WELLNESS LLC, dba The Dispensary, a  
Nevada Limited Liability Company,

Respondents/Cross-  
Appellants,

and

STATE OF NEVADA, DEPARTMENT OF  
TAXATION,

Respondent.

**Supreme Court Case No. 79670**

Electronically Filed  
Nov 22 2019 02:49 p.m.

DOCKETING STATEMENT  
CIVIL APPEALS  
OPENED Supreme Court

**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 it is 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 11  
County Clark Judge Elizabeth Gonzalez  
District Ct. Case No. A-18-785818-W

**2. Attorney filing this docketing statement:**

Attorney Nathanael Rulis Telephone 702-385-6000  
Firm Kemp, Jones & Coulthard, LLP  
Address 3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, NV 89169

Client(s) MM Development Company, Inc.; LivFree Wellness, 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 See Attachment 1 Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

Attorney See Attachment 1 Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(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 NRCP 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. Compassionate Team of Las Vegas LLC, Case No. 79671
- (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. Serenity Wellness Ctr. LLC, et al., Case No. 79668

**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 2.

**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 under NRS 453D.210, Cross-Appellants brought suit against the Department for irregularities and problems with the application scoring process. When plaintiffs several of the cases filed motions for preliminary injunctions, the cases were coordinated in front of the Hon. Elizabeth Gonzales for the purpose of holding an evidentiary hearing. At the conclusion of the evidentiary hearing, the district court issued findings about problems with the Department's scoring of applications and held that the Department violated NRS 453D.200(6) by failing to conduct background checks on owners for some of the successful applicants. Though finding that many applicants failed to submit complete applications (the applications did not include an actual proposed physical location as was required), which affected the grading and scoring, the court declined to enjoin the Department from conducting necessary final inspections for those applicants given licenses.

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

Whether the district court erred by failing to enjoin the State and its award of conditional licenses to any applicants that failed to provide a physical address and/or completed application as set forth in NRS453D.210(5)(b).

**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 ability to change the requirements of a statute passed as the result of a ballot initiative under Article 19, Section 2(3) of the Nevada State Constitution.

**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 regarding recreational marijuana in Nevada.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**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** Sep 19, 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 Sep 24, 2019

☐ 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 Nov 22, 2019

(c) Date written notice of entry of order resolving tolling motion was served Nov 22, 2019

Was service by:

☐ Delivery

☒ Mail

**19. Date notice of appeal filed** Sep 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, Inc. and LivFree Wellness, LLC filed the Notice of Cross-Appeal 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 the scope of a preliminary injunction against the State of Nevada, Department of Taxation that directly affects the Cross-Appellants. As this is an appeal of an order granting in part and denying in part 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:

On October 29, 2019, Chief Judge Linda Bell orally granted a Motion to Consolidate in all matters listed in Attachment 3.

(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:

The other 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. Lone Mountain Partners LLC has only filed a single appeal on the relevant issues in Greenmart 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) Plaintiffs brought claims for violation of constitutional rights, writs of mandamus, declaratory relief, and judicial review against the State of Nevada, Department of Taxation seeking that errors with the grading be fixed and to obtain one or more dispensary licenses and/or damages.

(2) Nevada Organic Remedies, LLC and Integral Associates, LLC, et al., brought counterclaims for declaratory relief.

**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:

All claims remain pending before the district court. This appeal only challenges a preliminary injunction order.

(b) Specify the parties remaining below:  
All parties remain in the proceedings pending below.

(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

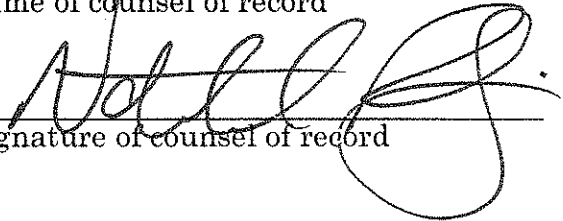
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

MM Development Company, Inc., et al.  
Name of appellant

Nov 22, 2019  
Date

Nevada, Clark County  
State and county where signed

Nathanael R. Rulis  
Name of counsel of record

  
Signature of counsel of record

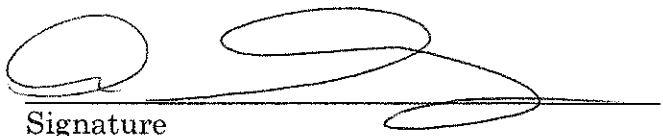
## CERTIFICATE OF SERVICE

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.)

See Attachment 1.

Dated this 22 day of November, 2019

  
Signature

## ATTACHMENT 1

Margaret A. McLetchie, Nevada Bar No. 10931  
Alina M. Shell, Nevada Bar No. 11711  
MCLEATCHIE LAW  
701 E. Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
*Attorneys for Greenmart of Nevada NLV, LLC*

David R. Koch (NV Bar #8830)  
Steven B. Scow (NV Bar #9906)  
Brody R. Wight (NV Bar #13615)  
Daniel G. Scow (NV Bar #14614)  
KOCH & SCOW LLC  
11500 S. Eastern Ave., Suite 210  
Henderson, Nevada 89052  
*Attorneys for Nevada Organic Remedies*

Aaron Ford, Attorney General, Nevada Bar No. 7704  
Steve Shevorski, Nevada Bar No. 8256  
David J. Pope, Nevada Bar No. 8617  
Theresa M. Haar, Nevada Bar No. 12158  
NEVADA OFFICE OF ATTORNEY GENERAL  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101  
*Attorneys for State of Nevada of Nevada, Department of Taxation*

Jared Kahn, Nevada Bar # 12603  
JK LEGAL & CONSULTING, LLC  
9205 W. Russell Rd., Suite 240  
Las Vegas, NV 89148  
*Attorney for Helping Hands Wellness Center LLC*

Eric D. Hone, NV Bar No. 8499  
Jamie L. Zimmennan, NV Bar No. 11749  
Moorea L. Katz, NV Bar No. 12007  
HI LAW GROUP  
701 N. Green Valley Parkway, Suite 200  
Henderson NV 89074  
*Attorneys for Lone Mountain Partners, LLC*

Joseph A. Gutierrez, Nevada Bar No. 9046  
Jason R. Maier, Nevada Bar No. 8557  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Ave.  
Las Vegas, NV 89148

Philip M. Hymanson, Nevada Bar No. 2253  
Henry J. Hymanson, Nevada Bar No. 14381  
HYMANSON & HYMANSON  
8816 Spanish Ridge Ave.  
Las Vegas, NV 89148

Dennis M. Prince, Nevada Bar No. 5092  
Kevin T. Strong, Nevada Bar No. 12107  
PRINCE LAW GROUP  
8816 Spanish Ridge Ave.  
Las Vegas, NV 89148  
*Attorneys for CPCM Holdings, LLC dba Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC*

