

Case No. 80637

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA EX REL. DEPARTMENT OF TAXATION,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK; and THE
HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE,

Respondents,

NEVADA WELLNESS CENTER, LLC,

Real Party in Interest.

**PETITIONER'S APPENDIX
VOLUME I OF II**

Respectfully submitted by:

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Nevada Attorney General
STEVE SHEVORSKI (Bar No. 8256)
Chief Litigation Counsel
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State of Nevada ex rel. Department of Taxation

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 21st day of February, 2020.

I certify that some of the participants in the case are not currently registered electronic filing system users. For those parties service was made by depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada to the following unregistered participants:

Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent

The Honorable Elizabeth Gonzalez
Regional Justice Center
Department 11
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent

Theodore Parker, III, Esq.
Mahogany Turfley, Esq.
Parker, Nelson & Associates
2460 Professional Ct., Ste. 200
Las Vegas, Nevada 89128
*Attorneys for Real Party
in Interest Nevada Wellness
Center, LLC*

/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General

For Purchasing Use Only:
RFP/Contract #329G/18404

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting by and Through Its

Various State Agencies
Monitored By: Department of Administration
Purchasing Division
515 E. Musser Street, Room 300
Carson City NV 89701
Contact: Annette Morfin, Purchasing Officer
Phone: (775) 684-0185 Fax: (775) 684-0188
Email: amorfin@admin.nv.gov

and

Manpower
63 Keystone Ave. #202
Reno NV 89503
Contact: Patrick Harrigan
Phone: (775) 328-6020 Fax: (775) 328-6030
Email: pharrigan@mpreno.com

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners (BOE), services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada.

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.**
 - A. "State" – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
 - B. "Independent Contractor" – means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract.
 - C. "Fiscal Year" – is defined as the period beginning July 1st and ending June 30th of the following year.
 - D. "Current State Employee" – means a person who is an employee of an agency of the State.
 - E. "Former State Employee" – means a person who was an employee of any agency of the State at any time within the preceding 24 months.
3. **CONTRACT TERM:** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 10, Contract Termination*. Contract is subject to Board of Examiners' approval (anticipated to be March 14, 2017).

Effective from:	April 1, 2017	To:	March 31, 2021
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4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of termination for default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, posted prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	REQUEST FOR PROPOSAL 3296 AND AMENDMENT #1
ATTACHMENT BB:	INSURANCE SCHEDULE
ATTACHMENT CC:	CONTRACTOR'S RESPONSE

A Contractor's attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 5, Incorporated Documents* at a cost as noted below:

Total Contract or installments payable at:	Invoices will be done on a weekly basis to avoid possible timecard fraud. Invoices will be paid upon receipt of invoice and using agency's approval, invoices will be paid within 30 days. Agency Recruitment Invoices: will be paid per temporary employee hourly pay rate plus 24% Agency Recruitment Administrative Markup Fee. Contractor Recruitment Invoices: will be paid per temporary employee hourly pay rate plus 34% Contractor Recruitment Administrative Markup Fee. Both markup fees include a 20.89% for SUTA, FUTA, FICA, Modified Business Tax, General Liability, Bonding and Works Compensation (Self-Insured). Health Insurance, Employer Sponsored Health Insurance, Training, General Management, Administration and Operations Expenses are included in the markup rate. Manpower is compliant with the Patient Protection and Affordable Care Act (PPACA). Temporary employees may be required to drive State vehicles and contractor must maintain the \$1,000,000.00 automobile liability on their insurance policy to cover this requirement. There will be no fee incurred to the State should the temp employee accept a permanent position to the State regardless of the timeframe.
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Total Contract Not to Exceed:	\$7,000,000.00 for the contract term.
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The contractual authority, as identified by the not to exceed amount, does not obligate the State of Nevada to expend funds or purchase goods or services up to that amount; the purchase amount will be controlled by the individual using agency's purchase orders or other authorized means of requisition for services and/or goods as submitted to and accepted by the contractor.

