

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

NEVADA WELLNESS CENTER
LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Appellant,

vs.

NEVADA DEPARTMENT OF
TAXATION,

Respondent.

Supreme Court No. 80230

District Court No. A-19-787004-B Electronically Filed
May 28 2020 09:01 a.m.

Consolidated with: Elizabeth A. Brown
Clerk of Supreme Court

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

RESPONSE TO ORDER TO SHOW CAUSE

On April 29, 2020, this Court issued an Order to Show Cause regarding a potential jurisdictional defect in this case. Appellant, Nevada Wellness Center, LLC, (“NWC”), hereby submits the following information and supporting exhibits to cure any potential jurisdictional defect regarding the August 23, 2019 order, in which NWC filed a notice appeal in district court case No. A-19-787004-B. NWC hereby submits the following information and supporting exhibit demonstrating that the

¹ Eighth Judicial District Court Judge Elizabeth Gonzalez, consolidated A-19-786962-B with A-19-787004-B, A-18-785818-W Case No. A-18-786357-W, A-19-786962-B, A-19-787035-C, A-19-787540-W, A-19-787726-C, A-19-801416-B for the purposes of the preliminary injunction. Judge Gonzalez issued the August 23, 2019 order following the preliminary injunction hearing in the consolidated case A-19-786962-B. On October 29, 2019, Chief Judge Linda Bell granted a Motion to Consolidate A-19-787004-B, with A-18-785818-W, A-18-786357-W, A-19-786962-B, A-19-787035-C, A-19-787540-W, A-19-787726-C, and A-19-801416-B. (See Exhibit 1, parties and attorneys in the consolidated cases). As a result, the court filed an Amended Findings of Fact and Conclusion of Law in A-19-787540-W. (See Exhibit 2).

Court does have jurisdiction over the above-listed appeal, and that the appeal should not be dismissed.

A. The August 23, 2019 Order Has Been Entered in District Court Case Numbers A-19-787540-W, A-19-787004-B and A-19-786962-B.

The Order to Show Cause (OSC”) observed that “[t]he challenged order, entered on August 23, 2019, appears to have only initially been filed [in] case number A-19-786962-B and that “[a]n amended version of the order with case numbers A-19-786962-B and A-19-787004-B was filed on February 7, 2020.” This Court noted that the “defect may be remedied by filing a copy of the August 23, 2019 order in the underlying district court case.”

After the Court issued its Order to Show Cause, notice of entry of the August 23, 2019 order was entered in the following cases: A-19-787540-W, A-19-786962-B and A-19-787004-B. *See* Exhibits 3, 4 & 5 (the relevant Notices of Entry of the August 23, 2020 Order in consolidated cases numbered A-19-787540-W, A-19-786962-B and A-19-787004-B).

///

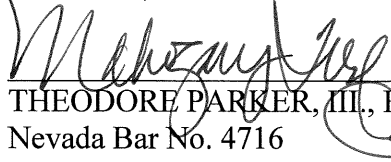
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For the reasons set forth above, NWC respectfully asserts that the Court has jurisdiction over Appeal No. 80230.

Respectfully submitted the 26th day of May, 2020.

PARKER, NELSON & ASSOCIATES, CHTD.



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CERTIFICATE OF SERVICE

I certify that on the 28th day of May, 2020 I served a copy of this completed Response to Order to Show Cause upon all counsel of record:

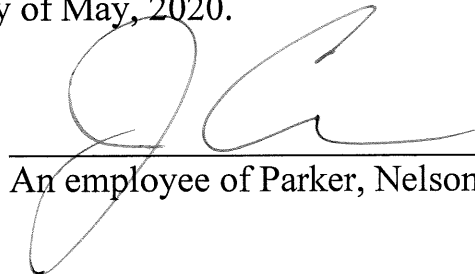
■ Electronic service of the foregoing document shall be made in accordance with the Master Service List

☐ By personally serving it upon him/her; or

■ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

See Attachment 1.

Dated this 28th, day of May, 2020.



An employee of Parker, Nelson & Associates Chtd.

Attachment 1
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Acres Dispensary LLC
Acres Medical LLC
Alternative Medicine Association LC
Blossum Group LLC
Carson City Agency Solutions LLC
Cheyenne Medical LLC
Circle S Farms LLC
CN Licenseco I Inc

CWNevada LLC
Diversified Modalities Marketing Ltd
ECONevada LLC
Forever Green LLC
FSWFL LLC
GB Sciences Nevada LLC
GBS Nevada Partners LLC
GFIVE Cultivation LLC
Green Life Productions LLC
Greenpoint Nevada Inc
Greenscape Productions LLC
Greenway Health Community LLC
Greenway Medical LLC
GTI Nevada LLC
H and K Growers Corp
Harvest Foundation LLC
Healthcare Options for Patients Enterprises LLC
Helios NV LLC
High Sierra Cultivation LLC
International Service and Rebuilding Inc.
LNP LLC
Luff Enterprises NV Inc
Malana LV LLC
Matrix NV LLC
Nevada Botanical Science Inc
Nevada Group Wellness LLC
Nevada Holistic Medicine LLC
Nevada Pure LLC
NLV Wellness LLC
NLVG LLC
Nuleaf Incline Dispensary LLC
NV 3480 Partners LLC
NV Green Inc
Nye Farm Tech Ltd
Paradise Wellness Center LLC
Phenofarm NV LLC
Pysis One LLC
Polaris Wellness Center LLC
Releaf Cultivation LLC
RG Highland Enterprises Inc
Silver Sage Wellness LLC
Solace Enterprises LLLP
Wellness and Caregivers of Nevada NLV LLC
Sweet Goldy LLC
Vegas Valley Growers LLC
Green Therapeutics LLC

Polaris Wellness Center

Pure Tonic Concentrations LLC

TRNP098

Wellness Connection of Nevada LLC

Wendovera LLC

West Coast Development Nevada LLC

WSCC Inc

YMY Ventures LLC

The attorneys for the above parties is unknown at this time

EXHIBIT 1
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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14
15 In Re: D.O.T. Litigation

CASE NO.: A-19-787004-B

DEPT NO.: XI

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

**NOTICE OF ENTRY OF ORDER
GRANTING JOINT MOTION TO
CONSOLIDATE**

23 PLEASE TAKE NOTICE that Order Granting Joint Motion to Consolidate was entered
24 on the 6th day of December, 2019.

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A copy of said Order is attached hereto.