James J. Pisanelli, Nevada Bar No. 4027  
Todd L. Bice, Nevada Bar No. 4534  
Jordan T. Smith, Nevada Bar No. 12097  
PISANELLI BICE, PLLC  
400 S. 7th St., Suite 300  
Las Vegas, NV 89101  
*Attorneys for Integral Associates, LLC dba Essence Cannabis Dispensaries; Essence Tropicana, LLC; Essence Henderson, LLC,*

Brigid M. Higgins, Nevada Bar No. 5990  
Rusty J. Graf, Nevada Bar No. 6322  
BLACK & LOBELLO  
10777 W. Twain Ave., 3rd Floor  
Las Vegas, NV 89135  
*Attorneys for Clear River LLC*

## ATTACHMENT 2

<b>Plaintiffs</b>	<b>Case No.</b>	<b>Court</b>	<b>Disposition</b>
MM Development Company, Inc., et al. v. State of Nevada, Dept. of Taxation, et al.	A-18-785818-W	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	The Findings of Fact and Conclusions of Law at issue in this appeal has been entered
Compassionate Team of Las Vegas, LLC v. State of Nevada, Dept. of Taxation, et al.	A-18-786357-W	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	The Findings of Fact and Conclusions of Law at issue in this appeal has been entered
Serenity Wellness Center, LLC, et al. v. State of Nevada, Dept. of Taxation, et al.	A-19-786962-B	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	The Findings of Fact and Conclusions of Law at issue in this appeal has been entered
ETW Management Group, LLC, et al. v. State of Nevada, Dept. of Taxation, et al.	A-19-787004-B	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	The Findings of Fact and Conclusions of Law at issue in this appeal has been entered
DH Flamingo, Inc., et al. v. State of Nevada, Dept. of Taxation, et al.	A-19-787035-C	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	N/A
Nevada Wellness Center, Inc. v. State of Nevada, Dept. of Taxation, et al.	A-19-787540-W	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	The Findings of Fact and Conclusions of Law at issue in this appeal has been entered
High Sierra Holistics, LLC v. State of Nevada, Dept. of Taxation, et al.	A-19-787726-C	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	The Findings of Fact and Conclusions of Law at issue in this appeal has been entered
Serenity Wellness Center, LLC, et al. v. State of Nevada, Dept. of Taxation, et al.	2:19-cv-00818-GMN-NJK	U.S. Dist. Ct., District of Nevada	N/A
Qualcan, LLC v. State of Nevada, Dept. of Taxation, et al.	A-19-801416-B	Eighth Jud. Dist. Ct., Clark County, Nevada, Dept. XI	N/A

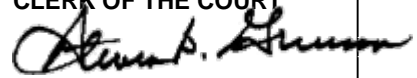
### **ATTACHMENT 3**

STATE EX REL. DEPARTMENT OF TAXATION  
STATE EX REL. NEVADA TAX COMMISSION  
3AP INC.  
5SEA T INVESTMENTS LLC  
ACRES DISPENSARY LLC  
ACRES MEDICAL LLC  
AGUA STREET LLC  
ALTERNATIVE MEDICINE ASSOCIATION LC  
BIONEVA INNOVATIONS OF CARSON CITY LLC  
BLOSSUM GROUP LLC  
BLUE COYOTE RANCH LLC  
CARSON CITY AGENCY SOLUTIONS L.L.C.  
CHEYENNE MEDICAL LLC  
CIRCLE S FARMS LLC  
CLEAR RIVER, LLC  
CN LICENSE CO I, INC.  
COMMERCE PARK MEDICAL L.L.C.  
COMPASSIONATE TEAM OF LAS VEGAS LLC  
CW NEV ADA, LLC  
D LUX LLC  
DEEP ROOTS MEDICAL LLC  
DIVERSIFIED MODALITIES MARKETING LTD.  
DP HOLDINGS, INC.  
ECO NEVADA LLC  
ESSENCE HENDERSON, LLC  
ESSENCE TROPICANA, LLC  
ETW MANAGEMENT GROUP LLC  
EUPHORIA WELLNESS LLC  
EUREKA NEWGEN FARMS LLC  
FIDELIS HOLDINGS, LLC.  
FOREVER GREEN, LLC  
FRANKLIN BIOSCIENCE NV LLC  
FSWFL, LLC  
GB SCIENCES NEVADA LLC  
GBS NEVADA PARTNERS, LLC  
GFIVE CULTIVATION LLC  
GLOBAL HARMONY LLC  
GOOD CHEMISTRY NEVADA, LLC  
GRAVITAS HENDERSON L.L.C.  
GRAVITAS NEVADA LTD.  
GREEN LEAF FARMS HOLDINGS LLC  
GREEN LIFE PRODUCTIONS LLC  
GREEN THERAPEUTICS LLC  
GREENLEAF WELLNESS, INC.

GREENMART OF NEVADA NLV, LLC  
GREENSCAPE PRODUCTIONS LLC  
GREENWAY HEALTH COMMUNITY L.L.C.  
GREENWAY MEDICAL LLC  
GTI NEVADA, LLC  
H & K GROWERS CORP.  
HARVEST OF NEVADA LLC  
HEALTHCARE OPTIONS FOR PATIENTS ENTERPRISES, LLC  
HELIOS NV LLC  
HELPING HANDS WELLNESS CENTER, INC.  
HERBAL CHOICE INC.  
HIGH SIERRA CULTIVATION LLC  
HIGH SIERRA HOLISTICS LLC  
INTERNATIONAL SERVICE AND REBUILDING, INC.  
JUST QUALITY, LLC  
KINDIBLES LLC  
LAS VEGAS WELLNESS AND COMPASSION LLC  
LIBRA WELLNESS CENTER, LLC  
LIVFREE WELLNESS LLC  
LNP, LLC  
LONE MOUNTAIN PARTNERS, LLC  
LUFF ENTERPRISES NV, INC.  
LVMC C&P LLC  
MALANA LV L.L.C.  
MATRIX NV, LLC  
MEDIFARM IV, LLC  
MILLER FARMS, LLC  
MM DEVELOPMENT COMPANY, INC.  
MM R & D, LLC.  
MMNV2 HOLDINGS I, LLC  
MMOF VEGAS RETAIL, INC.  
NATURAL MEDICINE L.L.C.  
NCMM, LLC  
NEVADA BOTANICAL SCIENCE, INC.  
NEVADA GROUP WELLNESS LLC  
NEVADA HOLISTIC MEDICINE LLC,  
NEVADA MEDICAL GROUP LLC  
NEVADA ORGANIC REMEDIES LLC  
NEVADA WELLNESS CENTER LLC  
NEVADAPURE, LLC  
NEVCANN LLC  
NLV WELLNESS LLC  
NLVG, LLC  
NULEAF INCLINE DISPENSARY LLC  
NV 3480 PARTNERS LLC  
NV GREEN INC.



