

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GREENMART OF NEVADA NLV, LLC,
Appellant,
vs.
NEVADA WELLNESS CENTER LLC and
THE STATE OF NEVADA DEPARTMENT
OF TAXATION,
Respondents.

No. 79673

Electronically Filed
Oct 16 2019 04:09 p.m.

Elizabeth A. Brown
Clerk of the Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department XVIII
County Clark Judge Mary Kay Holthus
District Ct. Case No. A-19-787540-W

2. Attorney filing this docketing statement:

Attorney Margaret McLetchie and Alina M. Shell Telephone 702-728-5300
Firm McLetchie Law
Address 701 E. Bridger Ave., Suite 520
Las Vegas, NV 89101

Client(s) GreenMart of Nevada NLV, LLC

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

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

Attorney Theodore Parker III Telephone 702-868-8000
Firm PARKER, NELSON & ASSOCIATES, CHTD.
Address 2460 Professional Court, Suite 200
Las Vegas, NV 89128

Client(s) Nevada Wellness Center LLC

Attorney Aaron D. Ford Telephone 702-486-3420
Firm Office of the Attorney General
Address Ketan D. Bhirud, Steve Shevorski, David J. Pope, and Theresa M. Haar
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

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

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

- (1) GREENMART OF NEV. NLV LLC et al. v. HIGH SIERRA HOLISTICS, LLC, Case No. 79672
- (2) GREENMART OF NEV. NLV LLC v. COMPASSIONATE TEAM OF LAS VEGAS LLC, Case No. 79671
- (3) GREENMART OF NEV. NLV LLC v. SERENITY WELLNESS CENTER LLC, Case No. 79668
- (4) GREENMART OF NEV. NLV LLC et al. v. MM DEV. CO., INC. et al., Case No. 79670
- (5) GREENMART OF NEV. NLV LLC et al. v. ETW MANAGEMENT GROUP, LLC et al., Case No. 79669

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

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

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

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

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

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

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

None

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☒ A ballot question

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

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

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

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

Was it a bench or jury trial? n/a

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No

TIMELINESS OF NOTICE OF APPEAL

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

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

17. Date written notice of entry of judgment or order was served 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 13, 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 n/a; motion still pending

(c) Date written notice of entry of order resolving tolling motion was served n/a

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 19, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

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

22. List all parties involved in the action or consolidated actions in the district court:
(a) Parties:

(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:

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.

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

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

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

(b) Specify the parties remaining below:

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

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

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

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

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

VERIFICATION

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

GreenMart of Nevada NLV, LLC

Name of appellant

Alina M. Shell

Name of counsel of record

10/16/2019

Date



Signature of counsel of record

State of Nevada, County of Clark

State and county where signed

CERTIFICATE OF SERVICE

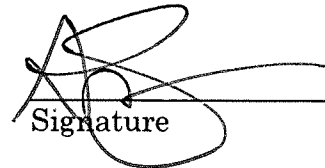
I certify that on the 16th day of October, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ 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.)

Theodore Parker, III
PARKER, NELSON & ASSOCIATES, CHTD.
2460 Professional Court, Suite 200
Las Vegas, NV 89128

Aaron Ford, Ketan Bhirud, Steve Shevorski, David Pope, and Theresa Haar
NEVADA OFFICE OF ATTORNEY GENERAL
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Dated this 16th day of October, 2019



Signature

ATTACHMENT A

7. Pending and prior proceedings in other courts

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

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

ATTACHMENT B

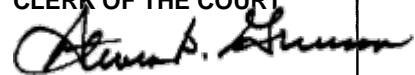
9. Issues on appeal

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

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

Whether the district court abused its discretion in failing to articulate the irreparable harm that Respondents would suffer if the preliminary injunction was denied; and

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



COMP
THEODORE PARKER, III, ESQ.
Nevada Bar No. 4716
PARKER, NELSON & ASSOCIATES, CHTD.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128
Telephone: (702) 868-8000
Facsimile: (702) 868-8001
Email: tparker@pnalaw.net

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

CASE NO.: A-19-787540-W
DEPT. NO.: Department 18

**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, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "Plaintiff"),
by and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
NELSON & ASSOCIATES, CHTD., and hereby complains against Defendants, STATE OF
NEVADA, DEPARTMENT OF TAXATION; and DOES I through X and ROE CORPORATIONS
I through X, and petitions this Court for Writ of Mandamus as follows:

I.

PARTIES & JURISDICTION

1. Plaintiff, NEVADA WELLNESS CENTER, LLC, is a Nevada Limited Liability
Company duly licensed under the laws of the State of Nevada.

2. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
"Department") is an agency of the State of Nevada. The Department is responsible for licensing and
regulating retail marijuana businesses in Nevada through its Marijuana Enforcement Division.

3. The true names and capacities, whether individual, corporate, association or otherwise of the Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated herein as DOES and/or ROE CORPORATIONS is responsible in some manner for the events and happenings herein referred to, and in some manner caused the injuries and damages to Plaintiff alleged herein. Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and capacities of said Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive when the same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such Defendants in this action.

II.

GENERAL ALLEGATIONS

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

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

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

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

8. If the Department received more than one application for a license for a recreational

1 marijuana retail store and the Department determined that more than one of the applications was
2 complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department was required
3 to rank the applications within each applicable locality for any applicants in a jurisdiction that limits
4 the number of retail marijuana stores in order from first to last. Ranking is based on compliance with
5 the provisions of R092-17 Sec. 80, NRS 453D and on the content of the applications relating to:

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

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

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

26 11. Prior to the application process with the Department, Plaintiff was previously scored
27 and ranked in the 2015 licensing procedure, pursuant to NRS 453A, in conjunction with a medical
28 marijuana establishment permit application.

1 12. At that time, Plaintiff received a score of 198.62 and was ranked as the highest
2 applicant for a medical marijuana dispensary in Las Vegas, Nevada and received a score of 193.62
3 and was ranked seventh highest applicant for a medical marijuana dispensary in the City of
4 Henderson, Nevada.

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

7 14. The only major difference between the factors assessed for the 2015 rankings and the
8 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners,
9 officers, board members) to the existing merit criteria.

10 15. Plaintiff submitted applications for recreational marijuana retail store licenses to own
11 and operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark
12 County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno, Nevada.

13 16. On or about December 5, 2018, despite its prior exceptional rankings, Plaintiff was
14 informed by the Department that all of its applications to operate recreational marijuana retail stores
15 were denied.

16 17. Plaintiff is informed and believes that the Department improperly granted
17 "conditional" licenses to applicants that were ranked substantially lower than Plaintiff on the 2015
18 rankings.

19 18. Plaintiff is informed and believes that the Department improperly granted more than
20 one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership
21 groups.

22 19. Plaintiff timely filed an Appeal and Petition for Reconsideration with the State of
23 Nevada Department of Taxation on January 4, 2019.

24 20. Plaintiff is scheduled to meet with the Department of Taxation on January 17, 2019.

25 21. On January 10, 2019 the State of Nevada Department of Taxation notified Plaintiff
26 that there is no allowance for an appeal and that it would take no further action based on Plaintiff's
27 Notice of Appeal. See Exhibit 1.

28 22. Plaintiff not being satisfied with the results of its Appeal and Petition for

1 Reconsideration, has exhausted its administrative remedies.

2 23. Plaintiff therefore files the present Complaint in order to pursue its legal rights and
3 remedies.

4 **III.**

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Relief)**

8 24. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

9 25. A justiciable controversy exists that warrants a declaratory judgment pursuant to
10 Nevada's Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.

11 26. Plaintiff and the Defendants have adverse and/or competing interests as the
12 Department, through its Marijuana Enforcement Division, has denied the applications submitted by
13 Plaintiff and has violated Plaintiff's Constitutional Rights, Nevada law, and State policy.

14 27. The Department's refusal to issue Plaintiff a "conditional" license affects Plaintiff's
15 rights afforded it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

16 28. Further, the Department's improper ranking of the other applicants for a recreational
17 marijuana establishment license and the Department's subsequent, improper issuance to each of a
18 "conditional" license also affects the rights of Plaintiff afforded it by NRS 453D, NAC 453D,
19 R09217, and other Nevada laws and regulations.

20 29. The Department's actions and/or inactions also have created an actual justiciable
21 controversy ripe for judicial determination between Plaintiff and the Department with respect to the
22 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17 as to
23 Plaintiff. Plaintiff has been harmed, and will continue to be harmed, by the Defendants' actions.

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

26 31. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

27 a. That the Department improperly denied Plaintiff four (4) "conditional"
28 licenses for the operation of a recreational marijuana establishment in the

1 following jurisdictions: unincorporated Clark County, Nevada; Las Vegas,
2 Nevada; North Las Vegas, Nevada; and Reno, Nevada.

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

15 32. Plaintiff also seeks a declaration from this Court that the Department must issue
16 Plaintiff four (4) "conditional" licenses for the operation of a recreational marijuana establishment
17 in unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno,
18 Nevada, since Plaintiff's score issued by the Department would have ranked high enough to entitle
19 it to "conditional" licenses had the Department properly applied the provisions of NRS 453D, NAC
20 Chapter 453D, and R092-17.

21 33. Plaintiff asserts and contends that a declaratory judgment is both necessary and proper
22 at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of
23 the Plaintiff afforded it by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and
24 regulations.

25 34. Plaintiff has found it necessary to retain the legal services of Parker, Nelson &
26 Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees
27 and costs therefor.

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

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

1 fundamentally unfair and violated the due process requirements of the Nevada and United States
2 Constitutions.

3 46. The Constitutional infirmity of this entire process renders the denial void and
4 unenforceable, and Plaintiff is entitled to a declaration as to the denials' ineffectiveness and an order
5 enjoining its enforcement.

6 47. Plaintiff is also entitled to damages for these due process violations.

7 48. As the action of the Department necessitated that Plaintiff retain the legal services
8 of Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
9 entitled to attorneys' fees and costs of suit.

10 49. Plaintiff has found it necessary to bring this action, and Plaintiff is entitled to recover
11 its reasonable attorneys' fees and costs therefor.

12 **FOURTH CLAIM FOR RELIEF**

13 **(Violation of Substantive Due Process)**

14 50. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

15 51. The denial violates Plaintiff's substantive due process rights guaranteed by the Nevada
16 Constitution and the United States Constitution.

17 52. The Constitutional infirmity of this entire process and the Department's denial renders
18 the denial void and unenforceable, and Plaintiff is entitled to a declaration as to the denials'
19 ineffectiveness and an order enjoining its enforcement.

20 53. Plaintiff is also entitled to damages for these due process violations.

21 54. As the action of the Department necessitated that Plaintiff retain the legal services
22 of Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
23 entitled to attorneys' fees and costs of suit.

24 **FIFTH CLAIM FOR RELIEF**

25 **(Equal Protection Violation)**

26 55. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

27 56. The denial violates Plaintiff's right to equal protection under the Nevada and United
28 States Constitutions.

1 57. The denial divides up marijuana applications into two or more classes.

2 58. This classification and disparate treatment is unconstitutional because there is no
3 rational relationship between the disparity of this treatment and any legitimate governmental
4 purpose.

5 59. The constitutional infirmity of this denial renders it void and unenforceable, and
6 Plaintiff is entitled to a declaration as to the denials' ineffectiveness and an order enjoining its
7 enforcement.

8 60. As the action of the Department necessitated that Plaintiff retain the legal services
9 of Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
10 entitled to attorneys' fees and costs of suit.

11 **SIXTH CLAIM FOR RELIEF**

12 **(Petition for Judicial Review)**

13 61. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

14 62. The Department, in misinterpreting and incorrectly applying NRS 453D, NAC 453D
15 and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing "conditional"
16 licenses to applicants that do not merit "conditional" licenses under NRS 453D, NAC 453D, and
17 R092-17.

