

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

NEVADA WELLNESS CENTER, LLC, a
Nevada limited liability company; and
THE STATE OF NEVADA
DEPARTMENT OF TAXATION,

Respondents.

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Oct 29 2019 04:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO:
79673

DISTRICT COURT CASE NO.:
A787540

MOTION TO CONSOLIDATE APPEALS

Appellant GreenMart of Nevada NLV, LLC (“GreenMart”), hereby moves this Court for a consolidation of Appeal Nos. 79668, 79669, 79670, 79671, 79672, and 79673, all of which center on the same issues of fact and law. This motion is supported by the attached memorandum of points and authorities, as well as all papers and pleadings on file in the aforementioned cases.

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MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Nev. R. App. P. 3(b)(2), when parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party. Pending before this Court are six appeals all arising out of an identical set of facts and pursuing the same claims. Because these six appeals raise the same issues of facts and law, this Court should consolidate all of these appeals for the purposes of briefing and oral argument.

As set forth in the docketing statement filed with this Court on October 6, 2019 (*see* Doc. No. 19-42921) and identically set forth in the docketing statements for Appeal Nos. 79669, 79670, 79671, 79672, and 79673, 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 Nev. Rev. Stat. § 453D.210, several losing applicants (including the respondents in the instant appeal and Appeal Nos. 79669, 79670, 79671, 79672, and 79673) brought suit against the Department in several different cases. Several winning applicants—including GreenMart—moved to intervene.

When the plaintiffs in the various cases filed motions for preliminary injunctions, the cases were coordinated in front of the Honorable Elizabeth Gonzalez for the purpose of holding an evidentiary hearing. At the conclusion of the

evidentiary hearing, the court held that the Department’s adoption of NAC 453D.255(1) was “arbitrary and capricious” and was an “impermissible deviation” from Nev. Rev. Stat. § 453D.200(6) as it did not require the Department to conduct background checks on nominal owners with an ownership interest of less than 5% in some successful applicants. 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.

The winning applicants affected by the district court’s order timely filed notices of appeal in the following cases:

District Court Case	Appellant(s)	Appeal No.
<i>Serenity Wellness Center, LLC et al. v. The State of Nevada, Department of Taxation, Case No. A-19-786962-B</i>	GreenMart of Nevada NLV, LLC Nevada Organic Remedies, LLC Lone Mountain Partners, LLC	79668
<i>ETW Management Group, LLC et al. v. The State of Nevada, Department of Taxation, Case No. A-19-787004-B</i>	GreenMart of Nevada NLV, LLC Nevada Organic Remedies, LLC	79669
<i>MM Development Company, Inc. v. The State of Nevada, Department of Taxation, Case No. A-18-785818-W</i>	GreenMart of Nevada NLV, LLC Nevada Organic Remedies, LLC	79670
<i>Compassionate Team of Las Vegas, LLC v. The State of Nevada, Department of Taxation, Case No. A-18-786357-W</i>	GreenMart of Nevada NLV, LLC	79671
<i>High Sierra Holistics, LLC. v. The State of Nevada, Department of Taxation, Case No. A-19-787726-C</i>	GreenMart of Nevada NLV, LLC	79672

<i>Nevada Wellness Center, LLC. v. The State of Nevada, Department of Taxation, Case No. A-19-787540-W</i>	GreenMart of Nevada NLV, LLC	79673
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Additionally, on October 3, 2019, the plaintiffs in the *ETW Management* and *MM Development* matters filed notices of cross-appeal with the district court.

More recently, on October 11, 2019, the plaintiffs in the *ETW Management* case filed a motion to consolidate all of the above-listed cases and several other cases raising the same or similar claims in front of Judge Gonzalez; the plaintiffs in the *Serenity Wellness*, *Nevada Wellness Center*, and *High Sierra Holistics* matters joined in that motion. On October 29, 2019, Eighth Judicial District Court Chief Judge Linda Bell granted that motion and consolidated all of the underlying actions. In so doing, the Honorable Chief Judge Bell recognized that coordination was necessary not just for logistical and administrative reasons, but also to avoid any issues that might arise with different courts issuing conflicting orders.

Because all six of the above-listed appeals sought to be consolidated here are directly concerned with the same district court order, and because the district court has recognized the need for consolidation of the cases below, these appeals should be consolidated for the purposes of judicial economy and the reduce the possibility of inconsistence decisions and guidance.

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Accordingly, GreenMart respectfully requests that this Court issue an order providing for the consolidation of appeal Nos. 79668, 79669, 79670, 79671, 79672, and 79673.

DATED this the 29th day of October, 2019.

/s/ Alina M. Shell

Margaret A. McLetchie, Nevada Bar No. 10931

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO CONSOLIDATE APPEALS was filed electronically with the Nevada Supreme Court on the 29th day of October, 2019. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Theodore Parker
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Counsel for Respondent,
Nevada Wellness Center, LLC

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The State of Nevada Department of Taxation

/s/ Lacey Ambro
Employee of McLetchie Law