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriate may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the state no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a state claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the state of processing the billing as a state claim and that this amount will be deducted from the state claim payment due to the Contractor.
9. **INSPECTION & AUDIT.**
- A. **Books and Records.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.
- B. **Inspection & Audit.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant State agency or its contracted examiners; the department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the state Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this Section.
- C. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the state, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.
10. **CONTRACT TERMINATION.**
- A. **Termination Without Cause.** Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.
- B. **State Termination for Non-Appropriation.** The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the state Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason for the contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- C. **Cause Termination for Default or Breach.** A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
- 1) If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - 2) If any State, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

- 5) If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - 6) If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- D. Time to Correct. Termination upon declared default or breach may be exercised only after service of formal written notice as specified in *Section 4, Notice*, and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- E. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this Section survive termination:
- 1) The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - 2) Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - 3) Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - 4) Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with *Section 2.1, State Ownership of Proprietary Information*.
11. **REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that the Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
12. **LIMITED LIABILITY.** The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the Contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
13. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
14. **INDEMNIFICATION.** To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the state only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the state whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the state; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

QUESTION		CONTRACTOR'S INITIALS	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	PH	
2.	Will the Contracting Agency be providing training to the independent contractor?	PH	
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	PH	
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?		PH
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	PH	
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?		PH
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?		PH

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the state, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in *Attachment BB*, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior to approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

A. Insurance Coverage. The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in *Attachment BB*, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

- 1) Final acceptance by the State of the completion of this Contract; or
- 2) Such time as the insurance is no longer required by the State under the terms of this Contract; whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

B. General Requirements.

- 1) Additional Insured: By endorsement to the general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- 2) Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- 3) Cross Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- 4) Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- 5) Policy Cancellation: Except for ten (10) days notice for non-payment of premiums, each insurance policy shall be endorsed to state that, without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this Section shall be sent by certified mail to the address shown on page one (1) of this contract.
- 6) Approved Insurer: Each insurance policy shall be:
 - a) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - b) Currently rated by A.M. Best as "A-VII" or better.

C. Evidence of Insurance.

Prior to the start of any work, Contractor must provide the following documents to the contracting State agency:

- 1) Certificate of Insurance: The Acorid 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The State project/Contract number; description and Contract effective dates shall be noted on the

certificate, and upon renewal of the policies listed, Contractor shall furnish the State with replacement certificates as described within *Section 16A, Insurance Coverage*.

Mail all required insurance documents to the State Contracting Agency identified on Page one of the Contract.

- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per *Section 16 B, General Requirements*.
 - 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.
 - 4) **Review and Approval:** Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.
17. **COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any State, county, city or federal license, authorization, waiver, permit qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.
 18. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
 19. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
 20. **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.
 21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepare or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark, or copyright protection.
 22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

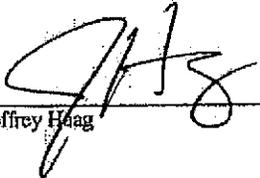
23. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.
24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:
- A. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt 67, Section 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - B. Contractor and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted there under contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
 - C. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
- A. Any federal, State, county or local agency, legislature, commission, council or board;
 - B. Any federal, State, county or local legislator, commission member, council member, board member, or other elected official; or
 - C. Any officer or employee of any federal, State, county or local agency, legislature, commission, council or board.
26. **WARRANTIES.**
- A. General Warranty. Contractor warrants that all services, deliverables, and/or work products under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry, shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
 - B. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State.
27. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.
28. **NOTIFICATION OF UTILIZATION OF CURRENT OR FORMER STATE EMPLOYEES.** Contractor has disclosed to the State all persons that the Contractor will utilize to perform services under this Contract who are Current State Employees or Former State Employees. Contractor will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this Contract without first notifying the Contracting Agency of such persons and the services that each such person will perform, and receiving from the Contracting Agency approval for the use of such persons.
29. **ASSIGNMENT OF ANTITRUST CLAIMS.** Contractor irrevocably assigns to the State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to

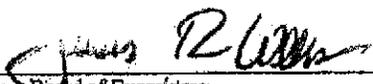
control any such litigation on such claim for relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to the State, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

30. **GOVERNING LAW: JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.
31. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

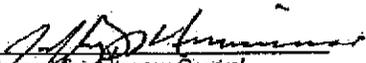
 1/26/17 General Manager
Independent Contractor's Signature Date Independent Contractor's Title

 1-30-2017 _____
Jeffrey Haag Date Administrator, Nevada State Purchasing

 APPROVED BY BOARD OF EXAMINERS
Signature Board of Examiners:

On: 2/14/17
Date

Approved as to form by:

 On: 30 Jan 17
Deputy Attorney General for Attorney General Date

State of Nevada
Department of Administration

Purchasing Division

515 E. Musser Street, Suite 300
Carson City, NV 89701



Brian Sandoval
Governor

Patrick Cates
Director

Jeffrey Haag
Administrator

State of Nevada
Purchasing Division
Request for Proposal: 3296
For
TEMPORARY EMPLOYMENT SERVICES