18 63. Plaintiff is aggrieved by the decision of the Department to deny Plaintiff's application
19 without proper notice, substantial evidence, or compliance with. NRS 453D, NAC 453D, R092-17,
20 and other Nevada state laws or regulations.

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

24 65. Accordingly, Plaintiff petitions this Court for judicial review of the record on which
25 the Department's denial was based, including but not limited to:

26 a. A determination that the decision lacked substantial evidence;

27 b. A determination that the denial is void ab initio for non-compliance with
28 NRS 453D, NAC 453D, R092-17, and other Nevada state laws or

1 regulations; and

2 c. Other relief consistent with those determinations.

3 66. Plaintiff has found it necessary to retain the legal services of Parker, Nelson &
4 Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees
5 and costs therefor.

6 **SEVENTH CLAIM FOR RELIEF**

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

8 67. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

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

12 69. The Department failed to perform various acts that the law requires including but not
13 limited to:

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

15 b. Arbitrarily and capriciously denying the application for no legitimate reason.

16 70. The Department acted arbitrarily and capriciously in the denial by performing or
17 failing to perform the acts enumerated above and because, inter alia:

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

19 b. The Board denied the application solely to approve other competing
20 applicants without regard to the merit of Plaintiff's application.

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

24 72. As a result of the Defendants' unlawful and arbitrary and capricious actions, Plaintiff
25 has been forced to retain legal services of Parker, Nelson & Associates, Chtd. to prosecute this
26 action, and is therefore also entitled to its damages, costs in this suit, and an award of attorneys' fees
27 pursuant to NRS 34.270.

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

IV.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

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


V.

JURY DEMAND

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

DATED this 14th day of January, 2019.

PARKER, NELSON & ASSOCIATES, CHTD.



THEODORE PARKER, III, ESQ.
Nevada Bar No. 4716
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1



STATE OF NEVADA
DEPARTMENT OF TAXATION

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

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

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

STEVE SISOLAK
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
MELANIE YOUNG
Executive Director

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

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

January 10, 2019

Nevada Wellness Center, LLC
c/o Theodore Parker
2460 Professional Ct. Suite 200
Las Vegas, NV 89128

Re: Notice of Appeal (RD312, RD313, RD314, RD315)
TID 1017582408

Mr. Theodore Parker,

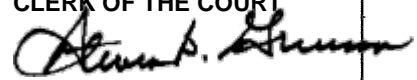
The Department is in receipt of your Notice of Appeal to the Nevada Tax Commission regarding the denial of a license for a retail marijuana store. NRS 233B.127 indicates the statutes dealing with adjudication of contested cases "do not apply to the grant, denial or renewal of a license unless notice and opportunity for hearing are required by law to be provided to the applicant before the grant, denial or renewal of the license."

The Department scored timely submitted applications using an impartial and numerically scored competitive process in accordance with NRS 453D.210(6). After scoring the applications, the Department ranked the applications from first to last. Pursuant to Sec. 80 of Permanent Regulation LCB File No. R092-17 filed on February 27, 2018 ("Permanent Regulations"), the Department issued licenses for retail marijuana stores to the highest-ranked applicants until the Department issued the number of licenses authorized for each jurisdiction. The Department issued the licenses or denials within 90 days of the closing of the application period (NRS 453D.210(4) & Sec. 84 of the Permanent Regulations). Unless otherwise indicated in the notice, the basis for the denial of your application was a failure to obtain a high enough ranking to obtain a license in the jurisdiction(s) in which you applied. There is no statutory or regulatory allowance for appealing the scoring, ranking, or denial.

As there is no allowance for an appeal of the denial of your application for the issuance of a retail marijuana store license, no further action will be taken by the Department on your Notice of Appeal.

Thank you for your interest in this application process.

Jorge Pupo
Deputy Executive Director
Marijuana Enforcement Division



1 MTN
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 PARKER, NELSON & ASSOCIATES, CHTD.
5 2460 Professional Court, Suite 200
6 Las Vegas, Nevada 89128
7 Telephone: (702) 868-8000
8 Facsimile: (702) 868-8001
9 Email: tparker@pnalaw.net

10 *Attorneys for Plaintiff*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

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

15 Plaintiff,

16 v.

17 STATE OF NEVADA, DEPARTMENT OF
18 TAXATION; and DOES I through X,
19 inclusive; and ROE CORPORATIONS I
20 through X, inclusive,

21 Defendants.

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

**NEVADA WELLNESS CENTER, LLC,
MOTION TO AMEND FINDINGS OF
FACTS AND CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52**

[Hearing Requested]

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

26 Plaintiffs,

27 v.

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

Defendants.

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

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG,
LLC, a Nevada limited liability company,
NULEAF INCLINE DISPENSARY, LLC, a
Nevada limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada
limited liability company, TRYKE

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

1 COMPANIES SO NV, LLC a Nevada limited
2 liability company, TRYKE COMPANIES
3 RENO, LLC, a Nevada limited liability
4 company, PARADISE WELLNESS
5 CENTER, LLC, a Nevada limited liability
6 company, GBS NEVADA PARTNERS, LLC,
7 a Nevada limited liability company, FIDELIS
8 HOLDINGS, LLC, a Nevada limited liability
9 company, GRAVITAS NEVADA, LLC, a
10 Nevada limited liability company, NEVADA
11 PURE, LLC, a Nevada limited liability
12 company, MEDIFARM, LLC, a Nevada
13 limited liability company; DOE PLAINTIFFS
14 I through X; and ROE ENTITIES I through
15 X,

16 Plaintiffs,

17 v.

18 THE STATE OF NEVADA, DEPARTMENT
19 OF TAXATION,

20 Defendants.

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

Plaintiffs,

v.

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

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

1 inclusive,

2 Defendants.

3
4 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "NWC"), by
5 and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
6 NELSON & ASSOCIATES, CHTD., and moved the Court seeking to Motion to Amend the
7 Findings of Facts and Conclusions of Law issued August 23, 2019, pursuant to NRCP 52.

8 This motion is made and based upon the pleadings and paper on file herein, the points and
9 authorities included herewith, the exhibits attached hereto and such oral argument as the Court may
10 entertain at the time this matter is heard.

11 DATED this 13th day of September, 2019.

12 PARKER, NELSON & ASSOCIATES, CHTD.

13 
14 THEODORE PARKER, III, ESQ.
15 Nevada Bar No. 4716
16 2460 Professional Court, Suite 200
17 Las Vegas, Nevada 89128

18 *Attorneys for Plaintiff*
19
20
21
22
23
24
25
26
27
28

1 NOTICE OF MOTION

2 **TO: ALL INTERESTED PARTIES and**

3 **TO: ITS COUNSEL OF RECORD:**

4 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
5 above and foregoing Motion to Amend Findings of Facts and Conclusions of Law date August 23,
6 2019, pursuant to NRCP 52. on for hearing, before the above-entitled Court in Department No. XI
7 on the ____ day of _____, 2019 at ____ a.m./p.m.

8 DATED this 13th day of September, 2019.

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

11 

12 THEODORE PARKER, III, ESQ.
13 Nevada Bar No. 4716
14 2460 Professional Court, Suite 200
15 Las Vegas, Nevada 89128

16 *Attorneys for Plaintiff*

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 **I.**

19 INTRODUCTION

20 Following lengthy hearings, on August 23, 2019, this Court issued Findings of Fact and
21 Conclusions of Law Granting Preliminary Injunction. (See Findings of Fact and Conclusions of Law
22 Granting Preliminary Injunction, filed August 23, 2019, a true and correct copy attached hereto as
23 Exhibit "A".) NWC now moves to amend those findings pursuant to NRCP 52. As shown below,
24 the entire selection process was so flawed, and conducted in such degradation of NWC's
25 constitutional rights, that the previous results must be discarded and the process redone in order to
26 arrive at impartial and fair results, as contemplated under the applicable laws and regulations.
27 Specifically, that the State must be enjoined from conducting a final inspection on any of the
28 conditional licenses issued in or about December of 2018 because the process was so rife with errors,
subject to corruption, including inappropriate sharing of information, lunches, dinners and drinks

1 between DoT staff and certain privileged applicants, and improper changes to the process which
2 amounted to DoT's refusal to follow the will of Nevada voters and therefore the entire process must
3 be deemed invalid.

4 II.

5 DISCUSSION

6 A. LEGAL AUTHORITIES

7 1. Motions to Amend Findings of Fact and Conclusions of Law

8 NRCP 52 provides in pertinent part:

9 (a) Findings and Conclusions.

10 (1) In General. In an action tried on the facts without a jury or with an
11 advisory jury, the court must find the facts specially and state its conclusions
12 of law separately. The findings and conclusions may be stated on the record
after the close of the evidence or may appear in an opinion or a memorandum
of decision filed by the court. Judgment must be entered under Rule 58.

13
14 (b) Amended or Additional Findings. On a party's motion filed no later than
15 28 days after service of written notice of entry of judgment, the court may
16 amend its findings — or make additional findings — and may amend the
judgment accordingly. The time for filing the motion cannot be extended
under Rule 6(b). The motion may accompany a motion for a new trial under
Rule 59.

17 NRCP 65 states in relevant part:

18 (a) Preliminary Injunction.

19 (1) Notice. The court may issue a preliminary injunction only on notice to the adverse
party.

20 (2) Consolidating the Hearing With the Trial on the Merits. Before or after beginning the
hearing on a motion for a preliminary injunction, the court may advance the trial on the
21 merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence
that is received on the motion and that would be admissible at trial becomes part of the trial
22 record and need not be repeated at trial. But the court must preserve any party's right to a jury
trial.

23 (b) Temporary Restraining Order.

24 (1) Issuing Without Notice. The court may issue a temporary restraining order without
written or oral notice to the adverse party or its attorney only if:

25 (A) specific facts in an affidavit or a verified complaint clearly show that immediate
26 and irreparable injury, loss, or damage will result to the movant before the adverse
party can be heard in opposition; and

27 (B) the movant's attorney certifies in writing any efforts made to give notice and the
28 reasons why it should not be required.

1 (2) Contents; Expiration. Every temporary restraining order issued without notice must
2 state the date and hour it was issued; describe the injury and state why it is irreparable; state
3 why the order was issued without notice; and be promptly filed in the clerk's office and
4 entered in the record. The order expires at the time after entry — not to exceed 14 days —
that the court sets, unless before that time the court, for good cause, extends it for a like
period or the adverse party consents to a longer extension. The reasons for an extension must
be entered in the record.

5 2. Violations of the Public Trust Warrant Voiding Results from a Flawed 6 Process

7 Invitations to bid are akin to requests for applications for licenses. As the Nevada Supreme
8 Court has stated, “[a]n awarding board has a duty to reject any bid materially varying from bid
9 specifications.” Faust v. Donrey Media Grp., 95 Nev. 235, 237 (1979). This is done to “preserve the
10 competitive nature of bidding by preventing unfair advantage to any bidder, or other conditions
11 undermining the necessary common standard of competition” and to “save public funds and guard
12 against favoritism, improvidence and corruption. Id. at 238, fn 1 and Richardson Constr. V. Clark
13 Cty. Scho. Dist., 123 Nev. 61, 66 (2007). It was with these principles in mind, that the Nevada
14 Supreme Court declared that a “contract is void if it materially differs from the contents of the
15 invitation to bid.” Orion Portfolio Servs. 2, LLC v. County of Clark ex rel. Univ. Med. Ctr., 126
16 Nev. 397 (2010). Likewise, applications for licenses that fail to conform to the standards and
17 requirements issued by DoT in DoT’s request for applications, should be deemed void on their face.

18 Ms. Contine provided sworn testimony that the physical locations were required under the
19 regulations she created and should have been a part of the application.

