

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  
Feb 04 2020 04:28 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENTS/CROSS-APPELLANTS'**  
**RESPONSE TO ORDER TO SHOW CAUSE**

Will Kemp (NV Bar No. 1205)  
Nathanael R. Rulis (NV Bar No. 11259)  
**KEMP, JONES & COULTHARD, LLP**  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
(702) 385-6000  
[n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)  
*Attorneys for Respondents/Cross-Appellants*  
*MM Development Company, Inc and*  
*LivFree Wellness, LLC*

Respondents/Cross-Appellants, MM Development Company, Inc. (“MM”) and LivFree Wellness, LLC (“LivFree”), by and through their undersigned counsel of record, hereby file this Response to the Order to Show Cause issued on January 14, 2020.

## **I. INTRODUCTION**

On January 14, 2020, this Court entered an Order to Show Cause as to why the appeals and cross-appeal in this case should not be dismissed. This Court is concerned with notices of entry of order that were filed in the various consolidated cases, which may have been insufficient to satisfy this Court’s jurisdictional concerns because the notices “do not bear the captions or case numbers of the district court cases from which these appeals arise.” Order to Show Cause, p. 3. Since this Court entered its Order to Show Cause, additional actions in the district court have resolved these issues. The appeal and cross-appeal are viable under the Nevada Rules of Appellate Procedure and should not be dismissed as there are no jurisdictional defects.

## **II. ARGUMENT**

When the Preliminary Injunction Order was entered, all the cases addressed in this Court’s Order to Show Cause had been coordinated for the purposes of the preliminary injunction hearing and resulting order. Judge Gonzalez specifically ordered that the following cases were coordinated for purposes of the preliminary injunction hearing: A-18-785818-W (MM Development Company, Inc., et al. v. State of Nevada, Dept. of Taxation, et al.), A-18-786357-W (Compassionate Team of Las

Vegas v. State of Nevada, Dept. of Taxation, et al.); A-19-786962-B (Serenity Wellness Center, LLC, et al. v. State of Nevada, Dept. of Taxation, et al.), A-19-787004-B (ETW Management Group, LLC, et al. v. State of Nevada, Dept. of Taxation, et al.), A-19-787540-W (Nevada Wellness Center, Inc. v. State of Nevada, Dept. of Taxation), and A-19-787726-C (High Sierra Holistics, LLC v. State of Nevada, Dept. of Taxation). The parties to each of the five cases listed in this Court's Order to Show Cause had notice of the Preliminary Injunction Order and notice of the appeal of the Preliminary Injunction Order, as they were all present at the preliminary injunction hearing. In the litigation below, **all** of these cases pending in the Eighth Judicial District Court have been consolidated before Judge Gonzalez in Department XI. The cases have been given the consolidated title In Re: D.O.T. Litigation and the consolidated Docket Number A-19-787004-B.

In the January 14, 2020 Order to Show Cause, the Court wrote that the potential jurisdictional defect in this appeal could be corrected by filing the August 23, 2019 order – from Judge Gonzalez – in the consolidated district court matter so long as it “bear[s] the caption and case number of each district court case underlying these appeals.” See Order to Show Cause, pp. 4-5. Following this Court's Order, on February 4, 2020 Greenmart of Nevada NLV, LLC refiled the order in the consolidated case, with each of the former unconsolidated cases identified as part of the order's caption. See Feb. 4, 2020 Order, attached hereto as **Exhibit 1**. Consistent with this Court's direction, the August 23, 2019 order has now been entered in the consolidated action below, with the caption and case number of each district court

case properly listed.

In the consolidated case, the ETW Plaintiffs have also filed a Motion to Amend Order, requesting that the district court amend the preliminary injunction order to include the coordinated case numbers in the caption and refile the amended preliminary injunction order into the consolidated case. See Motion (excluding exhibits), attached hereto as **Exhibit 2**. This motion is set to be heard on Friday, February 7, 2020.