Release Date: November 29, 2016

Deadline for Submission and Opening Date and Time: December 20, 2016 @ 2:00 PM

Refer to Section 9, RFP Timeline for the complete RFP schedule

For additional information, please contact:

Annette Morfin, Purchasing Officer

State of Nevada, Purchasing Division

515 E. Musser Street, Suite 300

Carson City, NV 89701

Phone: 775-684-0185

Email address: amorfin@admin.nv.gov

(TTY for Deaf and Hard of Hearing: 1-800-326-6868

Ask the relay agent to dial: 1-775-684-0185/V.)

Refer to Section 10 for instructions on submitting proposals

VENDOR INFORMATION SHEET FOR RFP 3296

Vendor Must:

- A) Provide all requested information in the space provided next to each numbered question. The information provided in Sections V1 through V6 will be used for development of the contract;
- B) Type or print responses; and
- C) Include this Vendor Information Sheet in Tab III of the Technical Proposal.

V1	Company Name	
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V2	Street Address	
----	----------------	--

V3	City, State, ZIP	
----	------------------	--

V4	Telephone Number		
	Area Code:	Number:	Extension:

V5	Facsimile Number		
	Area Code:	Number:	Extension:

V6	Toll Free Number		
	Area Code:	Number:	Extension:

V7	<i>Contact Person for Questions / Contract Negotiations, including address if different than above</i>		
	Name:		
	Title:		
	Address:		
Email Address:			

V8	Telephone Number for Contact Person		
	Area Code:	Number:	Extension:

V9	Facsimile Number for Contact Person		
	Area Code:	Number:	Extension:

V10	<i>Name of Individual Authorized to Bind the Organization</i>		
	Name:		Title:

V11	<i>Signature (Individual must be legally authorized to bind the vendor per NRS 333.337)</i>		
	Signature:		Date:

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Prospective vendors are advised to review Nevada's ethical standards requirements, including but not limited to, NRS 281A and the Governor's Proclamation, which can be found on the Purchasing Division's website (<http://purchasing.nv.gov>).

1. PROJECT OVERVIEW

- 1.1 The State of Nevada Purchasing Division is seeking proposals from qualified vendors to provide temporary employment services statewide on an as needed basis.
- 1.2 The State may award one (1) or more contracts in conjunction with this RFP, as determined to be in the best interest of the State. It is the intention of the State to award contract(s) on a statewide basis; however, proposals may be considered regionally.
 - 1.2.1 Northern Region – primarily Reno and Carson City;
 - 1.2.2 Southern Region – primarily Las Vegas; and
 - 1.2.3 Rural Region – primarily Elko, Ely and Winnemucca and potentially other rural cities of the State.

Most of the State's temporary staffing requirements are located in Carson City, Reno and Las Vegas. Vendor's proposal must identify the geographic region(s) in which temporary employment services are being offered.

- 1.3 The State would prefer proposing vendors to have a local presence in key areas which would include Reno, Carson City, Las Vegas and Elko. Include in your proposal where you have a local presence.
- 1.4 The number of contracts awarded will be determined based on the evaluation of all proposals submitted.
- 1.5 Vendors may also propose on all position classifications identified, or on a specific classification or group of classifications.
- 1.6 The contract(s) will be mandatory for State agencies located in geographic regions serviced by the contract. The University and Community College System, the Court System, the Legislative Counsel Bureau, and Political Subdivisions (i.e., cities, counties, school districts, etc.) may use the contract(s) resulting from this RFP; however, they are not required to do so.
- 1.7 The State Purchasing Division will administer contract(s) resulting from this RFP. The resulting contract(s) will be for a contract term of four (4) years, anticipated to begin April 1, 2017, subject to Board of Examiners approval and will terminate March 31, 2021.

2. ACRONYMS/DEFINITIONS

For the purposes of this RFP, the following acronyms/definitions will be used:

Acronym	Description
<i>Agency</i>	A State Agency, the University and Community College System, the Court System, the Legislative Counsel Bureau or Political Subdivision requesting temporary employment services.