20 Further, when insider information is provided to some, but not all applicants, it precludes all
21 applicants from competing on equal terms. Spiniello Constr. Co. V. Manchester, 189 Conn 539, 544
22 (Conn. 1983). In Spiniello, while the Court recognized the City’s actions were done in good faith
23 to obtain the best result for residents, the Court still found that “judicial relief is warranted where the
24 municipal action amounts to an erosion on the integrity of the bidding statute.” Id. at 545. “One of
25 the essentials to competitive bidding is that bidders **shall have the opportunity to bid on the same**
26 **thing.**” Gamewell Co. V. Phoenix, 216 F.2d 928, 934 (9th Cir. 1954) (emphasis added). “The
27 requirement is that specifications be such that **all parties can familiarize themselves with the**
28 **details.** Id. (emphasis added). Not only did the DoT give certain information to a privileged few

1 applicants but additionally made two different applications available during the application process.

2 It is appropriate for a Court to intervene when the process established by a governmental
3 agency “destroys the very principles of public policy that form the underlying basis of competitive
4 bidding.” Weinder v. City of Reno, 88 Nev. 127, 494 P.2d 277, 281 (1972). “[C]ourts should
5 scrutinize the conduct of the bidding process by any governmental agency when it appears that a
6 violation of the public trust may be involved.” Id. “Public confidence should be maintained at all
7 costs, even at the expense of those who errors are inadvertent.” Comm’n on Ethics v. JMA/Lucchesi,
8 110 Nev. 1, 10 (1994). “Innocence cannot deflect the appearance of impropriety.” Id. (reversing the
9 district court and reinstating the opinion of the Nevada Commission on Ethics because architects
10 obtained an unfair advantage over competitors by virtue of insider information).

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

24 **B. FINDINGS OF FACT**

25 **1. Removal of Physical Location**

26 It is an indisputable the DoT failed to comply with the physical location requirement. The
27 DoT’s arbitrary and improper elimination of the physical address requirement, as required by
28 NRS453D.210(5)(b), NAC 453D.265(1)(b), and NAC 453D.268(2)(e), made the grading process

1 unfair. Because winning applicants should not have received a license but for their manipulation of
2 the DoT's unfair process, the Court's preliminary injunction should also apply to those winning
3 applicants that did not provide actual physical addresses for the proposed marijuana establishments
4 (e.g., those that listed UPS stores or P.O. boxes). Former DoT Director Deonne Contine explicitly
5 testified that applications without a real physical address should have been summarily rejected.

6 The Court's related findings:

7 The Task Force's findings, issued on May 30, 2017, referenced the 2014 licensing process
8 for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The
9 Task Force recommended that "the qualifications for licensure of a marijuana establishment
10 and the impartial numerically scored bidding process for retail marijuana stores be
11 maintained as in the medical marijuana program except for a change in how local
12 jurisdictions participate in selection of locations. (See Exhibit "A" at p. 10.)

13 The DoT made a change to the application after circulating the first version of the application
14 to delete the requirement of a physical location. The modification resulted in a different
15 version of the application bearing the same "footer" with the original version remaining
16 available on the DoT's website. The DoT's late decision to delete the physical address
17 requirement on some application forms while not modifying those portions of the
18 application that were dependent on a physical location (i.e. floor plan, community impact,
19 security plan, and the sink locations) after the repeated communications by an applicant's
20 agent; not effectively communicating the revision; and, leaving the original version of the
21 application on the website, is evidence of conduct that is a serious issue. **P75**

22 By selectively eliminating the requirement to disclose an actual physical address for each and
23 every proposed retail recreational marijuana establishment, the DoT limited the ability of the
24 Temporary Employees to adequately assess graded criteria such as (i) prohibited proximity
25 to schools and certain other public facilities, (ii) impact on the community, (iii) security, (iv)
26 building plans, and (v) other material considerations prescribed by the Regulations. **P76"**

27 NWC provided a physical address for each desired jurisdiction and was graded incorrectly.
28 The graders seemed to only understand floor plans and deducted points for actual building plans and
inspection of NWC's location which was approved by the DoT on September 18, 2018.

22 **2. This Case is Distinguishable from the Nuleaf Case**

23 This motion to amend is based upon the failure of applicants to provide a physical location
24 in order for the DoT to even approve an application for a retail marijuana stores. Applications
25 submitted without a physical address were incomplete and should have been rejected. The Nuleaf
26 case is easily distinguishable from this case.

27 In Nuleaf, an injunction was sought due to applicants failure to comply with applicable local
28 and governmental zoning requirements before the applicant received a registration certificate for

1 a medical marijuana establishment. Nuleaf CLV Dispensary, LLC v. State Dep't of Health & Human
2 Servs., 414 P.3d 305, 306, (2018). The Court in Nuleaf was tasked with determining whether NRS
3 453A.322(3)(a)(5) required applicants compliance with applicable local and governmental zoning
4 requirements before a applicant can receive a registration certificate. Specifically NRS
5 453A.322(3)(a)(5) states:

6 “ (5) If the city, town or county in which the proposed medical marijuana establishment will
7 be located has enacted zoning restrictions, proof of licensure with the applicable local
8 governmental authority or a letter from the applicable local governmental authority certifying
that the proposed medical marijuana establishment is in compliance with those restrictions
and satisfies all applicable building requirements; and”

9 NRS 453A.322(3)(a)(5) requires proof of licensure with the applicable local governmental
10 authority or a letter from the applicable local governmental authority certifying that the proposed
11 medical marijuana establishment is in compliance with zoning restrictions and satisfies all applicable
12 building requirements.

13 Nuleaf **did not** address NRS 453A.322 requirement that a physical location be provided in
14 the application. Rather, the issue was an applicants failure to obtain licensure from applicable local
15 governmental authority certifying that the proposed medical marijuana establishment is in
16 compliance with zoning restrictions and satisfied all applicable building requirements.

17 In the case at bar, NWC is seeking injunctive relief because other applicants failed to comply
18 with the requirement to list a physical address on the initial application as required by NRS
19 453D.210(5)(b).

20 Specifically NRS 453D.210(5)(b) provides:

21 “5. The Department shall approve a license application if:

22 (b) The physical address where the proposed marijuana establishment will operate is owned
by the applicant or the applicant has the written permission of the property owner to operate
the proposed marijuana establishment on that property. . . .”

23 According to plain unambiguous language of NRS 453D.210(5)(b) the DoT shall only
24 approve a completed license application that includes a physical address. Consequently, all
25 applications without physical locations should have been deemed incomplete and rejected, not
26 approved or scored by the DoT. Unlike the Nuleaf case, here the court is asked to determined
27 whether the clear language of 453D.210(5)(b) applications to include a physical address where the
28 proposed marijuana establishment will operate in order for the DoT to approve a completed license

1 application. Stated a different way, pursuant to NRS 453D.210(5)(b) applications without physical
2 addresses were incomplete and should have been rejected.

3 Unlike this case, the issue in Nuleaf was applicants obtaining approval or proof of licensure
4 with the applicable local governmental authority. Furthermore, the Court in Nuleaf found the statute
5 at issue ambiguous. Here, the plain language of NRS 453D.210 clearly specifies **conditions for**
6 **approval of application** and clearly states the DoT is only to consider **completed applications**.

7 There is no similar language in NRS 453A.322(3)(a)(5), and thus the Nuleaf Court found NRS
8 453A.322(3)(a)(5) was open to interpretation. Here, NRS 453D.210 has additional language making
9 the plain language of the statute clear and unambiguous. When the language of a statute is plain and
10 unambiguous, a court should give that language its ordinary meaning and not go beyond it." City
11 Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

12 NRS 453D.210(4) provides:

13 "Acceptance of applications for licensing; priority in licensing; **conditions for approval of**
14 **application**; limitations on issuance of licenses to retail marijuana stores; competing
15 applications. [This section was proposed by an initiative petition and approved by the voters
16 at the 2016 General Election and therefore is not subject to legislative amendment or repeal
17 until after November 22, 2019.]

18 4. **Upon receipt of a complete** marijuana establishment license application. . . . (a) Issue
19 the appropriate license if the license application is approved...." (*Emphasis added*)

20 The court should give that language of NRS 453D.210 its ordinary meaning and not go
21 beyond it. *Id.* The plain language of NRS 453D.210 requires conditions for approval of all
22 applications. The plain language requires all applicants to provide a **complete** application which
23 requires a **physical location** for approval of the application. Former DoT Executive Deonne Contine
24 confirmed the DoT required a real physical location be provided on all applications. In fact, she
25 stated that "applications that did not have a real physical address should not have even been
26 considered."¹ In addition, DoT Deputy Executive Jorge Pupo testified that the DoT expected a
27 physical location to be included on all applications. He confirmed that applications without a
28 physical location are incomplete.² Thus according to the plain and unambiguous language of NRS

27 ¹ See Exhibit B, Trial Transcript Excerpts from July 12, 2019 P48:L15-49:16.

28 ² See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:19:L21-P:20:L11.

1 453D.210(4) and 453D.210(5)(b), as affirmed by DoT Executive and DoT Deputy Executive, all
2 applications without a physical location are incomplete and should have been rejected, not approved
3 and/or scored by the DoT. Accordingly the preliminary injunction should apply to all applications
4 that failed to provide a real physical location.

5 **2. Violation of Nevada Open Meeting Laws/Communication Methods**

6 The Nevada Open Meeting Law (OML) was enacted in 1960 to ensure that the actions and
7 deliberations of public bodies be conducted openly. The OML is set forth in chapter 241 of the
8 Nevada Revised Statutes (NRS). The DoT is a public body subject to NRS Chapter 241.

9 NRS 241.020 provides:

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

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

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

22 The DoT failed to comply with the open meeting laws with regard to dissemination of
23 information related to the recreational marijuana licensing application and associated requirements.
24 The application process for a license to sell recreational marijuana, unlike the application process
25 for a license to sell medical marijuana, did not contain any information on how or where to submit
26 questions regarding the application.³ Steve Gilbert testified that he did not know why this was the
27 case. (Id.) Mr. Gilbert further confirmed that while there was an email address to send questions to,
28 the questions and responses were not provided to all applicants.⁴ Compounding this with the fact
that the scoring criteria was deliberately kept secret from applicants, DoT's conduct raises red flags.⁵
The DoT permitted applicants and their representatives to personally contact the DoT staff about

26 ³See Exhibit D, Trial Transcript Excerpts from May 30, 2019, P:218:22-25.

27 ⁴ See Exhibit E, Trial Transcript Excerpts from May 30, 2019 Volume II, P207:L8-P209:9.

28 ⁵See Exhibit F, Trial Transcript Excerpts from June 19, 2019 Volume I, P120:L5-8.

1 the application process.

2 Unfortunately, DoT went a step further than merely carelessly failing to share all pertinent
3 information with all applicants; Mr. Pupo actively discussed the regulations with some applicants'
4 counsel on his personal cell phone. Mr. Pupo was aware before the applications were released that
5 there was confusion regarding some of the criteria.⁶ Yet, Mr. Pupo took "no corrective action" to
6 clarify the rule for the rest of the industry. (*Id.*) Mr. Pupo was offered a job by the same applicants
7 he spoke with on his personal cell phone and dined.⁷ In Mr. Pupo's own words "everyone had the
8 same opportunity to request clarification..."⁸)

9 Mr. Pupo's purported belief – that all applicants had the same opportunity to contact DoT
10 and obtain the same clarification, – is belied by Mr. Pupo's own testimony. Mr. Pupo admits to
11 speaking with the owners of some of the applicants personally *during the application process*.⁹ Mr.
12 Pupo met these applicants after DoT was charged with implementing the scoring procedure for
13 recreational marijuana.¹⁰ Mr. Pupo further had multiple dinners and lunches with certain owners.
14 ¹¹ Moreover, DoT itself refused to answer questions for applicants with which they were personally
15 unfamiliar.¹² Mr. Pupo could not explain why some applicants were simply denied information by
16 DoT. (*Id.*) However, Mr. Pupo could confirm he did not go out to dinners or lunches, or speak with,
17 NWC or its owners during the application process.¹³

20 ⁶ See Exhibit G, Trial Transcript Excerpts from June 19, 2019 Volume II, P46:L21-P48:L25.