NYE FARM TECH LTD.  
PARADISE WELLNESS CENTER LLC  
PHENOFARM NV LLC  
PHYSIS ONE LLC  
POLARIS WELLNESS CENTER L.L.C.  
PURE TONIC CONCENTRATES LLC  
QUALCAN L.L.C.  
RED EARTH, LLC  
RELEAF CULTIVATION, LLC  
RG HIGHLAND ENTERPRISES INC.  
ROMBOUGH REAL ESTATE INC.  
RURAL REMEDIES LLC  
SERENITY WELLNESS CENTER LLC  
SILVER SAGE WELLNESS LLC  
SOLACE ENTERPRISES, LLP  
SOUTHERN NEVADA GROWERS, INC.  
STRIVE WELLNESS OF NEVADA, LLC  
SWEET GOLDY LLC  
TGIG, LLC  
THC NEVADA, LLC  
THE HARVEST FOUNDATION LLC  
THOMPSON FARM ONE L.L.C.  
TRNVP098 LLC  
TRYKE COMPANIES RENO, LLC  
TRYKE COMPANIES SO NV, LLC  
TWELVE TWELVE LLC  
VEGAS VALLEY GROWERS NORTH, LLC  
WAVESEER OF NEVADA, LLC  
WELLNESS & CAREGIVERS OF NEVADA II, LLC  
WELLNESS CONNECTION OF NEVADA, LLC  
WENDOVERA LLC  
WSCC,NC  
YMY VENTURES LLC  
ZION GARDENS LLC  
D.H. FLAMINGO, INC., d/b/a THE APOTHECARY SHOPPE  
CLARK NATURAL MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA  
NYE NATURAL MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA  
CLARK NMSD LLC, d/b/a NuVEDA  
INYO FINE CANNABIS DISPENSARY L.L.C., d/b/a INYO FINE CANNABIS  
DISPENSARY  
SURTERRA HOLDINGS, INC.



Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
n.rulis@kempjones.com  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
*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.
- 24
- 25
- 26
- 27
- 28

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.

19  
20  
21  
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*;  
26  
27  
28

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

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           50.     As the action of the Department necessitated that Plaintiffs retain the legal services of  
2 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiffs are also  
3 entitled to attorneys' fees and costs of suit.

4                                   **FIFTH CLAIM FOR RELIEF**  
5                                   **(Equal Protection Violation)**

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

7           52.     The denial violates Plaintiffs' right to equal protection under the Nevada and United  
8 States Constitutions.

9           53.     The denial divides up marijuana applications into two or more classes.

10          54.     This classification and disparate treatment is unconstitutional because there is no  
11 rational relationship between the disparity of this treatment and any legitimate governmental purpose.

12          55.     The constitutional infirmity of the denials renders them void and unenforceable, and  
13 Plaintiffs are entitled to a declaration as to the denials' ineffectiveness and an order enjoining any  
14 enforcement.  
15

16          56.     As the action of the Department necessitated that Plaintiffs retain the legal services of  
17 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiffs are also  
18 entitled to attorneys' fees and costs of suit.  
19

20                                   **SIXTH CLAIM FOR RELIEF**  
21                                   **(Petition for Judicial Review)**

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

23          58.     The Department, in misinterpreting and incorrectly applying NRS 453D, NAC 453D  
24 and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing "conditional"  
25 licenses to applicants that do not merit "conditional" licenses under NRS 453D, NAC 453D, and  
26 R092-17.  
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                                 IV.  
14                                 PRAYER FOR RELIEF

15         WHEREFORE, Plaintiffs pray for judgment as follows:

- 16                 1.     For declaratory relief as set forth above;
- 17                 2.     For a preliminary and permanent injunction enjoining the enforcement of the denial;
- 18                 3.     For judicial review of the record and history on which the denial was based;
- 19                 4.     For the issuance of a writ of mandamus;
- 20                 5.     For compensatory and special damages as set forth herein;
- 21                 6.     For attorneys' fees and costs of suit; and
- 22                 7.     For all other and further relief as the Court deems just and proper.
- 23
- 24
- 25
- 26         ///
- 27         ///
- 28         ///

V.  
**JURY DEMAND**

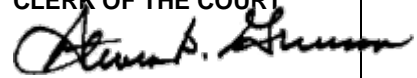
Trial by jury is hereby demanded on all claims and issues so triable.

DATED this December 18, 2018

**KEMP, JONES & COULTHARD LLP**



Will Kemp, Esq. (NV Bar No. 1205)  
Nathanael R. Rulis (NV Bar No. 11259)  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
*Attorneys for Plaintiffs*



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

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

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

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

Plaintiff,

vs.

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

Defendants,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

---

NEVADA ORGANIC REMEDIES, LLC,

Counterclaimant,

vs.

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

Counter-Defendants

Case No. A-18-785818-W

Dept. No. 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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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

///  
///

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

DATED: March 15, 2019

KOCH &amp; SCOW, LLC

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

## COUNTERCLAIM

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

## PARTIES

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

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

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

## JURISDICTION

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

///

///

///



**GENERAL ALLEGATIONS**

***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.

///

///

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*  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

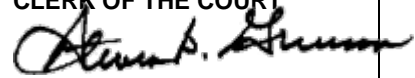
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 15, 2019, I caused the foregoing document entitled: **ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND COUNTERCLAIM**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

Michele L. Caro	mcaro@ag.nv.gov
David J. Pope	dpope@ag.nv.gov
Vivienne Rakowsky	vrakowsky@ag.nv.gov
Debra K. Turman	dturman@ag.nv.gov
Robert E. Werbicky	rwerbicky@ag.nv.gov
Danielle Wright	dwright2@ag.nv.gov
Ali Augustine	a.augustine@kempjones.com
Alisa Hayslett	a.hayslett@kempjones.com
Nathanael R Rulis	n.rulis@kempjones.com
Patricia Stoppard	p.stoppard@kempjones.com
Brandon Lopipero	bml@mgalaw.com
Margaret A McLetchie	maggie@nvlitigation.com
MGA Docketing	docket@mgalaw.com

Executed on March 15, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh  
Andrea Eshenbaugh



**AACC**

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

**MAIER GUTIERREZ & ASSOCIATES**

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

E-mail: jrm@mgalaw.com

jag@mgalaw.com

PHILIP M. HYMANSON, ESQ.

Nevada Bar No. 2253

HENRY JOSEPH HYMANSON, ESQ.

Nevada Bar No. 14381

**HYMANSON & HYMANSON**

8816 Spanish Ridge Avenue

Las Vegas, NV 89148

Telephone: (702) 629-3300

Facsimile: (702) 629-3332

Email: Phil@HymansonLawNV.com

Hank@HymansonLawNV.com

*Attorneys for Defendants 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*

**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.

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

Case No. : A-18-785818-W

Dept. No.: XVIII

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

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

Defendants in Intervention.