DATED this 9th day of December, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Maximilien D. Fetaz

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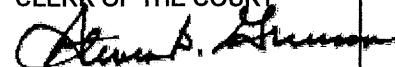
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING JOINT MOTION TO CONSOLIDATE** to be submitted electronically for filing and/or service with the Eighth Judicial District Court's Electronic Filing System on the 9th day of December, 2019, and to all parties currently on the electronic service list.

/s/ Paula Kay
an employee of Brownstein Hyatt Farber Schreck, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B

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

Dept No.: XI

**ORDER GRANTING JOINT MOTION
TO CONSOLIDATE**

Date of Hearing: October 29, 2019

Time of Hearing: 9:00 a.m.

The Joint Motion to Consolidate Pursuant to EDCR 2.50(c), and all Joinders to the same, having come on for hearing before this Honorable Court on October 29, 2019; David R. Koch, Esq., of the law firm Koch & Scow LLC, appearing on behalf of Nevada Organic Remedies, LLC; Eric D. Hone, Esq., of the law firm H1 Law Group, appearing on behalf of Lone Mountain Partners, LLC; Adam K. Bult, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP,

1 appearing on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green
2 Leaf Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice Inc., Just Quality, LLC,
3 Libra Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red
4 Earth LLC, THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc.'s (collectively,
5 "ETW Plaintiffs"); Dominic P. Gentile, Esq. and Ross J. Miller, Esq., of the law firm Clark Hill
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7 Dispensary, LLC, Nevada Holistic Medicine, LLC, TRYKE Companies SO NV, LLC, TRYKE
8 Companies Reno, LLC, Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis
9 Holdings, LLC, Gravitas Nevada, LLC, Nevada Pure, LLC, Medifarm, LLC (collectively,
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13 Nevada, Department of Taxation; Todd L. Bice, Esq., of the law firm Pisanelli Bice, appearing on
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15 LLC, Essence Henderson, LLC; Jared Kahn, Esq., of the law firm JK Legal & Consulting, LLC,
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19 Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC;
20 Rusty Graf, Esq. and Brigid Higgins, Esq., of the law firm Black & Lobello, appearing on behalf
21 of Clear River, LLC; Theodore Parker, III, Esq. and Mahogany Turfley, Esq. of the law firm
22 Parker Nelson & Associates, appearing on behalf of Nevada Wellness Center, LLC; Peter
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24 on behalf of Qualcan LLC; Dennis L. Kennedy, Esq. and Stephanie J. Glantz, Esq., of the law
25 firm Bailey Kennedy, appearing on behalf of D.H. Flamingo, Inc.; and all other appearances
26 noted in the record, and upon the Court's consideration of the pleadings and papers on file herein,
27 including any joinders and oppositions, the arguments of counsel, and good cause appearing,
28 makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1
2 1. At least eight cases have been filed in the Eighth Judicial District Court that center
3 on the Department of Taxation's method of awarding recreational marijuana licenses and whether
4 that method violated the Constitution of the United States of America, the Nevada Constitution
5 and NRS Chapter 453D.

6 2. The case numbers for the eight cases are listed in chronological order as follows:
7 (1) A-18-785818-W, (2) A-18-786357-W, (3) A-19-786962-B; (4) A-19-787004-B; (5) A-19-
8 787035-C; (6) A-19-787540-W; (7) A-19-787726-C; (8) A-19-801416-B.

9 3. The first case (Case No A-18-785818-W) was filed in Department VIII on
10 December 10, 2018, and was brought by MM Development Company, Inc.

11 4. The most recent case (Case No. A-19-801416-B) was filed in Department XIII on
12 September 5, 2019, and was brought by Qualcan, LLC.

13 5. Although it was not the first filed case, due to an absence in Department VIII, the
14 case filed by Serenity Wellness Center LLC, et al. (Case No. A-19-786962-B) in Department XI
15 became the lead case for these disputes.

16 6. To date, Department XI has heard various dispositive motions, including a motion
17 for preliminary injunction, which was coordinated amongst a majority of the cases, and motions
18 for summary judgment.

19 7. In total, Department XI has heard 20 days' worth of evidentiary hearings.

20 8. Additionally, Department XI has a trial setting for March 2020, which will resolve
21 all of these disputes prior to the June 2020 extension for the recreational marijuana license
22 awardees to open their businesses.

23 9. Although Department VIII has had its case for longer, it has heard fewer hearings
24 and is not as far along in the litigation process as Department XI.

25 10. The plaintiffs in all of these cases allege substantially similar claims against the
26 Department of Taxation and request substantially similar remedies to rectify the Department of
27 Taxation's alleged wrongdoings.
28

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

3 **CONCLUSIONS OF LAW**

4 12. NRCP 42(a) allows for the consolidation of actions when there is “a common
5 question of law or fact” among the actions that a party seeks to consolidate.

6 13. The purpose behind consolidation of actions is “to promote efficiency or preserve
7 fairness.” *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 852, 124 P.3d 530, 541
8 (2005).

9 14. Actions share common questions of law or fact when “there is some commonality
10 of issues,” even if there is not “perfect identity” between all the claims in the actions. *Krause v.*
11 *Nevada Mut. Ins. Co.*, No. 2:12-CV-00342-JCM-CW, 2013 WL 6524657, at *3 (D. Nev. Dec. 10,
12 2013).