21 ⁷ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P83:L8-P:84:L21.

22 ⁸ See Exhibit G, Trial Transcript Excerpts from June 19, 2019 Volume II, P58:L1-12.

23 ⁹ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P9:L15-25

24 ¹⁰ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P12:L1-15.

25 ¹¹ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P12:L1-15.

26 ¹² See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P72:L22-P74:L20.

27 ¹³ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P47:L14-P:48:L2.

1 As Mr. Pupo was the final decision maker on the scoring criteria – the buck stops here –.¹⁴
2 It appears Mr. Pupo manipulated the application process to award licenses to select applicants. This
3 violated the trust of the voters of Nevada and NRS 241. Pursuant to NRS 241.020 private meetings
4 by the DoT are prohibited. Since there is no statutory exception specifically providing public bodies
5 with the privilege to meet in private just because they have their attorneys present, such meetings are
6 prohibited. *McKay v. Board of County Comm'rs*, 103 Nev. 490, 746 P.2d 124, 1987 Nev. (Nev.
7 1987).

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

12 The Court's related findings:

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

16 **See Exhibit A ¶ 20**

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

18 **See Exhibit A ¶21**

19 The DoT conducted the following in violation of Nevada OML/NRS chapter 241:

- 20 1. Failed to provide a single point of contact for all applicants;
- 21 2. Allowed applicants to ask questions and receive answers directly from the
22 Department, without disseminating the same information to all applicants;
- 23 3. Modified the application without informing all applicants the application was
24 modified;
- 25 4. Failed to disseminate the modified application to all applicants;
- 26 5. Removed the requirement of a physical location from the application without
27 informing all applicants the physical location requirement was removed;

28 ¹⁴ See Exhibit F, Trial Transcript Excerpts from June 19, 2019 Volume I, P118:L25-P119:3.

1 6. Removed compliance from the grading process and failed to inform all applicants
2 of the removal of compliance; and

3 7. DoT Executives held private meetings with applicants/representatives/attorneys.

4 The DoT by its actions precluded all applicants from competing on equal terms. All actions
5 taken by the DoT following DoT's violation of NRS chapter 241, should be declared void pursuant
6 NRS 241.037.¹⁵ The DoT's action in issuing marijuana establishment licenses after it violated NRS
7 Chapter 241 should be voided. Accordingly the preliminary injunction should apply to all marijuana
8 establishment licenses issued.

9 **3. DoT Deputy Executive Jorge Pupo Actions**

10 Most alarming, are the actions of DoT Deputy Executive Jorge Pupo. Mr. Pupo exhibited
11 favoritism with certain applicants, made significant changes to the application and scoring process
12 substantial affecting the outcome thereof, and directed DoT investigators not to consider the sale
13 of marijuana to minors by a certain applicant thereby impacting the compliance section of
14 application scoring. Mr. Pupo's actions so infected the integrity of the application and scoring
15 process that it impacted NWC's right to just and fair application scoring process.

16 Specifically, Mr. Pupo explicitly testified that he had lunch, dinner and drinks with certain
17 applicants and/or their representatives.¹⁶ Karalin Cronkhite DoT Chief Investigator testified that
18 Mr. Pupo directed her not to include non compliance involving the sale of marijuana to minors by
19 certain facilities.¹⁷ Mr. Gilbert, testified that Mr. Pupo was responsible for applying the percentage
20
21

22
23 ¹⁵ See NRS 241.037(2) Any person denied a right conferred by this chapter may sue in the district court of
24 the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to
25 have an action taken by the public body declared void, to require compliance with or prevent violations of this
26 chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may
27 order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this
28 subsection.

27 ¹⁶ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:13:L7-15.

28 ¹⁷ See Exhibit H, Trial Transcript Excerpts from July 11 Volume I, 2019, P:78:L23-25.

1 and break down of points to certain categories.¹⁸ Mr. Gilbert testified that it was Mr. Pupo's decision
2 not to employ QuantumMark for the 2018 application process.¹⁹ Mr. Pupo confirmed that he decided
3 to remove the physical location as a scoring item from the application.²⁰ Mr. Pupo through multiple
4 actions was able to manipulate the application and scoring process. Consequently, the Court's
5 preliminary injunction should also apply to the entire process. Accordingly, the Court's Findings of
6 Fact and Conclusion of Law should be amended and the preliminary injunction should also apply
7 to the entire process.

8 **4. Former DoT Director Deonne Contine Actions**

9 Former DoT Director Deonne Contine's actions also exhibited favoritism with certain
10 applicants. Mrs. Contine's actions affected the integrity of the application and scoring process
11 impacting NWC's right to a just and fair application scoring process.

12 Specifically, Mrs. Contine explicitly testified that she had lunch, dinner and drinks with
13 certain applicants and/or their representatives, and that certain applicants called her on her cellular
14 telephone.²¹ She also testified that after leaving the DoT she received campaign contributions when
15 she ran for Nevada State Assembly from applicants and/or their representatives.²² Mrs. Contine
16 through multiple actions taken along side Mr. Pupo was able to manipulate the application and
17 scoring process infecting the integrity of the application and scoring process. Consequently, the
18 Court's preliminary injunction should also apply to the entire process.

19 **C. ARGUMENT**

20 **1. Competitive Bidding Process**

21 The purpose of a competitive application or bidding process "is to secure competition, save
22 public funds, and to guard against favoritism, improvidence and corruption." *Gulf Oil Corp. v. Clark*

23
24 ¹⁸ See Exhibit I, Trial Transcript Excerpts from June 11, 2019, P:98:L12-16.

25 ¹⁹ See Exhibit I, Trial Transcript Excerpts from June 11, 2019, P:96:L5-10.

26 ²⁰ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:14:L19-P15:L11.

27 ²¹ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:99:L21-P:100:L17.

28 ²² See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:101:L4-P:102:L8.

1 *Cty.*, 94 Nev. 116, 118-19, 575 P.2d 1332, 1333 (1978); see also *City of Boulder City v. Boulder*
2 *Excavating, Inc.*, 124 Nev. 749, 758, 191 P.3d 1175, 1181 (2008) (same). The statutes and
3 regulations that govern these competitive processes "are deemed to be for the benefit of the
4 taxpayers" and "are to be construed for the public good." *Gulf Oil*, 94 Nev. at 118-19.

5 **a. DoT's Violation of Nevada Open Meeting**
6 **Laws/Communication Methods**

7 By permitting applicants to submit applications with inside information when other
8 applicants were not afforded the same opportunity, the DoT precluded the other applicants from
9 competing on equal terms. See *Spiniello Const. Co. v. Town of Manchester*, 189 Conn. 539, 544,
10 456 A.2d 1199, 1202 (1983). By giving some applicants information that was not available to others,
11 the DoT defeated the objectivity and integrity of the competitive application process by exhibiting
12 favoritism. *Spiniello*, 189 Conn. 544-545. In that situation, an injunction was appropriate. *Id.*

13 **b. Violation of Initiative Ballot, NRS 453D.210(4) and (5), and**
14 **NAC 453D Requirements for Physical Address**

15 Under the marijuana ballot initiative, as codified in NRS 453D.210(4) and (5), the DoT shall,
16 within 90 days of receipt of applications, approve a license application if the prospective marijuana
17 establishment has submitted an application in compliance with regulations adopted by the
18 Department' and: (b) The physical address where the proposed marijuana establishment will operate
19 is owned by the applicant or the applicant has the written permission of the property owner to operate
20 the proposed marijuana establishment on that property; NRS 453D.210(5)(b). As the statute requires
21 the DoT to determine whether an application was submitted "in compliance with the regulations,"
the regulations likewise require that any application submitted must have the physical address in it:

- 22 1. On or before November 15, 2018, a person who holds a medical marijuana
23 establishment registration certificate may apply for not more than one
24 license for a marijuana establishment of the same type by submitting:
(b) An application on a form prescribed by the Department which includes, without
25 limitation:
(3) The physical address where the proposed marijuana establishment will be
located and the physical address of any co-owned or otherwise affiliated marijuana,

26 The application submission period began on September 7, 2018 and closed on September
27 20, 2018. The DoT, pursuant to statute, had until December 5, 2018 to complete its compliance
28 review. NAC 453D.265() (b) (3) (bold added). As if stating it once in the regulations was not

1 enough to be clear, NAC 453D.268(2)(e) also requires that "[The] application must include, without
2 limitation."

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

5 Both the Ballot Initiative (which was enacted as NRS 453D) and the DoT's adopted
6 regulations (NAC 453D) absolutely required all applications to be complete and approved
7 applications to include physical address where the proposed marijuana establishment will be located.
8 But the DoT only informed certain applicants (those that had direct access to DoT employees), that
9 real physical addresses were not required and would not be graded at all. The selective disclosure
10 of information by DoT employees about the grading and the need for a real physical address
11 impacted the entire process:

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

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

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

21 The DoT's failure to require an actual physical address, its failure to confirm whether actual
22 addresses were provided, and its failure to consider those addresses as part of the evaluation and
23 grading resulted in an unfair process. The DoT's unfair process allowed winning applicants to take
24 advantage of inside information to which they were privy and it permitted winning applicants to
25 manipulate their scoring for graded categories like (i) impact on the community, (ii) security, and
26 (iii) building plans, among others. An example of the resulting unfairness is shown by the fact that
27 the highest graded building scores were given to those applicants (e.g., Thrive) that did not have an
28 actual physical address and were able to submit fairy-tale building plans because they were not

1 bound by reality and an actual location. Currently, NWC provided physical addresses, building
2 plans, and parking plans of an existing building. The NWC building was inspected by DoT on
3 September 18, 2018 and approved.²³

4 Former DoT Director Deonne Contine testified that applications that did not have a real
5 physical address should not have even been considered:

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

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

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

9 A I wouldn't have even reviewed the applications.²⁴

10 Q Your staff would have been instructed that if they didn't have a physical address
apart from a Post Office box or a UPS Store that that application should not be
accepted; right?

11 A I think that would be the direction.

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

13 A Yes.

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

15 Right.²⁵

16 Because applicants would not have received a license but for their manipulation of the DoT's
17 unfair process, NWC believes that the Court's preliminary injunction should also apply to those
18 winning applicants that did not provide actual physical addresses for the proposed marijuana
19 establishments (e.g., those that listed UPS stores or P.O. boxes). In order to determine which of the
20 winning applicants failed to provide actual physical addresses for the proposed marijuana
21 establishments, the Court should order the DoT to identify which of winning applicants did not
22 comply with NRS 453D.210(5)(b), NAC 453D.265(1)(b), and NAC 453D.268(2)(e).

23 By comparison, NRS 333 (State Purchasing Chapter) provides:

24 "A contract may not be awarded to a bidder who does not comply with the
25 requirements set forth in the request for proposal".

26 NRS 333.311

27 ²³ See Exhibit J, A copy of the inspection result.

28 ²⁴ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:48:L15-21.

²⁵ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P49:L2-16.