And All Related Actions

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

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

### **I. PARTIES & JURISDICTION**

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

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

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

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

## **II. GENERAL ALLEGATIONS**

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

6. Answering paragraph 6 of the First Amended Complaint, no response is required as the allegations contained therein reference a document that speaks for itself. To the extent a response is required and the allegations accurately state the contents of the document referenced therein, Defendants admit these allegations.

7. Answering paragraph 7 of the First Amended Complaint, Defendants admit these allegations.

8. Answering paragraph 8 of the First Amended Complaint, Defendants admit these allegations.

9. Answering paragraph 9 (a)-(h) of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendants admit these allegations.

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

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

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



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

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

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

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

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

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

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

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

25     ///

26     ///

27     ///

28     ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

21. Answering paragraph 21 of the First Amended Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 20 above, and incorporates the same herein by reference as though fully set forth herein.

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

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

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

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

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

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

28. Answering paragraph 28(a)-(h) of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27     ///

28     ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

## SIXTH CLAIM FOR RELIEF (Petition for Judicial Review)

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

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

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

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

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

///

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

## SEVENTH CLAIM FOR RELIEF (Petition for Writ of Mandamus)

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

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

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

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

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

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

## GENERAL DENIAL

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

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ANSWER TO PRAYER FOR RELIEF**

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

**AFFIRMATIVE DEFENSES**

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

**First Affirmative Defense**

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

**Second Affirmative Defense**

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

**Third Affirmative Defense**

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

**Fourth Affirmative Defense**

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

**Fifth Affirmative Defense**

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

**Sixth Affirmative Defense**

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

///  
///



1                                    **Seventh Affirmative Defense**

2            Plaintiffs have failed to join necessary and indispensable parties to this litigation under NRC  
3 19 as the Court cannot grant any of Plaintiffs' claims without affecting the rights and privileges of  
4 those parties who received the licenses at issue as well as other third parties.

5                                    **Eighth Affirmative Defense**

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

8                                    **Ninth Affirmative Defense**

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

12                                   **Tenth Affirmative Defense**

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

15                                   **Eleventh Affirmative Defense**

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

18                                   **Twelfth Affirmative Defense**

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

21                                   **Fourteenth Affirmative Defense**

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

24                                   **Fifteenth Affirmative Defense**

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

27                                   **Sixteenth Affirmative Defense**

28           Plaintiffs have no constitutional rights to obtain privileged licenses.

1 **Seventeenth Affirmative Defense**

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

4 **Eighteenth Affirmative Defense**

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

6 **Nineteenth Affirmative Defense**

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

8 **Twentieth Affirmative Defense**

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

13 WHEREFORE, Defendants prays for judgment as follows:

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

19  
20 **COUNTERCLAIM**

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

28 ///

1 **PARTIES**

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

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

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

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

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

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

14 7. Upon information and belief, Plaintiff/Counterdefendant MM Development Company,  
15 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark  
16 County, Nevada.

17 8. Upon information and belief, Plaintiff/Counterdefendant Livfree Wellness LLC, dba  
18 The Dispensary is, and at all relevant times was, a Nevada limited liability company conducting  
19 business in Clark County, Nevada.

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

23 **GENERAL ALLEGATIONS**

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27     ///

28     ///

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

4                                   **FIRST COUNTERCLAIM**

5                                   **(Declaratory Relief)**

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

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

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

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

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

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

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

25     ///

26     ///

27     ///

28     ///

1 **PRAYER FOR RELIEF**

2 Wherefore, Counterclaimants pray for relief as follows:

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

8 DATED this 14<sup>th</sup> day of June 2019.

9 Respectfully submitted,

10 **MAIER GUTIERREZ & ASSOCIATES**

11 /s/ Joseph A. Gutierrez  
12 JOSEPH A. GUTIERREZ, ESQ.  
13 Nevada Bar No. 9046  
14 JASON R. MAIER, ESQ.  
15 Nevada Bar No. 8557  
16 8816 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148  
18 *Attorneys for Defendants/Counterclaimants*  
19 *Integral Associates, LLC d/b/a Essence Cannabis*  
20 *Dispensaries, Essence*  
21 *Tropicana, LLC, Essence Henderson, LLC,*  
22 *CPCM Holdings, LLC d/b/a Thrive Cannabis*  
23 *Marketplace, and Commerce Park Medical*  
24 *L.L.C., Cheyenne Medical LLC*  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

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

State of Nevada Department of Taxation – Defendant

Ketan D. Bhirud	kbhirud@ag.nv.gov
Theresa M. Haar	thaar@ag.nv.gov
Mary J. Pizzariello	mpizzariello@ag.nv.gov
Traci A. Plotnick	tplotnick@ag.nv.gov
David J. Pope	dpope@ag.nv.gov
Steven G. Shevorski	sshevorski@ag.nv.gov
Robert E. Werbicky	rwerbicky@ag.nv.gov
Danielle Wright	dwright2@ag.nv.gov

Nevada Organic Remedies LLC - Other

Andrea W. Eshenbaugh - Legal Assistant	aeshenbaugh@kochscow.com
David R. Koch	dkoch@kochscow.com
Daniel G Scow	dscow@kochscow.com
Steven B Scow	sscow@kochscow.com
Brody R. Wight	bwight@kochscow.com

Lone Mountain Partners, LLC - Intervenor Defendant

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

GreenMart of Nevada NLV LLC - Intervenor Defendant

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



1 Other Service Contacts

2 Ali Augustine a.augustine@kempjones.com

3 Adam Bult abult@bhfs.com

4 Travis Chance tchance@bhfs.com

5 Maximillen Fetaz mfetaz@bhfs.com

6 Thomas Gilchrist tgilchrist@bhfs.com

7 Alisa Hayslett a.hayslett@kempjones.com

8 Nathanael R Rulis n.rulis@kempjones.com

9 Daniel Simon lawyers@simonlawlv.com

10 Patricia Stoppard p.stoppard@kempjones.com

11

12

/s/ Brandon Lopipero

13

An Employee of MAIER GUTIERREZ & ASSOCIATES

14

15

16

17

18

19

20

21

22

23

24

25

26

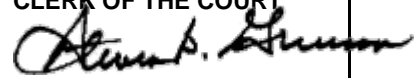
27

28

29

30

31



Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
n.rulis@kempjones.com  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
*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

Plaintiff,

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.: VIII

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

**HEARING REQUESTED**

Coordinated for purposes of preliminary  
injunction hearing with:

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

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

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

1 PLAINTIFFS I through X; and ROE ENTITIES  
2 I through X,

3 Plaintiffs,

4 vs.

5 THE STATE OF NEVADA, DEPARTMENT  
6 OF TAXATION,

7 Defendant.

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

28 Plaintiffs,

vs.