13 15. If there is commonality of issues among the cases, then this Court must weigh the
14 benefits that consolidation will produce against the inconvenience, prejudice, delay, or confusion
15 to the parties that may result from consolidation. *Id.*

16 16. Under the local rules, consolidation motions are generally heard by the judge
17 assigned to the first action that was commenced, and if the actions are consolidated, then the new
18 consolidated case is generally heard before that same judge. EDCR 2.50(a).

19 17. However, EDCR 2.50(c) provides that the Chief Judge of the Eighth Judicial
20 District Court has “the authority to order consolidation or coordination of any cases pending in
21 the district,” regardless of “any other provisions in [the Eighth Judicial District Court Rules].”

22 18. Given that EDCR 2.50(c) gives this Court the authority to consolidate any cases
23 pending in the district regardless of the other provisions in the local rules, this Court exercises
24 that authority to consolidate these cases into Department XI

25 19. These cases all share common questions of law and fact, in that the claims and the
26 prayers for relief mirror each other in each of the actions.

1 20. These commonalities justify consolidating all of the above listed cases pending
2 before the Eighth Judicial District Court, in order to promote efficiency, preserve fairness, and
3 avoid conflicting results. *Shuette*, 121 Nev. at 852, 124 P.3d at 541.

4 21. Moreover, due to how far along Department XI is in the litigation process, this
5 Court exercises its authority under EDCR 2.50(c) to consolidate the pending cases into
6 Department XI as opposed to Department VIII for the purpose of judicial efficiency.

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

9 **[ORDER CONTAINED ON THE FOLLOWING PAGE]**


ORDER

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Joint Motion to Consolidate is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following cases are consolidated for all purposes before the Eighth Judicial District Court, Department XI: (1) A-18-785818-W, (2) A-18-786357-W, (3) A-19-786962-B; (4) A-19-787004-B; (5) A-19-787035-C; (6) A-19-787540-W; (7) A-19-787726-C; (8) A-19-801416-B.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following case no. is the lead case no. as this matter proceeds forward: A-19-787004-B.


DATED this 5th day of December, 2019.


LINDA MARIE BELL, CHIEF JUDGE, EIGHTH JUDICIAL DISTRICT COURT

WS

Submitted by:

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5 *Attorneys for High Sierra Holistics, LLC*

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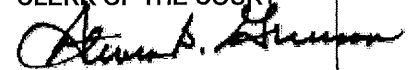
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EXHIBIT 2
Amended Findings of Fact and Conclusions of Law



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3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 Case No. A-19-786962-B and A-19-787004-B
7 Dept. No. 11

8 and Coordinated for a Limited Purpose With
9 A785818, A786357, A787540 and A787726

10 **AMENDED¹**
11 **FINDINGS OF FACT AND**
12 **CONCLUSIONS OF LAW GRANTING**
13 **PRELIMINARY INJUNCTION**

14 ETW MANAGEMENT GROUP LLC, a
15 Nevada limited liability company; GLOBAL
16 HARMONY LLC, a Nevada limited liability
17 company; GREEN LEAF FARMS HOLDINGS
18 LLC, a Nevada limited liability company;
19 GREEN THERAPEUTICS LLC, a Nevada
20 limited liability company; HERBAL CHOICE
21 INC., a Nevada corporation; JUST QUALITY,
22 LLC, a Nevada limited liability company;
23 LIBRA WELLNESS CENTER, LLC, a Nevada
24 limited liability company; ROMBOUGH REAL
25 ESTATE INC. dba MOTHER HERB, a Nevada
26 corporation; NEVCANN LLC, a Nevada limited
27 liability company; RED EARTH LLC, a Nevada
28 limited liability company; THC NEVADA LLC,
29 a Nevada limited liability company; ZION
30 GARDENS LLC, a Nevada limited liability
31 company; and MMOF Vegas Retail, Inc., a
32 Nevada corporation,

33 *Plaintiffs,*

34 v.

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

39 *Defendants.*

40 **AND**

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¹ These findings are amended to reflect findings made and conclusions reached in the two cases assigned to Dept. XI at the time of the conclusion of the preliminary injunction evidentiary hearing. The Court's order of July 11, 2019 coordinated A785818, A786357, A787540 and A 787726 for a limited purpose of the then ongoing preliminary injunction hearing but a separate order was not entered in those cases as the cases were not assigned to this department for all purposes. As discussed during the hearing on the Motion to Amend on February 7, 2020 and in conjunction with the orders to show cause issued by the Nevada Supreme Court in Case No. 79669, the Court does not address the retroactive effect, if any, of the consolidation entered by the Chief Judge by order filed on or about December 6, 2019.

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

Intervenors.

1 This matter having come before the Court for an evidentiary hearing on Plaintiffs' Motion for
2 Preliminary Injunction beginning on May 24, 2019, and occurring day to day thereafter until its
3 completion on August 16, 2019;² Dominic P. Gentile, Esq., Vincent Savarese III, Esq., Michael V.
4 Cristalli, Esq., and Ross J. Miller, Esq., of the law firm Gentile Cristalli Miller Armeni Savarese,
5 appeared on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,
6 Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC,
7 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,
8 LLC, Nevada Pure, LLC, Medifarm, LLC (Case No. A786962-B) (the "Serenity Plaintiffs"); Adam K.
9 Bult, Esq. and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP,
10 appeared on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf
11 Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice INC., Just Quality, LLC, Libra
12 Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red Earth LLC,
13 THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (Case No. A787004-B) (the
14 "ETW Plaintiffs"); William S. Kemp, Esq. and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones
15 & Coulthard LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness LLC
16 (Case No. A785818-W) (the "MM Plaintiffs"); Theodore Parker III, Esq., of the law firm Parker
17 Nelson & Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W)
18 (collectively the "Plaintiffs"); Steven G. Shevorski, Esq., Ketan D. Bhirud, Esq., and Theresa M. Haar,
19 Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada,
20 Department of Taxation; David R. Koch, Esq., of the law firm Koch & Scow LLC, appeared on behalf
21 of Nevada Organic Remedies, LLC; Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm
22 Black & Lobello, appeared on behalf of Clear River, LLC; Eric D. Hone, Esq., of the law firm H1 Law
23 Group, appeared on behalf of Lone Mountain Partners, LLC; Alina M. Shell, Esq., of the law firm
24 McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC; Jared Kahn, Esq., of the law