1 **c. Violation of Integrity of the Application and Scoring Process**
2 **that it Impacting NWC's Interest in a Just and Fair**
3 **Competitive Bidding Process**

4 Mr. Pupo and Mrs. Contine's actions in meeting with certain applicants and providing
5 information permitting applicants to submit applications with inside information when other
6 applicants were not afforded the same opportunity, the DoT precluded the other applicants from
7 competing on equal terms. See Spiniello Const. Co. v. Town of Manchester, 189 Conn. 539, 544,
8 456 A.2d 1199, 1202 (1983). Moreover, Mr. Pupo and Mrs. Contine by and through their actions
9 defeated the objectivity and integrity of the competitive application process. Spiniello, 189 Conn.
10 544-545. Mr. Pupo exhibited favoritism with certain applicants by making significant changes to
11 the application and scoring process, including physical location and scoring breakdown and
12 percentages, substantially affecting the outcome thereof. In addition, Mr. Pupo directed DoT
13 investigators not to investigate the sale of marijuana to minors by certain facilities thereby impacting
14 the compliance grading section of those applicants applications. Mr. Pupo made the decision to not
15 consider any deficiencies or violations committed by the applicant in violation of NAC
16 453D.272(i)(g). Mr. Pupo's totality of actions infected the integrity of the application and scoring
17 process, thereby impacted NWC's interest in a just and fair application scoring process. In that
18 situation, an injunction is appropriate. Id.

19 **d. The DoT May Not Waive Material Irregularities**

20 A government entity may waive minor irregularities with the bid documents as mere
21 informalities, *see* AAB. Elec., Inc. v. Stevensen Public School Dist. No. 303, 491 P.2d 684, 685
22 (Wash. 1971).²⁶ Material irregularities may not be waived, Blount, Inc. v. U.S., 22 Cl.Ct. 221, 227
23 (1989). A bid which contains a material nonconformity must be rejected as nonresponsive. Blount
24 citing Honeywell, Inc. v. United States, 16 Cl. Ct. 173, 181 (1989), rev'd on other grounds, 870 F.2d

25 ²⁶The test of whether or not a nonconformity or irregularity is material is whether or not it gives a bidder a
26 substantial advantage or benefit not enjoyed by the other bidders. Id. Irregularities are minor or immaterial only if
27 they do not affect price, quantity, or delivery of the overall supplies or services to be contracted. George & Benjamin
28 General Contractors v. Government of the Virgin Islands Dept. of Property and Procurement, 921 F. Supp. 304,309
(V.I. 1996). See also 48 C.F.R. § 14.301(a) ("to be considered for award, a bid must comply in all material respects
with the invitation for bids. Such compliance enables all bidders to stand on an equal footing and maintains the
integrity of the sealed bidding system.").

1 644 (Fed. Cir. 1989). Material terms and conditions of a solicitation involve price, quality, quantity,
2 and delivery. Id. The rule is designed to prevent bidders from taking exception to material
3 provisions of the contract in order to gain an unfair advantage over competitors and to assure that
4 the government evaluates all bids on an equal basis.

5 The violations allowed by the DoT cannot be considered “minor irregularities.” First and
6 foremost, the DoT has allowed applicants to violate the mandatory provision of NRS 453D.
7 Specifically, NRS 453D.210 provides that a applicant “must include” the names of prospective
8 owners, officers, board members and physical addresses of the proposed entities. *See e.g., Blaine*
9 *Equip. Co. v. State*, 122 Nev. 860, 866, 138 P.3d 820, 823 (2006) (the district court may not rely on
10 its equitable power to disregard the mandatory language of a statute). “When the language of a
11 statute is plain and unambiguous, a court should give that language its ordinary meaning and not go
12 beyond it.” *Id.* citing *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 891, 784 P.2d 974,
13 977 (1989). Minor irregularities may be waived but violations of Statutes and Regulations can not.
14 Therefore, all applications not complying with Nevada Statutes and/or Regulations must be rejected.

15 **III.**

16 **CONCLUSION**

17 Based upon the foregoing, NWC pursuant to NRCP 55 respectfully requests this Court
18 amend its Findings of Facts and Conclusions of Law dated August 23, 2019, and enjoining the State
19 from conducting a final inspection on any of the conditional licenses issued in or about December
20 of 2018 and deeming the entire scoring/application process invalid or at a minimum enjoining all
21 applicants that did not comply with Nevada Statutes 453D and Nevada Administrative Code 453D.

22 DATED this 13th day of September, 2019.

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

24 

25 THEODORE PARKER, III, ESQ.
26 Nevada Bar No. 4716
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

27 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER,
3 NELSON & ASSOCIATES, CHTD., and that on this 13th day of September, 2019, I served a
4 true and correct copy of the foregoing **NEVADA WELLNESS CENTER, LLC, MOTION TO**
5 **AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST**
6 **23, 2019, PURSUANT TO NRCP 52** on the party(s) set forth below by:

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

15 Aaron D. Ford, Esq.
16 Attorney General
17 Robert E. Werbicky, Esq.
18 Deputy Attorney General
19 Office of the Attorney General
20 555 E. Washington Avenue, Suite 3900
21 Las Vegas, NV 89101
22 (702) 486-3105
23 Fax: (702) 486-3416
24 Email: rwerbicky@ag.nv.gov
25 *Attorneys for Defendant,*
26 *State of Nevada, Department of Taxation*

27 
28 An employee of PARKER, NELSON & ASSOCIATES, CHTD.

EXHIBIT “A”

Steven D. Grierson

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

ASG 23 260
RECEIVED

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

Intervenors.

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

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

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

16 ***PROCEDURAL POSTURE***

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

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

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

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

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

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

8 ***PRELIMINARY STATEMENT***

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

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

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

24 A786962-B Serenity: Serenity Plaintiffs' Motion for Preliminary Injunction filed 3/19/19 (Joinder to Motion by
25 Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada
26 Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23);
27 Opposition by Nevada Organic Remedies: 5/9 (Joinder by Lone Mountain: 5/13; Joinder by Helping Hands: 5/21; and
28 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).

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

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

9 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

(g) Requirements for record keeping by marijuana establishments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRS 453D.020(3).

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

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

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

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

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

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

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

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

The second recommendation of concern is:

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

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

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

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

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

7 14. The Regulations for licensing were to be "directly and demonstrably related to the
8 operation of a marijuana establishment." NRS 453D.200(1)(b). The phrase "directly and demonstrably
9 related to the operation of a marijuana establishment" is subject to more than one interpretation.
10

11
12
13
14
15
16
17
18 *Use the marijuana establishments governing documents to determine who has approval rights and signatory
19 authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory
documents.

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

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

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

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS
27 453D.300, a marijuana establishment may require the person to submit to the Department a complete set of
fingerprints and written permission authorizing the Department to forward the fingerprints to the Central
Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its
report.
28

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

4
5 ⁹ Relevant portions of that provision require that application be made

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

8 ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24
25
26
27 ¹⁰ The DoT made a change to the application after circulating the first version of the application to delete the
28 requirement of a physical location. The modification resulted in a different version of the application bearing the same
“footer” with the original version remaining available on the DoT’s website.

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

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

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

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

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

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

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

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

23 28. The identified criteria consisted of organizational structure of the applicant (60 points);
24 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
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.¹¹

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

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

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

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

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

24
25
26
27
28 ¹¹ Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional
evidentiary proceedings in the assigned department.

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

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

9 42. The DoT made the determination that it was not reasonable to require industry to
10 provide every owner of a prospective licensee. The DOT’s determination that only owners of a 5% or
11 greater interest in the business were required to submit information on the application was not a
12 permissible regulatory modification of BQ2. This determination violated Article 19, Section 3 of the
13 Nevada Constitution. The determination was not based on a rational basis.
14

15 43. The limitation of “unreasonably impracticable” in BQ2¹² 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 BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
19 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT’s decision to adopt regulations in
20 direct violation of BQ2’s mandatory application requirements is violative of Article 19, Section 2(3) of
21 the Nevada Constitution.
22

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

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

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

28 ¹⁴ That provision states:

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

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

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

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

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

18
19 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
20 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
21 inspection of their marijuana establishment.
22
23
24

25 ¹⁵ Some applicants apparently provided the required information for each prospective owner, officer and board
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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.**

6 (Emphasis added.)

7 64. The Nevada Supreme Court has recognized that “[i]nitiative petitions must be kept
8 substantively intact; otherwise, the people’s voice would be obstructed. . . [I]nitiative legislation is not
9 subject to judicial tampering-the substance of an initiative petition should reflect the unadulterated will
10 of the people and should proceed, if at all, as originally proposed and signed. For this reason, our
11 constitution prevents the Legislature from changing or amending a proposed initiative petition that is
12 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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24
25
26
27
28 ¹⁷ The Court makes no determination as to the extent which the grading errors alleged by MM and Live Free may be
subject to other appropriate writ practice related to those individualized issues by the assigned department.

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

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

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

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

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

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

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

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

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

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

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

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

25
26
27 ¹⁸ As discussed during the preliminary injunction hearing, the Court sets a separate evidentiary hearing on whether to
28 increase the amount of this bond. That hearing is set for August 29, 2019, at 9:00 a.m.

ORDER

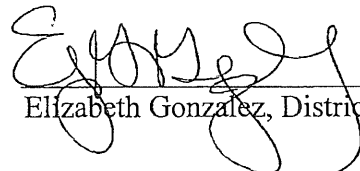
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

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

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

DATED this 23rd day of August 2019.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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


Dan Kutinac

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

EXHIBIT “B”

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 A I've never met him. I mean, I know who he is,
2 but --
3 Q Armand?
4 A Armand -- yes, I know Armand.
5 Q What's his last name?
6 A I don't know.
7 Q Okay. All I know is Armand, as well.
8 A Armand -- I don't know. Somebody who understands
9 his last name better could probably say it. I don't know.
10 Q Phil Peckman?
11 A I know him.
12 Q Do you know the names of any of the marijuana
13 establishments that may have applied?
14 A I know -- I mean, I know -- I don't -- when I looked
15 at -- I didn't look too closely at the caption here.
16 Q How about Essence?
17 A Is Essence Armand? I'm not sure.
18 Q Thrive?
19 A Thrive I think is Mr. Peckman and his group.
20 Q Nevada Organics?
21 A I don't know who that is.
22 Q Okay. Have you had lunch, dinner, or even coffee
23 with any of these people that you listed?
24 A Yes.
25 Q On more than one occasion?

1 A Yes.

2 Q Tell me who you recall having lunch with.

3 A I think I've had lunch with Mr. Ritter --

4 Q Anyone else?

5 A -- a couple times. I've known Brett Scolari for

6 years before marijuana. I've had lunch or coffee with him in

7 the past.

8 Q How about dinner?

9 A Brett. I don't -- I don't know.

10 Q All right.

11 A I think I've had dinner with Mr. Ritter, as well.

12 Or lunch or dinner. I can't recall.

13 Q Okay. Would any of these people have your cell

14 phone number?

15 A Yes.

16 Q Would that include Amanda Connor?

17 A Yes.

18 Q Phil Peckman?

19 A I don't know.

20 Q Andrew Jolley?

21 A I don't know. I mean, generally I worked to make

22 the regulations, to create the process. So I will have had

23 some contact and know pretty much anyone that was involved in

24 that process.

25 Q Okay.

1 A Either -- yeah.

2 Q Did you run for political office?

3 A Yes.

4 Q And what position did you run for?

5 A I ran for the Nevada State Assembly.

6 Q And when did you run?

7 A In 2018.

8 Q Okay. Did you have any fundraisers for that

9 campaign?

10 A Yes.

11 Q Were any of the people you listed a participant or a

12 contributor to your campaign?

13 A Yes.

14 Q Can you tell me which people, entities contributed

15 to your campaign?

16 A No, I can't -- I mean, I know some. I can't -- I

17 can't list them all.

18 Q Can you tell me of the applicants that are involved

19 in the marijuana business which ones contributed to your

20 campaign?

21 A I don't know.

22 Q You don't know any of them by name?

23 A Well, I know some of them by name, but I can't give

24 you -- I know TGIG did, I think Essence did, Thrive, Tryke.

25 Q Anyone else?

1 A There were others, but I just can't remember.

2 Q All right. And do you remember because you remember
3 them attending, or do you remember them because you remember
4 checks coming to you with their names on them? Or both?