### III. CONCLUSION

This appeal and cross-appeal should not be dismissed. This Court has proper jurisdiction over the appeal and cross-appeal in this case due to: (1) the prior coordination of the preliminary injunction hearing; (2) the subsequent consolidation of all the cases; and (3) the February 4, Order filed by Greenmart of Nevada, NLV, LLC. Alternatively, the parties should be given additional time to respond to the Court's Order to Show Cause to allow the ETW Plaintiffs' Motion to Amend Order be heard on Friday, February 7, 2020.

DATED this 4th day of February, 2020.

/s/ Nathanael R. Rulis

Will Kemp, Esq.

Nathanael R. Rulis, Esq.

**KEMP, JONES & COULTHARD, LLP**

3800 Howard Hughes Parkway, 17th Floor

Las Vegas, Nevada 89169

*Attorneys for Respondents/Cross-Appellants*

*MM Development Company, Inc and*

*LivFree Wellness, LLC*

### **CERTIFICATE OF SERVICE**

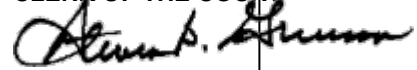
Pursuant to NRAP 25(b), I hereby certify that I am an employee of Kemp, Jones & Coulthard, LLP; that on the 4th day of February, 2020, I electronically filed the foregoing **RESPONDENTS/CROSS-APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex).

*/s/ Ali Augustine*

An employee of Kemp, Jones & Coulthard, LLP

# Ex. 1

(February 4, 2020 Order)



**ORDER**

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

*Counsel for GreenMart of Nevada NLV LLC*

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

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

Case No.: A-19-787004-B

Dept. No.: XI

**ORDER**

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

MM DEVELOPMENT COMPANY, INC., a  
Nevada Corporation, LIVFREE WELLNESS  
LLC, dba The Dispensary, a Nevada limited  
liability company,  
Plaintiffs,  
vs.  
STATE OF NEVADA, DEPARTMENT OF  
TAXATION; and DOES 1 through 10; and  
ROE CORPORATIONS 1 through 10,  
Defendants,  
GREENMART OF NEVADA NLV LLC, a  
Nevada limited liability company,  
Defendant-Intervenor.  
SERENITY WELLNESS CENTER, LLC, et  
al.,  
Plaintiffs,  
vs.  
STATE OF NEVADA, DEPARTMENT OF  
TAXATION,  
Defendant,  
and  
GREENMART OF NEVADA NLV LLC, a  
Nevada limited liability company, et al.  
Defendants-Intervenors.  
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.

Case No.: A-18-785818-W

Dept. No.: XI

**ORDER**

Case No.: A-19-786962-B

Dept. No.: XI

**ORDER**

Case No.: A-18-786357-W

Dept. No.: XI

**ORDER**



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

HIGH SIERRA HOLISTICS, LLC,  
Plaintiff,  
vs.  
STATE OF NEVADA, DEPARTMENT OF  
TAXATION; DOES 1-10 and ROE  
CORPORATIONS 1-10,  
Defendants.  
GREENMART OF NEVADA NLV LLC, a  
Nevada limited liability company,  
Intervenor Defendant.  
NEVADA WELLNESS CENTER, LLC, a  
Nevada limited liability company,  
Plaintiff,  
vs.  
STATE OF NEVADA, DEPARTMENT OF  
TAXATION; and NEVADA ORGANIC  
REMEDIES, LLC,  
Defendants.  
GREENMART OF NEVADA NLV LLC, a  
Nevada limited liability company,  
Intervenor Defendant.

Case No.: A-19-787726-C

Dept. No.: XI

**ORDER**

Case No.: A-19-787540-W

Dept. No.: XI

**ORDER**

**CERTIFICATE OF SERVICE**

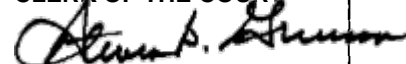
I hereby certify that on this 4<sup>th</sup> day of February, 2020, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing ORDER in *In Re D.O.T. Litigation*, Clark County District Court Case No. A-19-787004-B, to be submitted and served electronically to all parties currently on the electronic service list on February 4, 2020.