25
26 ² 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 firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc.; and
2 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Philip M. Hymanson,
3 Esq., of the law firm Hymanson & Hymanson; Todd Bice, Esq. and Jordan T. Smith, Esq. of the law
4 firm Pisanelli Bice; and Dennis Prince, Esq. of the Prince Law Group appeared on behalf of Integral
5 Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson,
6 LLC, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and
7 Cheyenne Medical, LLC (the “Essence/Thrive Entities”). The Court, having read and considered the
8 pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;
9 and having heard and carefully considered the testimony of the witnesses called to testify; having
10 considered the oral and written arguments of counsel, and with the intent of deciding the Motion for a
11 Preliminary Injunction,³ makes the following preliminary findings of fact and conclusions of law:

12 ***PROCEDURAL POSTURE***

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

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

- 19 a. Enjoin the denial of Plaintiffs applications;
- 20 b. Enjoin the enforcement of the licenses granted;
- 21 c. Enjoin the enforcement and implementation of NAC 453D;
- 22 d. An order restoring the *status quo ante* prior to the DoT’s adoption of NAC 453D;
- 23 and
- 24 e. Several orders compelling discovery.

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

5 *PRELIMINARY STATEMENT*

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

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

16 The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters
17 in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The
18 Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to
19 modify);⁵ those provisions with which the DoT was granted some discretion in implementation;⁶ and

20 ⁴ The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of
21 mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in
conjunction with this hearing include:

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

29 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)).

⁵ Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

1 the inherent discretion of an administrative agency to implement regulations to carry out its statutory
2 duties. The Court must give great deference to those activities that fall within the discretionary
3 functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2
4 or were arbitrary and capricious.

5 FINDINGS OF FACT

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

8 2. In 2000, the voters amended Nevada's Constitution to allow for the possession and use
9 of marijuana to treat various medical conditions. Nevada Constitution, Article 4, Section 38(1)(a). The
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13 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.

14 6 NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana
15 cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those
regulations would include.

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

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

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

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

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

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

23 (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;

24 (g) Requirements for record keeping by marijuana establishments;

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

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

27 (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;

28 (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 initiative left it to the Legislature to create laws “[a]uthoriz[ing] appropriate methods for supply of the
2 plant to patients authorized to use it.” Nevada Constitution, Article 4, Section 38(1)(e).

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

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

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

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

19 6. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.⁷

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

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

- 23 (a) Marijuana may only be purchased from a business that is licensed by the State of
24 Nevada;
- 25 (b) Business owners are subject to a review by the State of Nevada to confirm that the
26 business owners and the business location are suitable to produce or sell marijuana;
- 27 (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly
28 controlled through State licensing and regulation;
- (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.

⁷ 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.

1 NRS 453D.020(3).

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

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

7 10. The Task Force’s findings, issued on May 30, 2017, referenced the 2014 licensing
8 process for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The
9 Task Force recommended that “the qualifications for licensure of a marijuana establishment and the
10 impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical
11 marijuana program except for a change in how local jurisdictions participate in selection of locations.”
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13 11. Some of the Task Force’s recommendations appear to conflict with BQ2.⁸

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15 ⁸ The Final Task Force report (Exhibit 2009) contained the following statements:

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

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

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

23 The second recommendation of concern is:

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

- 27 *Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with
28 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
*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.

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.⁹

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.
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22 ⁹ Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

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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
26 a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the
27 Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation
28 for its report.

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

15. A person holding a medical marijuana establishment registration certificate could apply for one or more recreational marijuana establishment licenses within the time set forth by the DoT in the manner described in the application. NAC 453D.268.¹⁰

¹⁰ Relevant portions of that provision require that application be made

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

- 7 (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.

28 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 19. The DoT posted the application on its website and released the application for
20 recreational marijuana establishment licenses on July 6, 2018.¹¹

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28 ¹¹ 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
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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
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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.¹²

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.

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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

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28 ¹² 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 BQ2¹³ 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 BQ2.¹⁴ The failure of the DoT to carry out the mandatory provisions
19 of NRS 453D.200(6) is fatal to the application process.¹⁵ 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 ¹³ 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 ¹⁴ For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership
27 appears within the DoT’s discretion.

28 ¹⁵ 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 47. The DoT did not comply with BQ2 by requiring applicants to provide information for
9 each prospective owner, officer and board member or verify the ownership of applicants applying for
10 retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who
11 did not identify each prospective owner, officer and board member.¹⁶

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

17 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
18 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
19 inspection of their marijuana establishment.
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25 ¹⁶ 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.¹⁷

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).

¹⁷ 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

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.**

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
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.¹⁸ 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
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27

28 ¹⁸ 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.¹⁹
9

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

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27 ¹⁹ 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

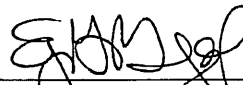
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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.²⁰

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 7th day of February 2020.



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.