5 A I mean, I remember -- I remember people attending
6 and then generally contributions, but I don't remember -- but
7 I don't necessarily know who everybody's group was, and so I
8 might have to look that up. So --

9 Q Did you ever receive any inquiries, or has anyone
10 ever hypothecated to you perhaps hiring you, any of the
11 applicants?

12 A I did -- no. Not in this case.

13 Q I'm sorry. You did what?

14 A No. No, not in this case.

15 Q Not in this case. What do you mean by that?

16 A Do you mean anybody?

17 Q Anybody.

18 A Yeah. I did some -- a little of application work --

19 Q And when did you do this application work?

20 A In July to November.

21 Q July what?

22 A To November.

23 Q Of what year?

24 A 2018.

25 Q When did you leave the State originally?

EXHIBIT “C”

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 10
VOLUME II**

THURSDAY, JUNE 20, 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 A Normal business.

2 Q Okay. Explain that.

3 A My day-to-day interactions, you know, managing the
4 industry.

5 Q Okay. Day-to-day managing of the industry, or day-
6 to-day familiarity with these owners?

7 A No. Just day-to-day management of, you know, the
8 industry. And I don't know all the entire ownership. I know,
9 you know, maybe one or two people may have common ownership.
10 I'd have to go into the records to see, you know, what the
11 exact ownership is.

12 Q But you knew -- tell me, did you know names in terms
13 of owners?

14 A One of each probably.

15 Q Tell me who you are familiar with that had ownership
16 interest in these companies. And we can start with Essence
17 Trop and Essence Henderson.

18 A Armen Yemenidjian or however you pronounce it.

19 Q Do you know how to spell it?

20 A No.

21 Q Okay. Good enough. And how about Cheyenne and
22 Commerce Park, which is Thrive?

23 A Yeah, I believe that's Mitch Britten and --

24 Q Had you spoken with either of them before the first
25 gentleman you named or the second?

1 A Yes.

2 Q On more than one occasion?

3 A Yes.

4 Q So when I asked you about your familiarity with the
5 owners it goes beyond simply the industry. You actually knew
6 these owners; is that correct?

7 A No, I know them from my interactions with the
8 industry.

9 Q Right. But you actually know -- there are a lot of
10 people in the industry. You may not know the owners; right?

11 A Yes.

12 Q Right. But in this case you knew the owners of all
13 four locations?

14 A Yes.

15 Q All right.

16 A Or at least some of them, right.

17 Q Good enough. And had you spoken to them prior to
18 the submission of the applications?

19 A Yes.

20 Q Did you speak with them between July of 2018 and
21 September 20th of 2018?

22 A I believe so. Possibly, yes.

23 Q Would your phone records reflect telephone
24 conversations with those gentlemen?

25 A Possibly, yes.

1 Q Do they have medical marijuana locations?

2 A Yes.

3 Q Have you known them since 2014?

4 A No.

5 Q When did you meet the owner of Essence Trop and
6 Essence Henderson?

7 A Sometime after the Department of Taxation started
8 administering the marijuana program.

9 Q What year would that be?

10 A I believe it was July 1st, 2017.

11 Q Okay. So after it became clear that recreational
12 marijuana would be available?

13 A Yes.

14 Q Same with the owner of Commerce and Cheyenne?

15 A Yes.

16 Q Okay. And can you tell me the circumstances in
17 terms of how you met them.

18 A I don't recall specifically. It could have -- you
19 know, I've met a lot of people through meetings or
20 regulations, things like that.

21 Q All right. Now, you indicated you've spoken to them
22 and you've met them, and you said your phone records would
23 reflect conversations with them. Did you ever text either of
24 them?

25 A Yes.

1 Q Okay. Have you produced records indicating that you
2 -- your phone records indicating text messages between
3 yourself and those owners?

4 A Yes.

5 Q Okay. Have you received any emails from them?

6 A Don't know. Not sure.

7 Q Have you gone to dinner with either of them?

8 A Dinner, I believe, yes.

9 Q Have you gone to lunch with either of them?

10 A Yes.

11 Q More than one occasion?

12 A Possibly, yes.

13 Q And would it also -- would those lunches or dinners
14 have occurred between 2017 and September 20th of 2018?

15 A Yes.

16 Q All right. Now, let me get back to a couple more
17 questions. We may come back to that, but I want to get back
18 to the statutes, the regulations first.

19 When we left off you told me that while location was
20 important in the ballot, location was important in the
21 statutes, and location was important in the regulations, you
22 thought you had the ability to remove it from the scoring on
23 the application process; is that correct?

24 A Yes.

25 Q All right. Now, do you think you also had the power

1 in your position, the way you remove location, to change the
2 age in terms of what person can purchase recreational
3 marijuana? Because that seemed also important in the ballot
4 question that it'd be someone over 21. Did you have the
5 authority to change it to 20?

6 A No.

7 Q What makes you think you had the ability to change
8 the location, since that was important and actually a question
9 within the ballot, but you couldn't change the age?

10 MR. KOCH: Objection. Lacks foundation.

11 THE COURT: Overruled.

12 THE WITNESS: I think I explained before. I don't
13 think we -- the initiative doesn't say how to score an
14 application.

15 BY MR. PARKER:

16 Q Wait a second, sir. Let's make sure we're on the
17 same page. I didn't ask about scoring this time.

18 A I'm sorry.

19 Q You removed location as a scoring item, I
20 understand.

21 A Yes.

22 Q But you told me right before we left and you gave me
23 time to think about your response, the Court did, that you had
24 the authority to remove location as a scoring item. Do you
25 remember that?

1 A Yes.

2 Q All right. If you can change something that was
3 important to the citizens of Nevada like location, which is
4 represented in the ballot question, do you think you also have
5 the ability to change the age a person can be to buy
6 recreational marijuana?

7 A No.

8 Q Is there anything in the ballot that differentiates
9 your authority in terms of locality versus age?

10 A No.

11 Q That's what I thought. All right.

12 So now let's go to the statute.

13 THE COURT: And, sir, if you'd like the book if it's
14 easier, I'd be happy to get it for you.

15 THE WITNESS: Sure, Your Honor.

16 MR. PARKER: He may need it, Your Honor. I'm going
17 to be flipping back and forth a little bit.

18 THE COURT: I've just got to make sure I grab the
19 right one. 453; correct? There you go.

20 THE WITNESS: Thank you, ma'am.

21 BY MR. PARKER:

22 Q And we're going to start with the statutes, and then
23 we'll work to the regs, okay?

24 A Okay.

25 Q All right. And the first one we're going to look at

1 Q All right. Now, when you told Mr. Miller yesterday
2 that location -- a location was required but not scored does
3 that mean that every applicant who gave a floor plan without a
4 location had presented an incomplete or inadequate
5 application?

6 A I don't believe so.

7 Q Well, that's what you said. You said yesterday more
8 than once, and I was --

9 A Maybe I misunderstood the question.

10 Q Well, maybe you --

11 A Your question. Can you just say it again.

12 Q Certainly. Because I found this interesting. You
13 said that locations were required, but would not be scored.
14 Do you remember saying that more than once yesterday?

15 A Yes.

16 Q Right. So given what you've told me right before we
17 broke for lunch, that location was required, doesn't that mean
18 every applicant who provided a floor plan without a location,
19 even if a location wasn't scored, would have presented an
20 inadequate and incomplete application?

21 A I believe I said that location was required on the
22 application.

23 Q Right. So they provided an application that did not
24 have a location. Each one of those applicants' applications
25 were incomplete and should not be considered by your

1 Department; isn't that correct?

2 A I would say it can be considered incomplete, but it
3 would move forward.

4 Q Thank you. But it would be incomplete?

5 A If it's missing an element, yes. You know, we
6 expect the information --

7 Q You said location --

8 A -- that we ask for.

9 Q Right. You expected a location even if it wasn't
10 scored; isn't that correct?

11 A Yes.

12 Q Thank you. Now let's go to 453D.205 and paragraph
13 (1). Do you have that in front of you?

14 A Yes.

15 Q And it talks about background checks. And again it
16 refers to subsection (6), 453D.200, which is right above it,
17 okay?

18 A Okay.

19 Q And if you want, I can read what subsection (6) says
20 of 453D.200 --

21 A No, I see it.

22 Q You can see it?

23 A Yes.

24 Q Okay. Good. So yesterday when you were speaking
25 with Mr. Ross you talked about --

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

(Pause in the proceedings)

THE WITNESS: Is this the entire application?

BY MR. PARKER:

Q Yeah. But we're going to only look at a couple of pages, okay.

Sir, I want you to take a look at DOTNBWELL2. So it's page 2.

A Okay.

Q Are you familiar with this form -- document?

A With this letter, yeah. Yes.

Q Is this a form that is utilized by the Department of Taxation Marijuana Enforcement Division?

A Yes.

Q All right. And can you tell me -- this was sent out September 18th, 2018, to Mr. Frank Hawkins. Do you know who he is?

A Yes.

Q Have you met him before?

A Yes.

Q When?

A This week.

Q Okay. Other than this week have you met him before?

A No.

Q Have you ever gone to lunch or dinner with him?

A No.

1 Q Has he ever called you on the phone?

2 A No.

3 Q All right. It says here, "On September 12th, 2018,
4 The Department of Taxation Marijuana Enforcement Division
5 conducted a routine inspection/audit of your establishment
6 located at 3200 South Valley View Boulevard, Las Vegas,
7 Nevada." And it has certificate numbers and the license
8 number. Do you see that?

9 A Yes.

10 Q All right. The next paragraph says, "The
11 audit/inspection results reveal that your establishment was in
12 compliance with Nevada Revised Statutes..., " and it references
13 453A and 453D; is that correct?

14 A Yes.

15 Q All right. And it also says, "...the Administrative
16 Code, and no deficiencies were noted during the inspection."
17 Do you see that?

18 A Yes.

19 Q What does that mean in terms of the operation of
20 Nevada Wellness Center at this location?

21 A It means at this time upon the inspection from my
22 inspectors that they found nothing out of compliance.

23 Q All right. Would that mean that the location as
24 it's being operated would be suitable both in terms of
25 location and suitable in terms of adequacy of size to sell

1 THE COURT: The A-V guys are allowed to have a
2 break. Here he comes.

3 (Pause in the proceedings)

4 THE COURT: Okay. Now we're ready.

5 MR. PARKER: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. PARKER: May I proceed?

8 THE COURT: You may.

9 MR. PARKER: So can we look at Exhibit 446, page 1,
10 please.

11 BY MR. PARKER:

12 Q It should be coming up, Mr. Pupo.

13 So this is the Marijuana Nevada email to Ramsey, is
14 it Davise? How do you pronounce that?

15 Oh. Is yours not on?

16 A It's not on the screen here.

17 MR. PARKER: May I approach?

18 THE COURT: You may. Are you going to use the turn
19 off and hopefully it comes back on method?

20 (Pause in the proceedings)

21 BY MR. PARKER:

22 Q All right. Do you recognize that email address in
23 terms of the sender? It says "From: Marijuana Nevada."

24 A Okay. Yes.

25 Q Is that from the Department of Taxation?

1 A That's one of our boxes, yes.

2 Q Okay. And it's dated September 9, 2018. So this is
3 during the application process, is that correct, after
4 applications are being -- the window in terms of submission of
5 applications? Wasn't it the 7th through the 20th?

6 A Yeah. Okay. I believe it was the 7th through the
7 20th.

8 Q All right. So it appears here that Mr. Ramsey was
9 being responded to by Mr. Plaskon; is that correct?

10 A Yes.

11 Q All right. And he indicates here that he cannot
12 answer the question being asked; is that correct?

13 MR. KOCH: Objection. Document speaks for itself.

14 THE COURT: Overruled.

15 THE WITNESS: It's that would not provide guidance
16 to individual applicants.

17 BY MR. PARKER:

18 Q Now, tell me. That seems at odds with what has been
19 said earlier in this trial -- or in this hearing. I was told
20 that, you know, you've had conversations and others have had
21 conversations with representatives of applicants, as well as
22 applicants. Why would Mr. Plaskon take this position on
23 September 9th, 2018?