This document applies to Case No. A-19-786962-B; Case No. A-19-785818-W; Case No. A-19-787004-B; Case No. A-19-787540-W; Case No. A-18-786357-W; and Case No. A-19-787726-C (consolidated as *In Re D.O.T. Litigation*, Case No. A-19-787004-B).

Pursuant to the January 27, 2020 Order, I hereby further certify that on this 4<sup>th</sup> day of February, 2020, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Clark Natural Medicinal Solutions, LLC  
Nye County Medicinal Solutions, LLC  
Clark NMSD LLC  
P.O. Box 6255  
Pahrump, NV 89041

/s/ Pharan Burchfield  
An Employee of McLetchie Law



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;

26  
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;

             (b) Business owners are subject to a review by the State of Nevada to confirm that the  
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;

27           <sup>6</sup> As the provisions of BQ2 and the sections NRS 453D currently in effect (with the exception of NRS 453D.205) are  
28 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.

1           15.     A person holding a medical marijuana establishment registration certificate could apply  
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in  
3 the manner described in the application. NAC 453D.268.<sup>9</sup>  
4

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

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

8 \*\*\*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. The DoT posted the application on its website and released the application for  
recreational marijuana establishment licenses on July 6, 2018.<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 43. The limitation of “unreasonably impracticable” in BQ2<sup>12</sup> does not apply to the  
15 mandatory language of BQ2, but to the Regulations which the DoT adopted.  
16

17 44. The adoption of NAC 453D.255(1), as it applies to the application process is an  
18 unconstitutional modification of BQ2.<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.

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

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

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

9           62.     In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a  
10 constitutional violation may be difficult or impossible to remedy through money damages, such a  
11 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d  
12 1118, 1124 (2013).

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

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

19           ...

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

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

7 (Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17  
18 79. The DoT failed to establish any quality assurance or quality control of the grading done  
19 by Temporary Employees.<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**

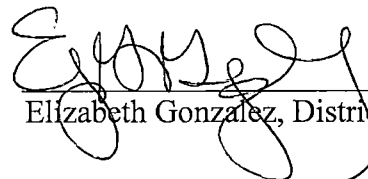
**IT IS HEREBY ADJUDGED ORDERED AND DECREED** that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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**

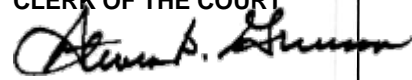
I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

  
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.

## Ex. 2

(February 4, 2020 Motion to Amend Order)



1 **MAME**

ADAM K. BULT, ESQ., Nevada Bar No. 9332

2 [abult@bhfs.com](mailto:abult@bhfs.com)

MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737

3 [mfetaz@bhfs.com](mailto:mfetaz@bhfs.com)

TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

4 [tchance@bhfs.com](mailto:tchance@bhfs.com)

BROWNSTEIN HYATT FARBER SCHRECK, LLP

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

6 Telephone: 702.382.2101

Facsimile: 702.382.8135

7  
8 ADAM R. FULTON, ESQ., Nevada Bar No. 11572

9 [afulton@jfnvlaw.com](mailto:afulton@jfnvlaw.com)

JENNINGS & FULTON, LTD.

2580 Sorrel Street

Las Vegas, NV 89146

10 Telephone: 702.979.3565

Facsimile: 702.362.2060

11 *Attorneys for ETW Management Group LLC; et al.*

12  
13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

Case No.: A-19-787004-B

Consolidated with: A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept No.: XI

**MOTION TO AMEND ORDER  
PURSUANT TO NRCP 60(a); EX  
PARTE MOTION FOR ORDER  
SHORTENING TIME**

**HEARING REQUESTED**

*Date: February 7, 2020*

*Time: 9:00 a.m.*

25 Plaintiffs ETW MANAGEMENT GROUP LLC ("ETW"), GLOBAL HARMONY LLC  
26 ("Global Harmony"), GREEN LEAF FARMS HOLDINGS LLC ("GLFH"), GREEN  
27 THERAPEUTICS LLC ("GT"), HERBAL CHOICE INC. ("Herbal Choice"), JUST QUALITY,  
28