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

26 Defendants.

Case No.: A-19-787004-B

Dept. No.: XI

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

Plaintiff,

v.

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

Defendants.

Case No.: A-19-787540-W

Dept. No.: XVIII

NOW APPEAR Plaintiffs/Counter-Defendants MM Development Company, Inc. d/b/a/  
Planet 13 (“MM”) and LivFree Wellness, LLC d/b/a The Dispensary (“LivFree”) (“Plaintiffs”),  
by and through their counsel of record, and move to alter or amend the Findings of Fact and  
Conclusions of Law Granting Preliminary Injunction filed by the Court against Defendants  
State of Nevada, Department of Taxation (“Department”) and all Defendants-in-Intervention on  
August 23, 2019. The Court should alter or amend the Findings of Fact and Conclusions of  
Law to enjoin final inspections of any conditional license winning applicant that did not provide  
the physical address where the proposed marijuana establishment will be located as part of  
applications.

This motion is made and based upon NRCP 52, the following memorandum of points  
and authorities, the pleadings and papers on file herein, any exhibits attached hereto, and any  
oral argument that this Court may entertain at a hearing on this motion.

## **MEMORANDUM OF POINTS & AUTHORITIES**

### **I.**

#### **INTRODUCTION**

There was an express anti-monopoly provision included in the applications for  
recreational marijuana dispensary licenses that prevented the same applicant from winning more

than one license in one jurisdiction (e.g., unincorporated Clark County). According to the Application form released by the Department, highlighted in bold and all red letters, “**No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.**” Admitted Exhibits 5 and 5a, p. 7 (Bold in original). According to testimony from Department employees, as long as a company submitted applications under differently-named limited liability companies, entities with the exact same ownership could be awarded multiple licenses in the same jurisdiction. Under the Department’s approach, if one entity had submitted the same application under 61 differently-named limited liability companies, it could have been awarded all 61 licenses. As former Department Director Deonne Contine agreed during her testimony, applicants with identical ownership structure who applied for multiple licenses in the same jurisdiction (e.g., unincorporated Clark County) should not have obtained more than one license. Unfortunately, that’s exactly what the Department allowed to happen. Both Essence and Thrive were awarded two conditional licenses in unincorporated Clark County. See Admitted Exhibit 13. Those entities – Essence and Thrive – that were improperly granted multiple licenses in unincorporated Clark County should be enjoined from moving forward on more than one of their locations/licenses.

In addition, the Department improperly changed how the applications should be scored. Under the marijuana ballot initiative, as codified in NRS 453D.210(4) and (5), the Department shall, within 90 days of receipt of applications, approve a license application if the prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department<sup>1</sup> and the physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property. NRS 453D.210(5)(b). The statute requires the Department to determine whether an application was submitted “in

---

<sup>1</sup> The application submission period began on September 7, 2018 and closed on September 20, 2018. The Department, pursuant to statute, had until December 5, 2018 to complete its compliance review.

1 compliance with the regulations.” The regulations likewise require that any application submitted  
2 must, “**without limitation**,” have the physical address where the proposed marijuana  
3 establishment will be located. NAC 453D.265(1)(b)(3); see also NAC 453D.268(2)(e) (“[t]he  
4 application must include, without limitation ... [t]he physical address where the proposed  
5 marijuana establishment will be located”). The Department’s failure to require an actual physical  
6 address, its failure to confirm whether actual addresses were provided, and its failure to consider  
7 those addresses as part of the evaluation and grading resulted in scoring errors and an unfair  
8 process.

## 9 II. 10 ARGUMENT

11 NRCP 52(b) expressly provides that, “[o]n a party’s motion filed no later than 28 days  
12 after service of written notice of entry of judgment, the court may amend its findings – or make  
13 additional findings – and may amend the judgment accordingly.”<sup>2</sup> NRCP 52(b) is designed to  
14 protect parties by providing them with an opportunity to object to or amend findings of fact and  
15 conclusions of law made by the district court. See Foley v. Morse & Mowbray, 109 Nev. 116,  
16 123-24, 848 P.2d 519, 524 (1993). Because clarifications and inclusions may be necessary to the  
17 order or judgment subject to appellate review, supplementation and amendment is expressly  
18 encouraged by the Nevada Supreme Court. See Solar Inc. v. Electric Smith Const. & Equipment  
19 Co., 88 Nev. 457, 459, 499 P.2d 649, 650 (1972).

### 20 A. The Department Failed To Acknowledge The Anti-Monopoly Legislative Intent

21 The medical marijuana statute states, “To prevent monopolistic practices, the Department  
22 shall ensure ... that it does not issue, to any one person, group of persons or entity, the greater of  
23 ... more than 10 percent of the medical marijuana establishment registration certificates otherwise  
24 allocable in the county.” NRS 453A.326(2). The Department attempted to mirror this language  
25

---

26  
27 <sup>2</sup> Notice of Entry of the Court’s Findings of Fact and Conclusions of Law was filed on August  
28 28, 2019 in Serenity Wellness Center, LLC, et al. v. State of Nevada Department of Taxation, et  
al. (Case No. A-19-796862-B).

1 for the retail marijuana regulations, but now ignores the oligopoly it is creating by giving a select  
2 group of applicants an astounding 86% of the new licenses in Nevada in 2018. See NAC  
3 453D.272(5) (“To prevent monopolistic practices, the Department will ensure ... that it does not  
4 issue, to any one person, group of persons or entity, the greater of ... more than 10 percent of the  
5 medical marijuana establishment registration certificates otherwise allocable in the county.”).

6 According to former Director Deonne Contine, if an applicant with identical ownership  
7 structure applied for two licenses in unincorporated Clark County, they should have only been  
8 awarded no more than one license:

9 Q It says, “No applicant may be awarded.” That’s a strict requirement, isn’t  
10 it?

11 A Yeah. And so jurisdiction/locality, I guess that would apply to the different  
12 jurisdictions within the county.

13 Q So would you interpret that to mean that an applicant could not obtain more  
14 than –

15 A Yeah, so like one in Henderson, one in Vegas, one in Clark County, one in  
16 North Las Vegas.

17 Q So if you had -- if an applicant with identical ownership structure who had  
18 applied for two licenses in unincorporated Clark County, they would only  
19 be given one license; right?

20 A I think so, yes.

21 See Contine Testimony, July 12, 2019, 84:17-25, a true and correct copy is attached hereto as part  
22 of **Exhibit 1**. When complaints were raised with the Department that giving companies like  
23 Essence and Thrive more than one license in unincorporated Clark County blatantly violated the  
24 “anti-monopoly” provision that precluded the same applicant from having multiple licenses in  
25 one jurisdiction, the Department responded with an affidavit arguing that Essence did not in fact  
26 violate this provision because Integral Associates, LLC, Essence Henderson, LLC and Essence  
27 Tropicana, LLC were “different” entities. **Admitted Exhibit 86**; 12/13/18 Gilbert Aff.; ¶¶ 15-16  
28 (“The information [that Essence won multiple entities in the same jurisdiction], attributed by MM  
to ‘press reports’ related to the breakdown of licenses awarded in Clark County, is inaccurate;”  
and then describing the true winner as Essence Henderson, LLC and Essence Tropicana LLC and  
not Integral Associates, LLC.).