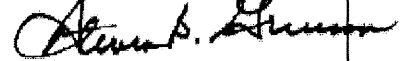


Dan Kutinac

²⁰ 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 3

**File-stamped copy of Notice of Entry of August 23, 2019
Findings of Facts and Conclusions of Law in Case #A-19-787540-W**



1 **NEO**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 MAHOGANY TURFLEY, ESQ.
5 Nevada Bar No. 13974
6 **PARKER, NELSON & ASSOCIATES, CHTD.**
7 2460 Professional Court, Suite 200
8 Las Vegas, Nevada 89128
9 Telephone: (702) 868-8000
10 Facsimile: (702) 868-8001
11 Email: tparker@pnalaw.net

12 *Attorneys for Plaintiff*
13 *Nevada Wellness Center, LLC*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

20 STATE OF NEVADA, DEPARTMENT OF
21 TAXATION; and DOES I through X,
22 inclusive; and ROE CORPORATIONS I
23 through X, inclusive,

24 Defendants.

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

**NOTICE OF ENTRY OF FINDINGS OF
FACTS AND CONCLUSIONS OF LAW
GRANTING PRELIMINARY
INJUNCTION ISSUED ON AUGUST 23,
2019**

25 MM DEVELOPMENT COMPANY, INC., a
26 Nevada corporation; LIVFREE WELLNESS
27 LLC, dba The Dispensary, a Nevada limited
28 liability company,

Plaintiffs,

v.

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 **NOTICE OF ENTRY OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
5 **GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**

6 PLEASE TAKE NOTICE that an **FINDINGS OF FACTS AND CONCLUSIONS OF**
7 **LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**, a true and
8 correct copy of which is attached hereto, was entered to the Court on the 23rd, day of August, 2019.

9 DATED this 12th, day of May, 2020.

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

11 
12 THEODORE PARKER, III., ESQ.

13 Nevada Bar No. 4716

14 MAHOGANY TURFLEY, ESQ.

15 Nevada Bar No. 13974

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

17 2460 Professional Court, Suite 200

18 Las Vegas, Nevada 89128

19 Telephone: (702) 868-8000

20 Facsimile: (702) 868-8001

21 Email: tparker@pnalaw.net

22 *Attorneys for Plaintiff,*

23 *Nevada Wellness Center, LLC*

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 12th day of May, 2020, I served a true and
4 correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACTS AND**
5 **CONCLUSIONS OF LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON**
6 **AUGUST 23, 2019** 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 the
8 United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- 9 ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26,
10 by faxing a true and correct copy of the same to each party addressed as follows:
- 11 ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set
12 forth below on this date before 5:00 p.m.
- 13 ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-
14 serve (Odyssey) filing system.

15 *(All Parties on the Electronic Service List)*

16 
17 An employee of PARKER, NELSON & ASSOCIATES, CHTD.
18
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21
22
23
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27
28

Steven D. Grierson

1 FFCL

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 SERENITY WELLNESS CENTER, LLC, a
7 Nevada limited liability company, TGIG, LLC,
8 a Nevada limited liability company, NULEAF
9 INCLINE DISPENSARY, LLC, a Nevada
10 limited liability company, NEVADA
11 HOLISTIC MEDICINE, LLC, a Nevada limited
12 liability company, TRYKE COMPANIES SO
13 NV, LLC, a Nevada limited liability company,
14 TRYKE COMPANIES RENO, LLC, a Nevada
15 limited liability company, PARADISE
16 WELLNESS CENTER, LLC, a Nevada limited
17 liability company, GBS NEVADA PARTNERS,
18 LLC, a Nevada limited liability company,
19 FIDELIS HOLDINGS, LLC, a Nevada limited
20 liability company, GRAVITAS NEVADA,
21 LLC, a Nevada limited liability company,
22 NEVADA PURE, LLC, a Nevada limited
23 liability company, MEDIFARM, LLC, a Nevada
24 limited liability company, DOE PLAINTIFFS I
25 through X; and ROE ENTITY PLAINTIFFS I
26 through X,

27 Plaintiff(s),

28 vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

29 NEVADA ORGANIC REMEDIES, LLC;
30 INTEGRAL ASSOCIATES LLC d/b/a
31 ESSENCE CANNABIS DISPENSARIES, a
32 Nevada limited liability company; ESSENCE
33 TROPICANA, LLC, a Nevada limited liability
34 company; ESSENCE HENDERSON, LLC, a
35 Nevada limited liability company; CPCM
36 HOLDINGS, LLC d/b/a THRIVE CANNABIS
37 MARKETPLACE, COMMERCE PARK
38 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

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,

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Intervenors.

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

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¹ Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done
prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on
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.

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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:
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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.
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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
20 documents.

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

25 at 2515-2516.

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

27 1. When conducting a background check pursuant to subsection 6 of NRS 453D.200, the Department may
28 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. 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.

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

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28 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
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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).
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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.
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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.
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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
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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

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

13 43. The limitation of "unreasonably impracticable" in BQ2¹² does not apply to the
14 mandatory language of BQ2, but to the Regulations which the DoT adopted.

15 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
16 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
17 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT's decision to adopt regulations in
18 direct violation of BQ2's mandatory application requirements is violative of Article 19, Section 2(3) of
19 the Nevada Constitution.

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

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

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

27 ¹⁴ That provision states:

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

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

17 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
18 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
19 inspection of their marijuana establishment.
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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:
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16 "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the
17 limitations of section 6 of this article, the people reserve to themselves the power to propose,
18 by initiative petition, statutes and amendments to statutes and amendments to this
19 constitution, and to enact or reject them at the polls.

20 ...

21 3. If the initiative petition proposes a statute or an amendment to a statute, the person who
22 intends to circulate it shall file a copy with the secretary of state before beginning circulation
23 and not earlier than January 1 of the year preceding the year in which a regular session of the
24 legislature is held. After its circulation, it shall be filed with the secretary of state not less than
25 30 days prior to any regular session of the legislature. The circulation of the petition shall cease
26 on the day the petition is filed with the secretary of state or such other date as may be prescribed
27 for the verification of the number of signatures affixed to the petition, whichever is earliest. The
28 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
7 approved by the voters shall not be amended, annulled, repealed, set aside or suspended
8 by the legislature within 3 years from the date it takes effect."

9 (Emphasis added.)