02-03-20A09:57 RCVD

20227938

1 LLC ("Just Quality"), LIBRA WELLNESS CENTER, LLC ("Libra"), ROMBOUGH REAL  
2 ESTATE INC. dba MOTHER HERB ("Mother Herb"), NEVCANN LLC ("NEVCANN"), RED  
3 EARTH LLC ("Red Earth"), THC NEVADA LLC ("THCNV"), ZION GARDENS LLC  
4 ("Zion"), and MMOF Vegas Retail, Inc. ("MMOF") (collectively, "ETW Plaintiffs"), by and  
5 through their undersigned counsel of record, Adam K. Bult, Esq., Maximilien D. Fetaz, Esq., and  
6 Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Adam R.  
7 Fulton, Esq., of the law firm of Jennings & Fulton, Ltd., hereby move this Court to amend its  
8 Finding of Facts, Conclusions of Law, and Order issued on August 23, 2019, pursuant to NRC  
9 60(a). This Motion is made and based upon the pleadings and papers on file herein, the  
10 Memorandum of Points and Authorities, the Declaration of Maximilien D. Fetaz, Esq., the  
11 exhibits attached hereto, and any oral argument allowed at the time of hearing.

12 DATED this 3rd day of February, 2020.

13 BROWNSTEIN HYATT FARBER SCHRECK, LLP

14   
15 ADAM K. BULT, ESQ., Nevada Bar No. 9332  
16 MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
17 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

18 JENNINGS & FULTON, LTD.  
19 ADAM R. FULTON, ESQ., Nevada Bar No. 11572  
20 *Attorneys for Plaintiffs*  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER SHORTENING TIME**

Good cause appearing therefore, IT IS HEREBY ORDERED that the **MOTION TO AMEND ORDER PURSUANT TO NRCP 60(a); EX PARTE MOTION FOR ORDER SHORTENING TIME** shall be heard on shortened time on the 7 day of Feb, 2020, at 9 (3E) a.m./p.m. before the above entitled Court located at Regional Justice Center, Courtroom 11, 200 Lewis Ave., Las Vegas, NV 89155.

DATED this 4<sup>th</sup> day of February, 2020.

  
DISTRICT COURT JUDGE 

Submitted by:

  
**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

ADAM K. BULT, ESQ., Nevada Bar No. 9332  
MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

JENNINGS & FULTON, LTD.  
ADAM R. FULTON, ESQ., Nevada Bar No. 11572

*Attorneys for ETW Plaintiffs*

**DECLARATION OF MAXIMILIEN D. FETAZ, ESQ. IN SUPPORT OF MOTION TO  
AMEND ORDER PURSUANT TO NRCP 60(a); EX PARTE MOTION FOR ORDER  
SHORTENING TIME**

I, Maximilien D. Fetaz, Esq., hereby declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and an attorney with the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel for ETW Plaintiffs in this matter.

2. I make this declaration in support of Plaintiffs' Motion to Amend Order Pursuant to NRCP 60(a) on an Order Shortening Time.

3. I have personal knowledge of the matters set forth in this declaration and, if called as a witness, could and would competently testify thereto.

4. On July 11, 2019, the Eighth Judicial District Court, Department XI entered its Order Granting in Part and Denying in Part Motion to Consolidate, which coordinated six of the matters that were before the Eighth Judicial District Court. Each involved the misfeasance of the Department of Taxation (the "Department") in issuing conditional licenses to operate recreational marijuana dispensaries. The cases were coordinated for purposes of the then pending Motions for Preliminary Injunction.

5. Over the course of several months, the Court held a 20-day evidentiary hearing on the request for injunctive relief.

6. On August 23, 2019, the Court filed its Findings of Facts and Conclusions of Law Granting Preliminary Injunction (the "Preliminary Injunction Order").

