

Electronically Filed  
Dec 27 2019 02:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

# EXHIBIT “A”



1 **COMP**  
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](mailto: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.: 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*

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

27 **I.**

**PARTIES & JURISDICTION**

28 **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 **SECOND CLAIM FOR RELIEF**

2 **(Injunctive Relief)**

3 35. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

4 36. The Department's flawed interpretation of the provisions of NRS 453D, NAC Chapter  
5 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the law constitute  
6 and cause continuing and irreparable harm to Plaintiff with no adequate remedy at law.

7 37. The purpose of this refusal was and is to unreasonably interfere with Plaintiff's  
8 business and causing Plaintiff to suffer irreparable harm.

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

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

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

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

19 42. Plaintiff has retained the legal services of Parker, Nelson & Associates, Chtd. to bring  
20 this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

21 **THIRD CLAIM FOR RELIEF**

22 **(Violation of Procedural Due Process)**

23 43. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

24 44. The procedures employed by the Department in denying Plaintiff's applications have  
25 deprived Plaintiff of due process of law as guaranteed by the Nevada Constitution and the United  
26 States Constitution.

27 45. The process in which denial was considered, noticed to the public, and passed failed  
28 to provide Plaintiff a meaningful opportunity to be heard at a consequential time and was



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