Despite proclaiming that these were separate entities for the anti-monopoly provisions,  
the Department and the Manpower graders took the tax and financial contributions of Integral

Associates, LLC, and used it to highly score the financial plan for the purported completely different entities of Essence Henderson, LLC and Essence Tropicana LLC. Because the two new Essence entities were not even formed until the final days of 2017<sup>3</sup>, they would not have paid Nevada taxes and made no Nevada financial contribution prior to the date that their applications for licenses were filed in 2018. Given the number of points awarded for tax payments and financial contributions (25 points in this subpart), it would have been impossible for these entities to be winning applicants unless they were awarded points for taxes actually paid by Integral Associates, LLC. Hence, applicants are “separate” applicants to the Department when the “anti-monopoly” provision is applied but the “same” applicant when taxes paid are shuffled from one completely different legal entity to another. This cognitive dissonance allowed the Department to award licenses to applicants that had actually paid no Nevada taxes whatsoever, but instead claimed taxes paid by other entities.

The Department’s treatment of these entities for purposes of taxes paid demonstrates that, despite having differently-named LLCs, the entities were and are Integral Associates, LLC (Essence) and CPCM Holdings, LLC (Thrive).<sup>4</sup> Under the Department’s own rules, they should not have been awarded more than one license in any jurisdiction. Hence, Essence and Thrive should be enjoined from receiving any final inspection on a second conditional license or location in unincorporated Clark County.

**B. The Department’s Selective Dissemination Of Information About The Physical Address Requirement Precluded The Applicants From Competing On Equal Terms**

The purpose of a competitive application or bidding process “is to secure competition, save public funds, **and to guard against favoritism, improvidence and corruption.**” Gulf Oil Corp. v. Clark Cty., 94 Nev. 116, 118–19, 575 P.2d 1332, 1333 (1978); see also City of Boulder

---

<sup>3</sup> See **Admitted Exhibits 80 & 81**, Nevada Secretary of State Filings for Essence Henderson, LLC and Essence Tropicana, LLC.

<sup>4</sup> The Court may simply look at how these entities have appeared in this case – as Defendants 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.



1 City v. Boulder Excavating, Inc., 124 Nev. 749, 758, 191 P.3d 1175, 1181 (2008) (same). The  
2 statutes and regulations that govern these competitive processes “are deemed to be for the benefit  
3 of the taxpayers” and “are to be construed for the public good.” Gulf Oil, 94 Nev. at 118–19. By  
4 permitting applicants to submit applications with inside information when other applicants were  
5 not afforded the same opportunity, the Department precluded the other applicants from competing  
6 on equal terms. See Spiniello Const. Co. v. Town of Manchester, 189 Conn. 539, 544, 456 A.2d  
7 1199, 1202 (1983). By giving some applicants information that was not available to others, the  
8 Department defeated the object and integrity of the competitive application process by exhibiting  
9 favoritism. Spiniello, 189 Conn. 544-545. In that situation, an injunction is appropriate. Id.

10 Under the marijuana ballot initiative, as codified in NRS 453D.210(4) and (5), the  
11 Department **shall**, within 90 days of receipt of applications, approve a license application **if** the  
12 prospective marijuana establishment has submitted an application in compliance with regulations  
13 adopted by the Department<sup>5</sup> **and**:

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

17 NRS 453D.210(5)(b). As the statute requires the Department to determine whether an application  
18 was submitted “in compliance with the regulations,” the regulations likewise require that any  
19 application submitted must have the physical address in it:

- 20 1. On or before November 15, 2018, a person who holds a medical marijuana  
21 establishment registration certificate may apply for not more than one  
license for a marijuana establishment of the same type by submitting:

22 ...

- 23 (b) An application on a form prescribed by the Department which  
includes, **without limitation**:

24 ...

- 25 (3) **The physical address where the proposed marijuana**  
**establishment will be located and the physical address**

26 \_\_\_\_\_  
27 <sup>5</sup> The application submission period began on September 7, 2018 and closed on September 20,  
28 2018. The Department, pursuant to statute, had until December 5, 2018 to complete its  
compliance review.

of any co-owned or otherwise affiliated marijuana establishments;

NAC 453D.265(1)(b)(3) (bold added). As if stating it once in the regulations was not enough to be clear, NAC 453D.268(2)(e) also requires that “[t]he application **must include, without limitation:**”

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

Both the ballot initiative (which was enacted as NRS 453D) and the Department’s adopted regulations (NAC 453D) absolutely required any approved applications must include physical address where the proposed marijuana establishment will be located.

But the Department only informed certain applicants (those that had direct access to Department employees), that real physical addresses were not required and would not be graded at all. The selective disclosure of information by Department employees about the grading and the need for a real physical address impacted the entire process:

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

...

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

...

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

Findings of Fact and Conclusions of Law Granting Preliminary Injunction, electronically filed on filed August 23, 2019.

The Department's failure to require an actual physical address, its failure to confirm whether actual addresses were provided, and its failure to consider those addresses as part of the evaluation and grading resulted in an unfair process. Based on exhibits admitted at trial, it is clear that Essence Tropicana, LLC, Essence Henderson, LLC, Cheyenne Medical, LLC, Commerce Park Medical, LLC and Nevada Organic Remedies (at a minimum) did not submit physical addresses where their proposed marijuana establishments would be located, but instead submitted UPS Store addresses. See Admitted Exhibits 301, 302, 303. The Department's unfair process allowed these winning applicants to take advantage of inside information to which they were privy and it permitted winning applicants to manipulate their scoring for graded categories like (i) impact on the community, (ii) security, and (iii) building plans, among others. An example of the resulting unfairness is shown by the fact that the highest graded building scores were given to those applicants (e.g., Thrive) that did not have an actual physical address and were able to submit fairy-tale building plans because they were not bound by reality and an actual location.