7. On September 19, 2019, both Greenmart of Nevada NVL LLC ("GreenMart") and Nevada Organic Remedies, LLC ("NOR") filed separate notices of appeal, challenging the Preliminary Injunction Order

8. In response, on October 3, 2019, the ETW Plaintiffs filed their Notice of Cross Appeal.



9. After these notices were filed, the Nevada Supreme Court issued an Order to Show Cause, asking the parties to explain why the appeals and cross appeal should not be dismissed due to jurisdictional defects.

10. Specifically, the Nevada Supreme Court expressed concern that the case caption did not include the captions or case numbers for case numbers A-18-786357-W, A-19-787726-C, A-19-787540-W, A-19-787004-B, and A-18-785818-W.

11. Then, on January 14, 2020, the Nevada Supreme Court issued a second Order to Show Cause, explaining that an amended Preliminary Injunction Order was needed so that the appeals and cross appeal in the above referenced cases would not be dismissed for lack of jurisdiction.

12. The Nevada Supreme Court recommended that the ETW Plaintiffs file this motion to amend the Preliminary Injunction Order to include the other case numbers and captions.

13. This request is made in good faith and without dilatory motive.

14. This matter cannot be heard in the ordinary course because the Nevada Supreme Court has allotted 21 days to respond to the Order to Show Cause. If this matter is heard in the ordinary course, the Nevada Supreme Court could dismiss the above referenced appeals prior to a decision on this motion.

15. Therefore, the ETW Plaintiffs respectfully request that this motion be heard on February 7, 2020, or when the Court deems proper.

I declare under penalty of perjury under the laws of the State of Nevada that the forgoing is true and correct.

DATED: February 3<sup>rd</sup>, 2020 at Clark County, Nevada.

  
MAXIMILIEN D. FETAZ



## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

The ETW Plaintiffs move this Court to amend its Findings of Fact, Conclusions of Law, and Order, issued on August 23, 2019, (the “Preliminary Injunction Order”), pursuant to NRC 60(a). As this Court is well aware, the Preliminary Injunction Order was coordinated among the various cases involving the Department of Taxation (the “DOT”), which were, at that point, unconsolidated. After this Court issued the Preliminary Injunction Order, GreenMart of Nevada NVL LLC (“GreenMart”) and Nevada Organic Remedies, LLC (“NOR”) both filed separate Notices of Appeal. The ETW Plaintiffs timely filed a Notice of Cross Appeal. Since then, the Nevada Supreme Court has twice called into question its ability to hear the appeal and cross appeal because the Preliminary Injunction Order lists only Case No. A-19-786962-B in the case caption and excludes the other coordinated case numbers. Despite the fact that this Court indicated within the Preliminary Injunction Order that it was considering the other coordinated cases, the Nevada Supreme Court has stated that to consider the appeal for the coordinated cases, each of those case numbers must be listed in the caption of the Preliminary Injunction Order. Due to the fact that this Court clearly intended to coordinate the cases for the purposes of the preliminary injunction, the ETW Plaintiffs ask that this Court amend the Preliminary Injunction Order to include the coordinated case numbers in the caption and refile the amended Preliminary Injunction Order into the coordinated lead case.

### II. FACTUAL BACKGROUND

On August 23, 2019, after several hearings, this Court issued the Preliminary Injunction Order, granting the preliminary injunction. *See Exhibit A* (the “Preliminary Injunction Order”). On September 19, 2019, both Greenmart and NOR filed their notices of appeal, challenging the Preliminary Injunction Order. *See Exhibit B* (“Greenmart’s Notice of Appeal”); *Exhibit C* (“NOR’s Notice of Appeal”). In response, on October 3, 2019, the ETW Plaintiffs filed their Notice of Cross Appeal. *Exhibit D* (the “Notice of Cross Appeal”). After these notices were filed, the Nevada Supreme Court issued an Order to Show Cause, asking the parties to explain why the

1 appeals and cross appeal should not be dismissed due to jurisdictional defects. **Exhibit E** (the  
2 “first Order to Show Cause”).