24 MR. KOCH: Objection. Speculation.

25 THE COURT: Overruled.

1 THE WITNESS: He must have gotten instruction.

2 BY MR. PARKER:

3 Q Okay. Did you give any instruction to not provide
4 information to this person?

5 A No.

6 Q Are you familiar with Libra Wellness?

7 A Yes.

8 Q Do they have a medical marijuana license?

9 A I believe so, yes.

10 Q Did they apply for or receive a conditional
11 recreational license?

12 A I don't know.

13 Q All right. Was this the position taken by the
14 agency, your Department, on September 9th, that there would be
15 no more answers given?

16 MR. KOCH: Objection. Mischaracterizes the
17 document.

18 THE COURT: Overruled.

19 THE WITNESS: Yeah. I don't know that was
20 instructions.

21 BY MR. PARKER:

22 Q It says, "With that said, the Division cannot
23 provide guidance to individual applicants.

24 THE COURT: Hold on a second.

25 THE COURT RECORDER: I'm having a hard time hearing

1 THE WITNESS: I could have. I think that would have
2 created more problems.

3 BY MR. PARKER:

4 Q Okay. Thank you.

5 MR. PARKER: Now, let's stay right here in terms of
6 Exhibit 252, Shane. I don't need the other email.

7 BY MR. PARKER:

8 Q You told Mr. Miller that you went to -- you were
9 offered ownership -- you were offered jobs by I believe one of
10 the owners that you allowed to have more than one location in
11 this jurisdiction; is that correct?

12 A Yeah. I don't characterize them as offers. They
13 were saying, hey, if you leave the State, make sure I'm the
14 first one to call, or, give me a call.

15 Q And who was that again? Was this the owner of
16 Essence?

17 A Yes.

18 Q Okay. And did anyone else or any of the other
19 owners from Essence -- did you meet with any of them?

20 A No.

21 Q Did you meet with any of the owners of Cheyenne or
22 Commerce Park?

23 A Regarding?

24 Q Any offers of employment.

25 A No.

1 Q Did you meet with any owners -- do you know the
2 owners of Commerce Park and Cheyenne?

3 A I know -- I know some.

4 Q Okay.

5 A Yeah. I don't know that I know all the owners.

6 Q What owners do you know?

7 A Mitch Britten and Phil Peckman.

8 Q Okay. And who are the owners that you're aware of
9 in terms of Essence Trop and Essence Henderson?

10 A Just Armen.

11 Q No one else have you met with or are familiar with
12 that own that company?

13 A Not that I'm familiar with.

14 Q Okay. And did the owners of both these companies
15 the ones that you know in common -- you've spoken to them,
16 you've gone to lunch with them and/or dinner with them; right?

17 A Yes.

18 Q All right. And you turned them both down on the
19 offers?

20 A I am not interested in staying in the marijuana
21 space here.

22 MR. PARKER: Thank you. I appreciate your time.

23 THE COURT: Sir, I'm going to switch gears, if it's
24 okay. Since the people on that side of the room have finished
25 asking questions, I'm going to ask some, because I need a

EXHIBIT “D”

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 4

THURSDAY, MAY 30, 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 all at once.

2 BY MR. GENTILE:

3 Q All right. That's the 2018 application. Do you
4 recall it? Probably not.

5 A I'm not sure what I'm --

6 Q All right. Let me -- let me -- I've never lied to
7 you before, so I wouldn't start now, okay. Look at the top
8 one. The top one is the 2014 application form. The reason
9 you can see that is because due dates that end in the year
10 2014. Do you see that?

11 A Yes.

12 Q Okay. The bottom one is the 2018, and you could
13 trust me for the same reason, it says that there are due dates
14 for 2018, okay. I have a question for you.

15 The top one on the second line -- first one says,
16 "Request for application pay." Oddly enough, so does the
17 bottom one, first line says "Request for application pay,"
18 okay. But the second one on the top one says, "Deadline for
19 submitting questions." Look at the bottom one. Is there
20 anything there that indicates that you can submit questions in
21 2018?

22 A There is not.

23 Q Okay. How come?

24 A You know, to be quite honest with you, I wasn't the
25 one that made that decision. I don't -- I don't know.

EXHIBIT “E”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 5
VOLUME II**

FRIDAY, MAY 30, 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 regards to the diversity area?

2 A I don't -- I don't think so. You know, we do get a
3 lot of questions. Ky Plaskon, Mr. Plaskon would probably be
4 the better person to ask on how many questions he may have
5 received in regards to, you know, diversity. But I don't
6 recall we received too many.

7 Q What was -- oh. I've got it.

8 Sir, was there a procedure that the Department
9 implemented whereby an applicant that was confused could
10 potentially ask a question to get a clarification?

11 A Mr. Plaskon monitors generic email. A lot of
12 questions came in through there.

13 Q Okay. I've seen some responses to questions where
14 he says, "See application, see regulations," and other
15 responses where he actually gives some substantive
16 information. Is that your understanding of what was going on
17 here?

18 A I'm not aware of that.

19 Q Okay. Do you think it would have been a good idea
20 that any question and answer he gave was made available to all
21 the applicants so we had some consistency here?

22 A We try to do the best that we can to educate.

23 Q Okay.

24 A I think we did send out some list serves.

25 Q But you've seen bulletin boards that have questions

1 and answers posted on them so everybody's up to speed,
2 everybody's got the same information?

3 A Yeah, I've seen those.

4 Q That's commonly done with government contracting
5 programs; right?

6 A I'm not sure about that, but I've seen the boards.

7 Q Okay. But you didn't do that?

8 A We did not.

9 Q Okay. In retrospect do you think you should have
10 done that?

11 A Now, Ky would probably be a better person to ask
12 that, because I don't know the quantity and type of questions
13 that he did receive. I know he's in a situation where he did
14 receive a lot of questions, but he couldn't give out -- he
15 couldn't give out an answer that's -- that an applicant would
16 have an advantage with.

17 Q Well, there wouldn't be any advantage if you told
18 all the applicants the questions and answers. If you told
19 everybody the question and answer, no one has an advantage
20 there, do you think?

21 A We tried -- the Department did a good job, I think,
22 in my opinion, of providing the information they did.

23 Q A good job even though half the applicants knew the
24 that building address was not required and say half thought it
25 was required? The Department did a good job on that point?

1 MS. SHELL: Objection. Assumes facts not in
2 evidence.

3 THE COURT: Overruled.

4 THE WITNESS: I wasn't aware that half the
5 applicants didn't know that.

6 BY MR. KEMP:

7 Q You knew that some of the applicants didn't know
8 that?

9 A Yes.

10 Q For example, you know, that Livfree went out and got
11 real addresses for all six of those applications; right?

12 A I didn't know that.

13 Q Well, you heard Mr. Thomas testify to the extreme
14 efforts he went to get approved addresses; right?

15 A I did hear that.

16 Q And the Department expected people to be more like
17 Mr. Thomas than just to put down a Post Office box, didn't
18 they?

19 A Can you repeat that.

20 Q Didn't the Department expect that applicants would
21 be like Mr. Thomas, have real addresses and real locations?

22 A We -- the Department did not require a location.

23 Q Okay. And how could you rate things like community
24 impact without knowing where in Clark County the dispensary
25 was going to be?

EXHIBIT “F”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

WEDNESDAY, JUNE, 19, 2019

EVIDENTIARY HEARING - DAY 9

VOLUME I OF II

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 were supposed to consider, they wouldn't have considered it;
2 right?

3 A Well, again, I don't know if it was part of their --
4 the additional training outside of the evaluation sheets.
5 Because they did receive training from staff for --

6 Q You just -- you're speculating that that might have
7 happened, even though the face of the application that we just
8 walked through -- we can walk through it again --

9 A I mean, we're speculating on a lot of things here.

10 THE COURT: Sir, I don't want you to speculate. I
11 want you to tell me why the Department did what it did and made
12 the decisions it made after Ballot Question 2 was passed and
13 your department was charged with implementing.

14 MR. MILLER: Well, let me say it this way.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Wait. Thank you, sir. Now you may go,
17 Mr. Miller.

18 MR. MILLER: Were you asking a question, Judge. I
19 didn't catch it all.

20 THE COURT: I was making a statement. He said, "Yes,
21 Your Honor," and I just needed him to verify that while we were
22 here.

23 MR. MILLER: Got it.

24 BY MR. MILLER:

25 Q Let's pull up the application. And then we get to

1 the scoring criteria. You were involved in that; right? You
2 determined which points were going to be awarded?

3 A Yes.

4 Q And this is the --

5 MR. MILLER: We should pull up the -- I think it's
6 going to be page 18, 17. There we go, the page before.

7 BY MR. MILLER:

8 Q -- talking about an organizational structure; right?
9 You evaluate that criteria that was described there; right?

10 A I'm sorry?

11 Q You reviewed that criteria that was described there;
12 right?

13 A Under "organization"?

14 Q Yeah. Sixty points on the top, not up -- it's going
15 the wrong way. Yeah, organization.

16 A Right, uh-huh. Yes.

17 Q Description of the proposal -- and then you, in turn,
18 that's all (indiscernible). The description of the proposed
19 organizational structure of proposed marijuana establishment
20 and information concerning each owner, officer, and board
21 member of the proposed marijuana establishment, including the
22 information provided in response to the regulation. Right?

23 A Yeah.

24 Q And you determined that that criteria should be worth
25 60 points in total; right?

1 A Well, there are subcategories that make up that 60.

2 Q Right. You didn't disclose that to the applicants,
3 did you?

4 A No.

5 Q So it was secret to the applicants as though which
6 criteria are going to be included in that regulation and how
7 many points are going to be awarded; right?

8 A Yes.

9 Q Why did you keep that secret?

10 A Well, it's almost like -- my opinion, it's almost
11 like giving the answers to the test.

12 Q Is it?

13 A I mean --

14 Q How would it --

15 A Everyone's score -- sorry.

16 Q -- be like giving answers to the test, letting
17 everyone know that diversity, for example, was going to be
18 given 20 points, but the experience of key employees was going
19 to be worth zero because it wouldn't be considered. Is that
20 giving answers to the test?

21 A Wait. Say that again.

22 Q How would it be giving the answers to the test to
23 tell the applicants that diversity, within that 60 points, was
24 going to be awarded 20 points?

25 A The application can be tailored to, you know, those

EXHIBIT “G”

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 9
VOLUME II**

WEDNESDAY, JUNE 19, 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 how they believed the applications would be interpreted if
2 they did not provide a physical address on the application?

3 A Yeah. I don't -- I don't recall any.

4 Q Okay. But you gave at least Amanda Connor and John
5 Ritter guidance that physical address, although it was
6 required by law, wouldn't be scored and so they didn't need to
7 include it?

8 A No, I didn't say they didn't need to include it. I
9 said the application requires that they put a physical
10 address, but that it -- you know, that location was not
11 scored, it's not part of the scoring criteria.

12 Q Okay. And when you gave that guidance did you go
13 back to the Department and share that information with anybody
14 else that might have been receiving calls from applicants
15 about information in the application?

16 A Well, I'm sure we discussed it several times.

17 Q Okay. Who'd you discuss it with?

18 A Steve Gilbert, Kara, Damon.

19 Q And this was prior to the application being released
20 on July 5th?

21 A Yes. There was a lot of discussion around that --
22 during the Task Force and the public meetings or the
23 recommendations while we were doing the regulations.

24 Q But the two you just identified, Amanda Connor and
25 John Ritter, were the two co-chairs for the Task Force that

1 came up with the -- two co-chairs of the committee on the Task
2 Force that were designed to help implement the regulations
3 that are on the application; correct?