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

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

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

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

17 79. The DoT failed to establish any quality assurance or quality control of the grading done
18 by Temporary Employees.¹⁷ This is not an appropriate basis for the requested injunctive relief unless it
19 makes the grading process unfair.
20

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

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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

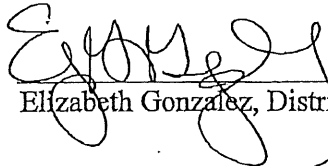
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

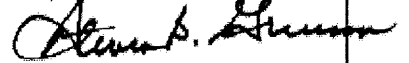
Certificate of Service

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 4
File-stamped copy of Notice of Entry of August 23, 2019
Findings of Facts and Conclusions of Law, Case # A-19-786962-B



1 **NEO**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 MAHOGANY TURFLEY, ESQ.
5 Nevada Bar No. 13974
6 **PARKER, NELSON & ASSOCIATES, CHTD.**
7 2460 Professional Court, Suite 200
8 Las Vegas, Nevada 89128
9 Telephone: (702) 868-8000
10 Facsimile: (702) 868-8001
11 Email: tparker@pnalaw.net

12 *Attorneys for Plaintiff,*
13 *Nevada Wellness Center, LLC*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 ETW MANAGEMENT GROUP LLC, a
17 Nevada limited liability company; GLOBAL
18 HARMONY LLC, a Nevada limited liability
19 company; GREEN LEAF FARMS
20 HOLDINGS LLC, a Nevada limited liability
21 company; GREEN THERAPEUTICS LLC, a
22 Nevada limited liability company; HERBAL
23 CHOICE INC., a Nevada corporation; JUST
24 QUALITY, LLC, a Nevada limited liability
25 company; LIBRA WELLNESS CENTER,
26 LLC, a Nevada limited liability company;
27 ROMBOUGH REAL ESTATE INC. dba
28 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,
inclusive,

Defendants.

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

Consolidated with:

Case No. A-18-785818-W
Case No. A-18-786357-W
Case No. A-19-786962-B
Case No. A-19-787035-C
Case No. A-19-787540-W
Case No. A-19-787726-C
Case No. A-19-801416-B

**NOTICE OF ENTRY OF FINDINGS OF
FACTS AND CONCLUSIONS OF LAW
GRANTING PRELIMINARY
INJUNCTION ISSUED ON AUGUST 23,
2019**

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

Plaintiffs,

v.

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

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

Plaintiffs,

v.

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

Defendants.

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

Intervenor Defendant.

CASE NO.: A-18-786357-W
DEPT. NO.: XIV

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

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

1 limited liability company; DOE PLAINTIFFS
2 I through X; and ROE ENTITIES I through
3 X,

4
5 Plaintiffs,

6 v.

7 THE STATE OF NEVADA, DEPARTMENT
8 OF TAXATION,

9 Defendants.

10 D.H. FLAMINGO, INC., d/b/a THE
11 APOTHECARY SHOPPE, a Nevada
12 corporation; CLARK NATURAL
13 MEDICINAL SOLUTIONS LLC, d/b/a
14 NuVEDA, a Nevada limited liability
15 company; NYE NATURAL MEDICINAL
16 SOLUTIONS LLC, d/b/a NuVEDA, a
17 Nevada limited liability company; CLARK
18 NMSD LLC, d/b/a NuVEDA, a Nevada
19 limited liability company; INYO FINE
20 CANNABIS DISPENSARY L.L.C., d/b/a
21 INYO FINE CANNABIS DISPENSARY, a
22 Nevada limited liability company; and
23 SURTERRA HOLDINGS, INC., a Delaware
24 corporation,

25 Plaintiffs/Petitioners,

26 v.

27 STATE EX REL. DEPARTMENT OF
28 TAXATION; STATE EX REL. NEVADA
TAX COMMISSION; et al.

Defendants/Respondents.

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-19-787035-C
DEPT NO.: VI

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

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

3 Intervenor Defendant.

4 HIGH SIERRA HOLISTICS, LLC,

5 Plaintiff,

6 v.

7 STATE OF NEVADA, DEPARTMENT OF
8 TAXATION; DOES 1-10 and ROE
9 CORPORATIONS 1-10,

10 Defendants.

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

13 Applicant in Intervention.

14 QUALCAN, LLC, a Nevada limited
15 liability company;

16 Plaintiff,

17 v.

18 THE STATE OF NEVADA,
19 DEPARTMENT OF TAXATION; DOES
20 I through X; ROE BUSINESS ENTITIES
21 I through X;

22 Defendants.

CASE NO.: A-19-787726-C
DEPT. NO.: XIV

CASE NO.: A-19-801416-B
DEPT. NO.: XIII

23 **NOTICE OF ENTRY OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
24 **GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**

25 PLEASE TAKE NOTICE that an **FINDINGS OF FACTS AND CONCLUSIONS OF**
26 **LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**, a true and

27 ///

28 ///

///

1 correct copy of which is attached hereto, was entered to the Court on the 23rd, day of August, 2019.

2 DATED this 12th, day of May, 2020.

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

4 
5 THEODORE PARKER, III., ESQ.

6 Nevada Bar No. 4716

7 MAHOGANY TURFLEY, ESQ.

8 Nevada Bar No. 13974

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

10 2460 Professional Court, Suite 200

11 Las Vegas, Nevada 89128

12 Telephone: (702) 868-8000

13 Facsimile: (702) 868-8001

14 Email: tparker@pnalaw.net

15 *Attorneys for Plaintiff,*

16 *Nevada Wellness Center, LLC*

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 12th, day of May, 2020, I served a true and
4 correct copy of the foregoing **NOTICE OF ENTRY OF ORDER FACTS AND CONCLUSIONS**
5 **OF LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**

6 on the party(s) set forth below by:

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

15 *(All Parties on the Electronic Service List)*

16 
17 _____
18 An employee of PARKER, NELSON & ASSOCIATES, CHTD.
19
20
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Steven D. Grierson

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; CPCMHOLDINGS, 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

ASIS 23 2019

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,

6
7 Intervenor.