A perfect example of why actual physical locations were required to be part of the applications and should have been graded is the zoning and business licensing morass that Thrive has created with its proposed Reno location. Thrive is trying to place its Reno location – for which it was awarded a conditional license in December 2018 – across the street (about 15 feet) from the only state-licensed halfway house (and substance abuse treatment facility) in Northern Nevada.<sup>6</sup> Thrive – which received 14.33 out of 15 points on its Community Impact grade – clearly benefitted by not disclosing any location other than a UPS Store to the Department. Because, if Thrive had been required to disclose an actual physical location for its dispensary, it would have become undeniable that it intended on opening directly across the street from a rehab center and

---

<sup>6</sup> See, e.g., Michelle Rindels, Substance Abuse Recovery Center Opposes Possible Next Door Neighbor – A Marijuana Dispensary, THE NEVADA INDEPENDENT (Sep. 5, 2019, 2:00 AM), <https://thenevadaindependent.com/article/substance-abuse-recovery-center-opposes-possible-next-door-neighbor-a-marijuana-dispensary>.

profiting off of recovering substance abuse patients. The Department's unilateral actions in eliminating the physical address requirement violated the requirements of NRS 453D **and** NAC 453D and did not just limit, but instead eliminated the ability of the Temporary Employees to adequately grade criteria such as impact on the community.

The Application Criteria provided by the Department states that 15 points will be awarded for the "likely impact of the proposed marijuana establishment in the community in which it is proposed to be located":

<p>A proposal demonstrating:</p> <ul style="list-style-type: none"> <li>▪ The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located.</li> <li>▪ The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana.</li> </ul> <p><i>Please note: The content of this response must be in a <b>non-identified</b> format.</i></p>	15
---	----

See **Admitted Exhibit 5**, p 18. There was no way to differentiate between competing applications if the grader did not know where in "the community" that the proposed establishment was to be. Gutting this requirement by eliminating the required "physical address" penalized applicants such as LivFree and MM (which did in fact include a physical address for its proposed establishment). Again, where winning applicants were separated from losing applicants by less than 1 point, the 15 points assigned to this category in and of itself would have elevated many "losers" into "winners."

As former Department Director Deonne Contine testified, these applications that did not have a real physical address should not have even been considered:

- Q You couldn't use a UPS Store, because that's not a real physical address; right?
- A I don't think -- I don't think that it would be allowed.
- Q Okay. And if you'd been the director at the time, you would have disqualified those applications?
- A **I wouldn't have even reviewed the applications.**

Contine Testimony, July 12, 2019, 48:15-21, **Exhibit 1**. She clarified further:

- Your staff would have been instructed that if they didn't have a physical address apart from a Post Office box or a UPS Store that that application should not be accepted; right?
- A I think that would be the direction.
- Q Okay. So the answer to my question is yes?

1 A Yes.

2 ...

I mean, the reason for your position is because the statute says that?

3 A Right.

4 See Exhibit 1, 49:2-16.

5 Applicants would not have received a license but for their manipulation of the address  
6 requirement and the Department's unfair process. The Court's preliminary injunction should  
7 apply to those winning applicants that did not provide actual physical addresses for the proposed  
8 marijuana establishments (e.g., those that listed UPS stores or P.O. boxes).

9 **III.**

10 **CONCLUSION**

11 Based upon the foregoing, and in accordance with NRCP 52, Plaintiffs respectfully  
12 request the Court amend its Findings of Facts and Conclusions of Law, dated August 23, 2019,  
13 and enjoin the State from conducting a final inspection on (1) the second locations of applicants  
14 that were awarded multiple licenses in a single jurisdiction, i.e., Essence and Thrive in  
15 unincorporated Clark County; and (2) any of the December 2018 conditional licenses – or issuing  
16 final licenses – for any of the winning applicants that provided UPS Stores as proposed physical  
17 addresses as part of their applications or for those that did not provide any actual proposed  
18 physical address as required by NRS 453D and NAC 453D.

19 For all the foregoing reasons, Plaintiffs respectfully request the Court grant this Motion to  
20 Alter or Amend the Findings of Fact and Conclusions of Law Granting Preliminary Injunction.

21 DATED this 24th day of September, 2019.

22 **KEMP, JONES & COULTHARD LLP**

23 /s/ Nathanael Rulis

24 Will Kemp, Esq. (NV Bar No. 1205)  
25 Nathanael R. Rulis (NV Bar No. 11259)  
26 3800 Howard Hughes Parkway, 17th Floor  
27 Las Vegas, Nevada 89169  
28 *Attorneys for Plaintiffs*

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of September, 2019, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S AND LIVFREE WELLNESS, LLC'S MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine

An employee of Kemp, Jones & Coulthard, LLP

# **Exhibit 1**

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SERENITY WELLNESS CENTER LLC, .  
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .  
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of  
Proceedings**

. . . . .

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 14**

FRIDAY, JULY 12, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS  
District Court

FLORENCE HOYT  
Las Vegas, Nevada 89146

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



1 address.

2 Q A physical address?

3 A Yes.

4 Q Okay. And a physical address in your mind could not  
5 be a Post Office box?

6 A Right.

7 Q Or one of these companies that maintains Post Office  
8 -- fake Post Office places. Couldn't be that, either; right?

9 A I think the idea was to have an office address  
10 essentially.

11 Q Right. So you couldn't use -- I can't remember what  
12 it is, UPS.

13 THE COURT: UPS Stores.

14 BY MR. KEMP:

15 Q You couldn't use a UPS Store, because that's not a  
16 real physical address; right?

17 A I don't think -- I don't think that it would be  
18 allowed.

19 Q Okay. And if you'd been the director at the time,  
20 you would have disqualified those applications?

21 A I wouldn't have even reviewed the applications.

22 Q Okay. Because it was disqualified, or because you  
23 wouldn't be the person doing the review?

24 A Well, I don't know. I mean, I --

25 Q And let me ask it --

1           A     -- I would --

2           Q     Let me ask it better.  Your staff would have been  
3 instructed that if they didn't have a physical address apart  
4 from a Post Office box or a UPS Store that that application  
5 should not be accepted; right?

6           A     I think that would be the direction.

7           Q     Okay.  So the answer to my question is yes?

8           A     Yes.

9           Q     Okay.  And the reason for that is because the  
10 statute required it; right?

11               MR. KOCH:  Objection.  Misstates the law.

12               THE COURT:  Overruled.

13 BY MR. KEMP:

14           Q     I mean, the reason for your position is because the  
15 statute says that?

16           A     Right.

17           Q     Okay.  All right.  Okay.  I'm going to go to my last  
18 area.  Mr. Gutierrez asked you some questions about  
19 extenuating circumstances.  Do you recall those?

20           A     Yes.

21           Q     And your answer said, and I wrote it down -- I tried  
22 to write it down verbatim.  You said, if they were enjoined,  
23 that would be beyond their control.  Do you recall saying  
24 that?

25           A     I guess what I -- yes, I recall saying that.

1 that.

2 Q I understand you weren't involved, but you drafted  
3 the regulations and that's where the authority to impose rules  
4 come from, do they not?

5 A Right. But I wasn't involved in kind of how it was  
6 put together and what was in that, so I don't know the  
7 thinking behind putting it together this way or any of that.  
8 I think it means that you're just notifying people that you're  
9 not necessarily entitled to more than one license.