3 The Nevada Supreme Court pointed to two jurisdictional defects in the appeals and cross  
4 appeal. First, the Nevada Supreme Court noted that the Preliminary Injunction Order appeared to  
5 be filed only in one of the coordinated case numbers and that the corresponding caption bore only  
6 one case number: Case No. A-19-786962-B. Ex. E, at 3. The Nevada Supreme Court explained  
7 that while a Notice of Entry of Order was filed in each of the coordinated cases, this did not give  
8 the Nevada Supreme Court jurisdiction to hear an appeal in case numbers A-18-786357-W, A-19-  
9 787726-C, A-19-787540-W, A-19-787004-B, and A-18-785818-W. Ex. E, at 3. Instead, the  
10 Nevada Supreme Court stated that to have jurisdiction to review the Preliminary Injunction Order  
11 in these cases numbers, the Preliminary Injunction Order had to be filed in each of these case  
12 numbers, and the caption of the Preliminary Injunction Order had to bear the above-referenced  
13 case numbers. Ex. E, at 3. In this Order to Show Cause, the Nevada Supreme Court indicated that  
14 this jurisdictional defect could be rectified by filing the Preliminary Injunction Order into each of  
15 the coordinated case numbers. Ex. E, at 3 n.3.<sup>1</sup>

16 In response to this Order to Show Cause, the ETW Plaintiffs explained that the  
17 Preliminary Injunction Order was coordinated with case numbers A-18-786357-W, A-19-787726-  
18 C, A-19-787540-W, A-19-787004-B, and A-18-785818-W, as evidenced by the Court’s  
19 coordination order and reference to these case numbers in the body of the Preliminary Injunction  
20 Order; and therefore, the ETW Plaintiffs argued that the Nevada Supreme Court retained  
21 jurisdiction to hear the cross appeal as to these cases. *See Exhibit F* (“ETW Plaintiffs’ Responses  
22 to the Order to Show Cause”), at 4–5.

23 Then, on January 14, 2020, the Nevada Supreme Court issued a second Order to Show  
24 Cause, and stated that it remained unconvinced that it retained jurisdiction over the appeals in the  
25 case numbers that were not listed in the caption of the Preliminary Injunction Order, despite the  
26 fact that in the body of the Preliminary Injunction Order, this Court expressed that the cases were

---

27 <sup>1</sup>The second jurisdictional defect involved a tolling motion filed in one of the case numbers that  
28 has since been resolved and is not pertinent to this Motion. *See Ex. E*, at 3–4.

coordinated. *See Exhibit G* (the “second Order to Show Cause”), at 3–4. However, the Nevada Supreme Court noted that the jurisdictional defect could be remedied by filing an amended version of the Preliminary Injunction Order in the lead case and that the amended order must “bear the caption and case number of each district court case underlying these appeals.” *Id.* at 4–5. Now, the ETW Plaintiffs bring this Motion to Amend the Preliminary Injunction Order, so that the appeals and cross appeal may move forward in each of the underlying district court cases that were coordinated for the purposes of the Preliminary Injunction Order.

### III. ARGUMENT

The ETW Plaintiffs respectfully request that this Court amend the Preliminary Injunction Order, pursuant to NRCP 60(a), to include each of the coordinated case numbers in the caption.

NRCP 60(a) states that “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.” Such a correction to an order is proper when there is a clerical error such as “a mistake in writing or copying.” *Pickett v. Comanche Const., Inc.*, 108 Nev. 422, 428, 836 P.2d 42, 46 (1992). A clerical error occurs when there is a “failure to make the written conclusions of law and judgment truly speak the determination which had been made.” *Frontier Ins. Serv. Inc. v. Gates*, 109 Nev. 231, 239, 849 P.2d 328, 333 (1993) (internal quotation marks omitted). In other words, “a clerical error is a mistake or omission by a clerk, counsel, or judge, or printer which is not the result of the exercise of a judicial function.” *Pickett*, 108 Nev. at 428, 836 P.2d at 46. Thus, a “Rule 60(a) [motion] may be invoked to make an original order more clearly reflect a court’s contemporaneous intent.” *RG Elec., Inc. v. Cole*, Case No. 65043, 2016 WL 606851, at \*1 (Nev. Feb. 12, 2016) (unpublished) (*citing Burton v. Johnson*, 975 F.2d 690, 694 (10th Cir.1992)).