4 A Say it again.

5 Q The two individuals that you named, Amanda Connor
6 and John Ritter, are you aware that those are the two co-
7 chairs on the Task Force for the subcommittee that was
8 designed and intended to review the applications for the
9 recreational manager license applications?

10 A No, I didn't know Amanda was a co-chair. Well, I
11 don't remember.

12 Q But nevertheless, they're very involved in the
13 industry; correct?

14 A Yes.

15 Q You would have expected them to have attended those
16 Task Force meetings?

17 A Yes.

18 Q All right. And participated in any public hearings
19 where the rules might have been explained?

20 A Yes.

21 Q Okay. And yet they didn't understand whether or not
22 a proposed physical address would be required; correct?

23 MR. SHEVORSKI: Objection. Speculation.

24 THE COURT: Overruled.

25 THE WITNESS: They would tell me -- like Amanda

1 would say she's getting questions from her clients and she
2 just wants to confirm, right. And, you know, John also was
3 more like a confirmation.

4 BY MR. MILLER:

5 Q Yeah. But at least for individuals that were highly
6 involved in the process it's apparent to you that there was
7 some confusion in this area; is that fair?

8 A Yes.

9 Q And so it's a fair assessment that other people
10 might have also had the same confusion; correct?

11 A Yes.

12 Q Did you make any attempts to clarify it?

13 A I believe I did.

14 Q How'd you do that?

15 A Well, I don't -- maybe not necessarily that I think
16 the clarification I was sending out was more regarding whether
17 someone owned or leased a location. They were asking about
18 where to put it. I don't think I put out a clarification
19 regarding physical location must be on -- must be listed on
20 the application.

21 Q Okay. So you knew in advance of the application
22 being released on July 5th that there was confusion within the
23 industry as to whether or not a proposed physical address was
24 required and would be scored; correct?

25 A Yes.

1 Q They believe that is required, and they submit their
2 application that way. Other applicants understand that a
3 proposed physical address will not be scored, so they don't
4 provide a physical address. Is that a fair application
5 process, sir?

6 A Is it a fair application process? I think everyone
7 had the same opportunity to request clarification. I think
8 that everyone had access to the Department. I think everyone
9 had access to submit their questions. I think everyone had an
10 opportunity to attend 70-plus public meetings and workshops
11 regarding this issue. I think the application was a fair
12 process -- the application process was a fair process.

13 Q Moving to 5.3.4.3, "Procedures to ensure adequate
14 security measures for building security." Sir, wouldn't you
15 agree that the consideration of that plan would indicate that
16 there is some tie-in within the scoring criteria to an actual
17 proposed physical address versus a fictional one?

18 A No.

19 Q So if you develop a plan that is designed to ensure
20 adequate security measures of a proposed physical location
21 that is tied to an actual address, has a real neighborhood
22 around it, may have additional security concerns, that one is
23 the same as one that could be submitted that doesn't have any
24 physical address associated with it at all?

25 A Pretty much, yeah.

EXHIBIT “H”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)
Plaintiffs,)
vs.)
STATE OF NEVADA DEPARTMENT OF)
TAXATION,)
Defendant.)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

THURSDAY, JULY, 11, 2019

EVIDENTIARY HEARING - DAY 13

VOLUME I OF II

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 Q Okay. With regard to these episodes, how did they
2 come to your attention?

3 A They were incident reports submitted by the facility
4 themselves.

5 Q Okay. And what did you do in response to the
6 reports?

7 A We accepted them --

8 Q No. I don't want to hear we. We is a -- when I use
9 the word you, I'm using it in the second person singular. Do
10 you understand?

11 A Yes.

12 Q All right. What did you do in response to receiving
13 these incident reports?

14 A I did not personally receive the incident reports.
15 They go to a separate email address. The administrative
16 assistant intakes them. I assigned them to people to
17 investigate. I was then directed to hold off on that. I had a
18 discussion with Jorge Pupo, and then I gave the direction to
19 the assigned people investigating to send acknowledgment
20 letters or look through them and see if there was room for
21 improvement.

22 Q Okay. You said you received a directive not to
23 assign these cases for investigation. From whom did you
24 receive that directive?

25 A Jorge Pupo.

EXHIBIT “I”

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 7

TUESDAY, JUNE 11, 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 Q And then did QuantumMark provide its own training
2 tools for 2018 or did your Department amend QuantumMark's
3 training tools for purposes of training the evaluators?

4 A We amended the 2014 training tools.

5 Q Why didn't you ask QuantumMark to provide updated
6 training tools to fit a recreational application?

7 A That wasn't my decision.

8 Q Whose decision was that?

9 A That would have been a contract decision,
10 essentially Mr. Pupo or the director of the Department.

11 Q Do you know who made that decision?

12 A No, I do not.

13 Q And do you know why that decision was made? Why
14 wasn't QuantumMark utilized to come up with the 2018 training
15 tools?

16 A I don't -- I do not know. I don't know if it was
17 ever contemplated.

18 Q And so going back to where we were, you were a part
19 of the process in terms of the merit criteria for diversity,
20 is that correct?

21 A Yes.

22 Q Who made the decision on how the scoring would be
23 done?

24 A Can you be --

25 Q Yes. Who came up with let's give points based on

1 A Yes.

2 Q All right. So if you didn't get the information
3 from the ballot question and you did not get that information
4 from the regulations, you had to get it from somewhere. Did
5 you get it from any other jurisdiction like Colorado? Because
6 I saw in the production of your training tool where there's
7 thanks given to QuantumMark, thanks given to Colorado. Do you
8 remember those?

9 A I do.

10 Q All right. So where did you get this methodology in
11 scoring diversity?

12 A The methodology was put together by Kara, Mr. Pupo
13 and myself. As far as the breakdown on the evaluation tool --

14 Q Yes, sir.

15 A -- that was put in then -- like I said, if I recall
16 correctly, Mr. Pupo gave us the breakdown of the percentages.

17 Q Do you know where he got that breakdown from?

18 A I do not.

19 Q And do you have any understanding whether or not
20 that breakdown can be traced to another jurisdiction like
21 Colorado or Washington or California?

22 A I wouldn't know, no.

23 Q You have no idea?

24 A No.

25 Q Good enough. Do you know whether or not there was

EXHIBIT “J”



BRIAN SANDOVAL
Governor
JAMES DEVOLLO
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <http://tax.nv.gov>
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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

September 18, 2018

Frank Hawkins
Nevada Wellness Center (D009)
2300 Alta Dr.
Las Vegas, NV 89107

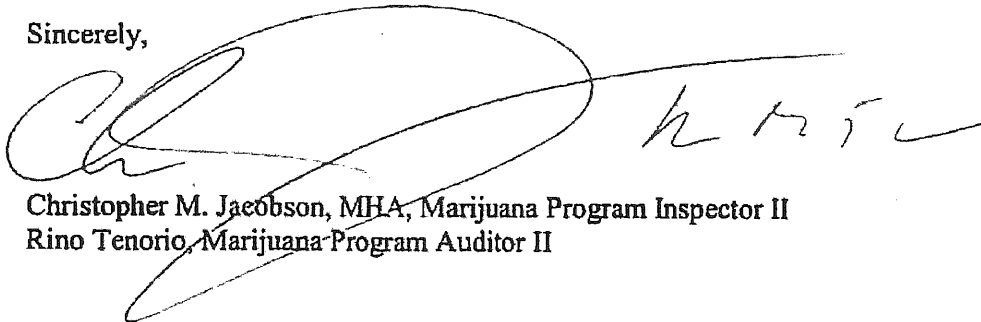
Dear Mr. Frank Hawkins:

On September 12, 2018, the Department of Taxation's Marijuana Enforcement Division conducted a routine inspection/audit of your establishment located at 3200 S. Valley View Blvd., Las Vegas, NV, certificate #30064186279328795105, license #1017582408-001-DIP.

The Audit/Inspection results revealed that your establishment was in compliance with Nevada Revised Statutes (NRS) 453A/453D and/or Nevada Administrative Code (NAC) 453A/R092-17 (NAC 453D). No deficiencies were noted during the inspection. Please retain this letter for your files.

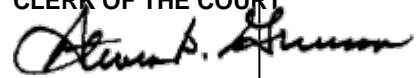
Should you have any questions concerning this matter, please contact our office at (702) 486-5786.

Sincerely,



Christopher M. Jacobson, MHA, Marijuana Program Inspector II
Rino Tenorio, Marijuana Program Auditor II

DOT-NVWell001358



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

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

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

Plaintiffs,

vs.

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

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

SERENITY WELLNESS CENTER, LLC, et
al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,
Defendant,

and

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

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

Case No.: A-18-785818-W

Dept. No.: VIII

**AMENDED NOTICE OF ENTRY OF
ORDER**

Case No.: A-19-786962-B

Dept. No.: XI

**AMENDED NOTICE OF ENTRY
OF ORDER**

Case No.: A-19-787004-B

Dept. No.: XI

AMENDED NOTICE OF ENTRY OF

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

Plaintiffs,

vs.

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

Defendants.

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

Defendant-Intervenor.

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

Plaintiff,

vs.

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

Defendants;

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

Intervenor Defendant.

HIGH SIERRA HOLISTICS, LLC,

Plaintiff,

vs.

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

ORDER

Case No.: A-18-786357-W

Dept. No.: XIV

AMENDED NOTICE OF ENTRY OF ORDER

Case No.: A-19-787726-C

Dept. No.: XIV

AMENDED NOTICE OF ENTRY OF ORDER

CORPORATIONS 1-10,
Defendants.

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

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

vs.

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

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

Case No.: A-19-787540-W

Dept. No.: XVIII

**AMENDED NOTICE OF ENTRY OF
ORDER**

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

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

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

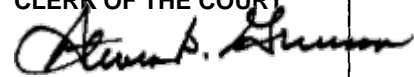
I hereby certify that on this 19th day of September, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing AMENDED NOTICE OF ENTRY OF ORDER in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District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

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

/s/ Pharan Burchfield
An Employee of McLetchie Law

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

EXHIBIT 1



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant(s).

and

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

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

CLERK OF THE COURT

RECEIVED
AUG 23 2019

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

Intervenors.

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

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

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

16 ***PROCEDURAL POSTURE***

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

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

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

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

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

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

8 ***PRELIMINARY STATEMENT***

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

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

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

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

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

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

9 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 (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 ⁶ 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.

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

5 NRS 453D.020(3).

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

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

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

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

17
18
19 ⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

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

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

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

27 The second recommendation of concern is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 28. The identified criteria consisted of organizational structure of the applicant (60 points);
24 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
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.¹¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ¹⁴ That provision states:

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

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

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

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

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

18
19 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
20 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
21 inspection of their marijuana establishment.
22
23
24

25 ¹⁵ Some applicants apparently provided the required information for each prospective owner, officer and board
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

10 62. In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a
11 constitutional violation may be difficult or impossible to remedy through money damages, such a
12 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d
13 1118, 1124 (2013).

14 63. Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent
15 part:
16

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

21 ...

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

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

7 (Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 80. The DoT made licensure conditional for one year based on the grant of power to create
22 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a
23 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's
24 discretion.
25
26
27

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

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

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

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

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

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

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

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

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

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

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

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

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

25
26
27 ¹⁸ As discussed during the preliminary injunction hearing, the Court sets a separate evidentiary hearing on whether to
28 increase the amount of this bond. That hearing is set for August 29, 2019, at 9:00 a.m.

ORDER

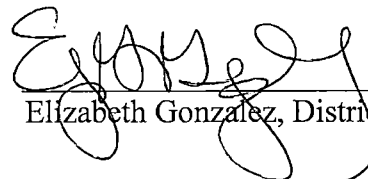
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

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

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

DATED this 23rd day of August 2019.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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


Dan Kutinac

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