10 Q Not necessarily entitled to more than one license?  
11 That's the way you interpret that provision?

12 A Uh-huh.

13 Q It says, "No applicant may be awarded." That's a  
14 strict requirement, isn't it?

15 A Yeah. And so jurisdiction/locality, I guess that  
16 would apply to the different jurisdictions within the county.

17 Q So would you interpret that to mean that an  
18 applicant could not obtain more than --

19 A Yeah, so like one in Henderson, one in Vegas, one in  
20 Clark County, one in North Las Vegas.

21 Q So if you had -- if an applicant with identical  
22 ownership structure who had applied for two licenses in  
23 unincorporated Clark County, they would only be given one  
24 license; right?

25 A I think so, yes.

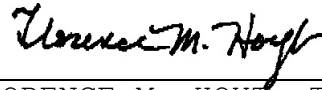
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT**  
**Las Vegas, Nevada 89146**



\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

7/14/19

\_\_\_\_\_  
DATE



Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
[n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
*Attorneys for Plaintiffs*  
*MM Development Company, Inc. &*  
*LivFree Wellness, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IN RE D.O.T. Litigation

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

**CONSOLIDATED WITH:**

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

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

TO: All parties herein; and

TO: Their respective counsel;

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

///

///

///

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

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

A copy of said Order is attached hereto.

Dated this 22th day of November, 2019.

KEMP JONES & COULTHARD, LLP

/s/ Nathanael Rulis

Will Kemp, Esq. (#1205)

Nathanael R. Rulis, Esq. (#11259)

3800 Howard Hughes Parkway, 17<sup>th</sup> Floor

Las Vegas, Nevada 89169

*Attorneys for Plaintiff*

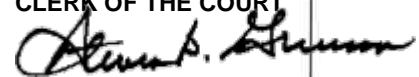
**CERTIFICATE OF SERVICE**

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

/s/ Ali Augustine

An employee of Kemp, Jones & Coulthard, LLP

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



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

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE D.O.T. Litigation

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

CONSOLIDATED WITH:

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

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

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

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

///

///

///

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

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

3 IT IS SO ORDERED.

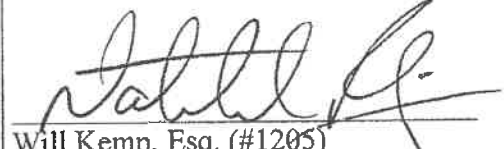
4 DATED this 22 day of November, 2019

5  
6 

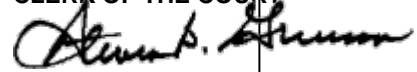
ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

7  
8 Respectfully Submitted by:

9 KEMP, JONES & COULTHARD, LLP

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





1 ANEO

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE LAW

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300

8 Email: maggie@nvlitigation.com

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

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

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

16 Plaintiffs,

17 vs.

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

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

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

27 Plaintiffs,

28 vs.

29 STATE OF NEVADA, DEPARTMENT OF  
30 TAXATION,  
31 Defendant,

32 and

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

36 ETW MANAGEMENT GROUP LLC, a  
37 Nevada limited liability company; GLOBAL  
38 HARMONY LLC, a Nevada limited liability  
39 company; GREEN LEAF FARMS  
40 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 23<sup>rd</sup> 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 19<sup>th</sup> day of September, 2019.

*/s/ Margaret A. McLetchie*

MARGARET A. MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETCHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

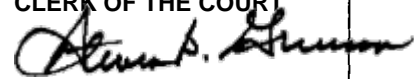
I hereby certify that on this 19<sup>th</sup> day of September, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing AMENDED NOTICE OF ENTRY OF ORDER in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark 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;<sup>1</sup> 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 <sup>1</sup> 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.

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

### 16 ***PROCEDURAL POSTURE***

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

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

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

---

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



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

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

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 <sup>3</sup> 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);<sup>4</sup> those provisions with which the DoT was granted some discretion in implementation;<sup>5</sup> 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 <sup>4</sup> 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 <sup>5</sup> 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.<sup>6</sup>

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;

---

<sup>6</sup> 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.<sup>7</sup>

---

<sup>7</sup> 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.<sup>8</sup>

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.

<sup>8</sup> 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.

15. A person holding a medical marijuana establishment registration certificate could apply for one or more recreational marijuana establishment licenses within the time set forth by the DoT in the manner described in the application. NAC 453D.268.<sup>9</sup>

<sup>9</sup> Relevant portions of that provision require that application be made

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

\*\*\*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

- 7
- 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.<sup>10</sup>

---

<sup>10</sup> 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  
25  
26  
27  
28

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  
27  
28

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.<sup>11</sup>

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 <sup>11</sup> 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

15 43. The limitation of “unreasonably impracticable” in BQ2<sup>12</sup> does not apply to the  
16 mandatory language of BQ2, but to the Regulations which the DoT adopted.

17 44. The adoption of NAC 453D.255(1), as it applies to the application process is an  
18 unconstitutional modification of BQ2.<sup>13</sup> The failure of the DoT to carry out the mandatory provisions  
19 of NRS 453D.200(6) is fatal to the application process.<sup>14</sup> 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 <sup>12</sup> 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 <sup>13</sup> For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership  
27 appears within the DoT’s discretion.

28 <sup>14</sup> 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.<sup>15</sup>

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.  
22  
23  
24

---

25 <sup>15</sup>     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.<sup>16</sup>

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).

<sup>16</sup> 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 66. Where, as here, amendment of a voter-initiated law is temporally precluded from  
21 amendment for three years, the administrative agency may not modify the law.

22 67. NRS 453D.200(1) provides that “the Department shall adopt all regulations necessary or  
23 convenient to carry out the provisions of this chapter.” The Court finds that the words “necessary or  
24 convenient” are susceptible to at least two reasonable interpretations. This limitation applies only to  
25 Regulations adopted by the DoT.  
26  
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.<sup>17</sup> 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.  
25  
26  
27

28 <sup>17</sup> 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

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

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.<sup>18</sup>

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

11  
12 / / / / /  
13 / / / / /  
14 / / / / /  
15 / / / / /  
16 / / / / /  
17 / / / / /  
18 / / / / /  
19 / / / / /  
20 / / / / /  
21 / / / / /  
22 / / / / /  
23 / / / / /  
24 / / / / /  
25  
26

27 <sup>18</sup> 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**

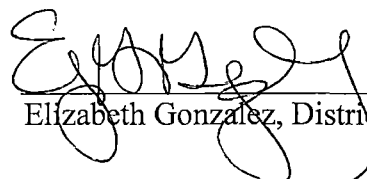
**IT IS HEREBY ADJUDGED ORDERED AND DECREED** that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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.<sup>19</sup>

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 23<sup>rd</sup> 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

<sup>19</sup> 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.