Here, this Court clearly intended for the Preliminary Injunction Order to apply to and be filed in each of the formerly unconsolidated cases, including case numbers A-18-786357-W, A-19-787726-C, A-19-787540-W, A-19-787004-B, and A-18-785818-W. As this Court indicated in its Preliminary Injunction Order, it intended to coordinate these cases for the purposes of the preliminary injunction. *See Ex. A*, at 2–3. This is further evidenced by this Court’s Order

1 Granting in Part and Denying in Part Motion to Consolidate, dated July 11, 2019, in which this  
2 Court coordinated the above-referenced cases for the purposes of the preliminary injunction  
3 hearing. *See Exhibit H* (the “Order on the Motion to Consolidate”), at 2:16-23. Thus, because  
4 this Court intended to coordinate these cases, amending the Preliminary Injunction Order to  
5 include the coordinated case numbers in the caption and refileing the amended Preliminary  
6 Injunction Order would effectuate the intent of the original order to coordinate these cases for the  
7 preliminary injunction. Otherwise, the Nevada Supreme Court will dismiss the appeals in the  
8 coordinated case numbers because it does not consider them to be coordinated, as the case  
9 numbers in question are not listed in the caption. An example caption for the amended  
10 Preliminary Injunction Order is attached hereto as **Exhibit I**.

11 Finally, once an appeal has been docketed, NRCP 60(a) allows amendment to an order  
12 “only with the appellate court’s leave.” Here, an appeal has been docketed, but the Nevada  
13 Supreme Court has twice urged that a copy of the Preliminary Injunction Order be re-filed with a  
14 caption bearing the coordinated case numbers in order to cure any appellate jurisdictional defect:

15 Alternatively, because the district court cases have now been  
16 consolidated, the order may be filed only in the lead case; however  
17 it must bear the caption and case number of each district court case  
underlying these appeals.

18 Ex. G, at 4–5; *see also* Ex. E, at 3 n.3. Thus, an amendment and re-filing of this order under  
19 NRCP 60(a) is proper, even though an appeal has been docketed and is pending, because the  
20 Nevada Supreme Court has granted leave to file such an amended Preliminary Injunction Order in  
21 both of its Orders to Show Cause. *See* Ex. E, at 3 n.3; Ex. G, at 4–5.

22 ///

28 ///

1 **IV. CONCLUSION**

2 Accordingly, the ETW Plaintiffs respectfully request that this Court file an amended  
3 Preliminary Injunction Order in the previous lead coordinated case, which bears case numbers A-  
4 18-786357-W, A-19-787726-C, A-19-787540-W, A-19-787004-B, and A-18-785818-W in the  
5 caption. This amended version of the Preliminary Injunction Order will effectuate this Court's  
6 intent to coordinate the Preliminary Injunction Order among those cases, cure the appellate  
7 jurisdictional defect, and allow the appeals and cross appeal to go forward.

8 DATED this 3rd day of February, 2020.

9 BROWNSTEIN HYATT FARBER SCHRECK, LLP

10   
11 ADAM K. BULT, ESQ., Nevada Bar No. 9332  
12 MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
13 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

14 JENNINGS & FULTON, LTD.  
15 ADAM R. FULTON, ESQ., Nevada Bar No. 11572  
16 *Attorneys for Plaintiffs*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **MOTION TO AMEND ORDER PURSUANT TO NRCP 60(a); EX PARTE MOTION FOR ORDER SHORTENING TIME** to be submitted electronically to all parties currently on the electronic service list on February 4, 2020.

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