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

28
¹ Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on 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 Wellniess 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:
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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.
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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
20 documents.
21 There was Task Force dissent on the recommendation. The concern with this recommendation was that by
22 changing the requirements on fingerprinting and background checks, the state would have less knowledge of when
23 an owner, officer, and board member commits an offense not allowed under current marijuana law, potentially
24 creating a less safe environment in the state.
25 at 2515-2516.

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

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

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

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

⁹ Relevant portions of that provision require that application be made

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

- 7 (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.

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

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28 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
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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).
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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.
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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.
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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
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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

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

13 43. The limitation of "unreasonably impracticable" in BQ2¹² does not apply to the
14 mandatory language of BQ2, but to the Regulations which the DoT adopted.

15 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
16 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
17 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT's decision to adopt regulations in
18 direct violation of BQ2's mandatory application requirements is violative of Article 19, Section 2(3) of
19 the Nevada Constitution.

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

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

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

27 ¹⁴ That provision states:

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

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

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

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

20 ...

21 3. If the initiative petition proposes a statute or an amendment to a statute, the person who
22 intends to circulate it shall file a copy with the secretary of state before beginning circulation
23 and not earlier than January 1 of the year preceding the year in which a regular session of the
24 legislature is held. After its circulation, it shall be filed with the secretary of state not less than
25 30 days prior to any regular session of the legislature. The circulation of the petition shall cease
26 on the day the petition is filed with the secretary of state or such other date as may be prescribed
27 for the verification of the number of signatures affixed to the petition, whichever is earliest. The
28 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
7 approved by the voters shall not be amended, annulled, repealed, set aside or suspended
8 by the legislature within 3 years from the date it takes effect."

9 (Emphasis added.)

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

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

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

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

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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

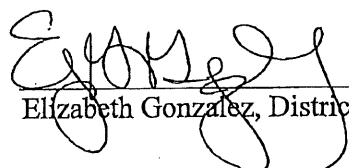
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

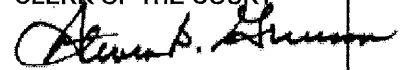
Certificate of Service

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 5
File-stamped copy of Notice of Entry of August 23, 2019
Findings of Facts and Conclusions of Law, Case # A-19-787004-B



1 **NEO**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 MAHOGANY TURFLEY, ESQ.
5 Nevada Bar No. 13974
6 **PARKER, NELSON & ASSOCIATES, CHTD.**
7 2460 Professional Court, Suite 200
8 Las Vegas, Nevada 89128
9 Telephone: (702) 868-8000
10 Facsimile: (702) 868-8001
11 Email: tparker@pnalaw.net

12 *Attorneys for Plaintiff,*
13 *Nevada Wellness Center, LLC*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 ETW MANAGEMENT GROUP LLC, a
17 Nevada limited liability company; GLOBAL
18 HARMONY LLC, a Nevada limited liability
19 company; GREEN LEAF FARMS
20 HOLDINGS LLC, a Nevada limited liability
21 company; GREEN THERAPEUTICS LLC, a
22 Nevada limited liability company; HERBAL
23 CHOICE INC., a Nevada corporation; JUST
24 QUALITY, LLC, a Nevada limited liability
25 company; LIBRA WELLNESS CENTER,
26 LLC, a Nevada limited liability company;
27 ROMBOUGH REAL ESTATE INC. dba
28 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,
inclusive,

Defendants.

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

Consolidated with:
Case No. A-18-785818-W
Case No. A-18-786357-W
Case No. A-19-786962-B
Case No. A-19-787035-C
Case No. A-19-787540-W
Case No. A-19-787726-C
Case No. A-19-801416-B

NOTICE OF ENTRY OF FINDINGS OF
FACTS AND CONCLUSIONS OF LAW
GRANTING PRELIMINARY
INJUNCTION ISSUED ON AUGUST 23,
2019

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

Plaintiffs,

v.

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

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

Plaintiffs,

v.

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

Defendants.

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

Intervenor Defendant.

CASE NO.: A-18-786357-W
DEPT. NO.: XIV

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

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

1 limited liability company; DOE PLAINTIFFS
2 I through X; and ROE ENTITIES I through
3 X,

4
5 Plaintiffs,

6 v.

7 THE STATE OF NEVADA, DEPARTMENT
8 OF TAXATION,

9 Defendants.

10 D.H. FLAMINGO, INC., d/b/a THE
11 APOTHECARY SHOPPE, a Nevada
12 corporation; CLARK NATURAL
13 MEDICINAL SOLUTIONS LLC, d/b/a
14 NuVEDA, a Nevada limited liability
15 company; NYE NATURAL MEDICINAL
16 SOLUTIONS LLC, d/b/a NuVEDA, a
17 Nevada limited liability company; CLARK
18 NMSD LLC, d/b/a NuVEDA, a Nevada
19 limited liability company; INYO FINE
20 CANNABIS DISPENSARY L.L.C., d/b/a
21 INYO FINE CANNABIS DISPENSARY, a
22 Nevada limited liability company; and
23 SURTERRA HOLDINGS, INC., a Delaware
24 corporation,

25 Plaintiffs/Petitioners,

26 v.

27 STATE EX REL. DEPARTMENT OF
28 TAXATION; STATE EX REL. NEVADA
TAX COMMISSION; et al.

Defendants/Respondents.

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-19-787035-C
DEPT NO.: VI

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

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

3 Intervenor Defendant.

4 HIGH SIERRA HOLISTICS, LLC,

5 Plaintiff,

6 v.

7 STATE OF NEVADA, DEPARTMENT OF
8 TAXATION; DOES 1-10 and ROE
9 CORPORATIONS 1-10,

10 Defendants.

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

13 Applicant in Intervention.

14 QUALCAN, LLC, a Nevada limited
15 liability company;

16 Plaintiff,

17 v.

18 THE STATE OF NEVADA,
19 DEPARTMENT OF TAXATION; DOES
20 I through X; ROE BUSINESS ENTITIES
21 I through X;

22 Defendants.

CASE NO.: A-19-787726-C
DEPT. NO.: XIV

CASE NO.: A-19-801416-B
DEPT. NO.: XIII

23 **NOTICE OF ENTRY OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
24 **GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**

25 PLEASE TAKE NOTICE that an **FINDINGS OF FACTS AND CONCLUSIONS OF**
26 **LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**, a true and

27 ///

28 ///

///

1 correct copy of which is attached hereto, was entered to the Court on the 23rd, day of August, 2019.

2 DATED this 12th, day of May, 2020.

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

4 
5 THEODORE PARKER, III., ESQ.

6 Nevada Bar No. 4716

7 MAHOGANY TURFLEY, ESQ.

8 Nevada Bar No. 13974

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

10 2460 Professional Court, Suite 200

11 Las Vegas, Nevada 89128

12 Telephone: (702) 868-8000

13 Facsimile: (702) 868-8001

14 Email: tparker@pnalaw.net

15 *Attorneys for Plaintiff,*

16 *Nevada Wellness Center, LLC*

1 **CERTIFICATE OF SERVICE**

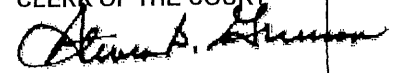
2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER,
3 NELSON & ASSOCIATES, CHTD., and that on this 12th, day of May, 2020, I served a true and
4 correct copy of the foregoing **NOTICE OF ENTRY OF ORDER FACTS AND CONCLUSIONS**
5 **OF LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**

6 on the party(s) set forth below by:

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

15 *(All Parties on the Electronic Service List)*

16 
17 _____
18 An employee of PARKER, NELSON & ASSOCIATES, CHTD.
19
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1 FFCL

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 SERENITY WELLNESS CENTER, LLC, a
7 Nevada limited liability company, TGIG, LLC,
8 a Nevada limited liability company, NULEAF
9 INCLINE DISPENSARY, LLC, a Nevada
10 limited liability company, NEVADA
11 HOLISTIC MEDICINE, LLC, a Nevada limited
12 liability company, TRYKE COMPANIES SO
13 NV, LLC, a Nevada limited liability company,
14 TRYKE COMPANIES RENO, LLC, a Nevada
15 limited liability company, PARADISE
16 WELLNESS CENTER, LLC, a Nevada limited
17 liability company, GBS NEVADA PARTNERS,
18 LLC, a Nevada limited liability company,
19 FIDELIS HOLDINGS, LLC, a Nevada limited
20 liability company, GRAVITAS NEVADA,
21 LLC, a Nevada limited liability company,
22 NEVADA PURE, LLC, a Nevada limited
23 liability company, MEDIFARM, LLC, a Nevada
24 limited liability company, DOE PLAINTIFFS I
25 through X; and ROE ENTITY PLAINTIFFS I
26 through X,

27 Plaintiff(s),

28 vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

29 NEVADA ORGANIC REMEDIES, LLC;
30 INTEGRAL ASSOCIATES LLC d/b/a
31 ESSENCE CANNABIS DISPENSARIES, a
32 Nevada limited liability company; ESSENCE
33 TROPICANA, LLC, a Nevada limited liability
34 company; ESSENCE HENDERSON, LLC, a
35 Nevada limited liability company; CPC
36 HOLDINGS, LLC d/b/a THRIVE CANNABIS
37 MARKETPLACE, COMMERCE PARK
38 MEDICAL, LLC, a Nevada limited liability
39 company; and CHEYENNE MEDICAL, LLC, a
40 Nevada limited liability company; LONE
41 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

Aug 23 2019

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,

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Intervenors.

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

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28
¹ Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done
prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on
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 Wellriess 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.

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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.

- 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

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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;

29 (k) An attestation that the information provided to the Department to apply for the license for a marijuana
30 establishment is true and correct according to the information known by the affiant at the time of signing; and

31 (l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC
32 453D.250 and the date on which the person signed the application.

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

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

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

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

42 (1) The title of the person;

43 (2) The race, ethnicity and gender of the person;

44 (3) A short description of the role in which the person will serve for the organization and his or her
45 responsibilities;

46 (4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to
47 the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a
48 marijuana establishment agent at the proposed marijuana establishment;

49 (5) Whether the person has served or is currently serving as an owner, officer or board member for another
50 medical marijuana establishment or marijuana establishment;

51 (6) Whether the person has served as an owner, officer or board member for a medical marijuana establishment
52 or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as
53 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.

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

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28 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
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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).
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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.
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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.
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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
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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

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

13 43. The limitation of "unreasonably impracticable" in BQ2¹² does not apply to the
14 mandatory language of BQ2, but to the Regulations which the DoT adopted.

15 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
16 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
17 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT's decision to adopt regulations in
18 direct violation of BQ2's mandatory application requirements is violative of Article 19, Section 2(3) of
19 the Nevada Constitution.

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

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

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

27 ¹⁴ That provision states:

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

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

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

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

20 ...

21 3. If the initiative petition proposes a statute or an amendment to a statute, the person who
22 intends to circulate it shall file a copy with the secretary of state before beginning circulation
23 and not earlier than January 1 of the year preceding the year in which a regular session of the
24 legislature is held. After its circulation, it shall be filed with the secretary of state not less than
25 30 days prior to any regular session of the legislature. The circulation of the petition shall cease
26 on the day the petition is filed with the secretary of state or such other date as may be prescribed
27 for the verification of the number of signatures affixed to the petition, whichever is earliest. The
28 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
7 approved by the voters shall not be amended, annulled, repealed, set aside or suspended
8 by the legislature within 3 years from the date it takes effect.

9 (Emphasis added.)

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

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

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

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

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

ORDER

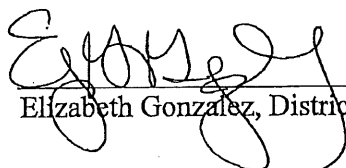
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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.