Acronym	Description
<i>Assumption</i>	An idea or belief that something will happen or occur without proof. An idea or belief taken for granted without proof of occurrence.
<i>Awarded Vendor</i>	The organization/individual that is awarded and has an approved contract with the State of Nevada for the services identified in this RFP.
<i>BOE</i>	State of Nevada Board of Examiners
<i>Confidential Information</i>	Any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or proposal. The term does not include the amount of a bid or proposal. Refer NRS 333.020(5) (b).
<i>Contract Approval Date</i>	The date the State of Nevada Board of Examiners officially approves and accepts all contract language, terms and conditions as negotiated between the State and the successful vendor.
<i>Contract Award Date</i>	The date when vendors are notified that a contract has been successfully negotiated, executed and is awaiting approval of the Board of Examiners.
<i>Contractor</i>	The company or organization that has an approved contract with the State of Nevada for services identified in this RFP. The contractor has full responsibility for coordinating and controlling all aspects of the contract, including support to be provided by any subcontractor(s). The contractor will be the sole point of contact with the State relative to contract performance.
<i>Cross Reference</i>	A reference from one document/section to another document/section containing related material.
<i>Customer</i>	Department, Division or Agency of the State of Nevada.
<i>Division/Agency</i>	The Division/Agency requesting services as identified in this RFP.
<i>Evaluation Committee</i>	An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to the RFP pursuant to NRS 333.335.
<i>Exception</i>	A formal objection taken to any statement/requirement identified within the RFP.
<i>Goods</i>	The term "goods" as used in this RFP has the meaning ascribed to it in NRS §104.2105(1) and includes, without limitation, "supplies", "materials", "equipment", and "commodities", as those terms are used in NRS Chapter 333.
<i>Key Personnel</i>	Vendor staff responsible for oversight of work during the life of the project and for deliverables.

Acronym	Description
LCB	Legislative Counsel Bureau
LOI	Letter of Intent - notification of the State's intent to award a contract to a vendor, pending successful negotiations; all information remains confidential until the issuance of the formal notice of award.
May	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
NAC	Nevada Administrative Code --All applicable NAC documentation may be reviewed via the internet at: www.leg.state.nv.us .
NOA	Notice of Award – formal notification of the State's decision to award a contract, pending Board of Examiners' approval of said contract, any non-confidential information becomes available upon written request.
NRS	Nevada Revised Statutes – All applicable NRS documentation may be reviewed via the internet at: www.leg.state.nv.us .
Pacific Time (PT)	Unless otherwise stated, all references to time in this RFP and any subsequent contract are understood to be Pacific Time.
Proprietary Information	Any trade secret or confidential business information that is contained in a bid or proposal submitted on a particular contract. (Refer to NRS 333.020 (5) (a).
Public Record	All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. (Refer to NRS 333.333 and NRS 600A.030 [5]).
Redacted	The process of removing confidential or proprietary information from a document prior to release of information to others.
RFP	Request for Proposal - a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection as defined in NRS 333.020(8).
Shall	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.

Acronym	Description
<i>Should</i>	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
<i>State</i>	The State of Nevada and any agency identified herein.
<i>Subcontractor</i>	Third party, not directly employed by the contractor, who will provide services identified in this RFP. This does not include third parties who provide support or incidental services to the contractor.
<i>Trade Secret</i>	Information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
<i>User</i>	Department, Division, Agency or County of the State of Nevada.
<i>Vendor</i>	Organization/individual submitting a proposal in response to this RFP.
<i>Will</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.

2.1 STATE OBSERVED HOLIDAYS

The State observes the holidays noted in the following table. When January 1st, July 4th, November 11th or December 25th falls on Saturday, the preceding Friday is observed as the legal holiday. If these days fall on Sunday, the following Monday is the observed holiday.

Holiday	Day Observed
New Year's Day	January 1
Martin Luther King Jr.'s Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Nevada Day	Last Friday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Family Day	Friday following the Fourth Thursday in November
Christmas Day	December 25

3. GENERAL INFORMATION

- 3.1 This RFP is soliciting proposals from Temporary Employment Companies to provide services relating to administrative and office support. These services are as needed and upon request from State agencies and political subdivisions. Contractor(s) will be responsible for hiring, firing, taxes, workers' compensation, etc., for the temporary assigned individuals who are not employees of the State of Nevada.
- 3.2 The State of Nevada paid out approximately \$8,054,251.00 in CY 2015 and \$7,025,530.00 in CY 2016 for these services under the current statewide contracts.
- 3.3 The State will not guarantee any minimum level of usage for any resulting contract(s) under this RFP.
- 3.4 The State agencies with the greatest demand for these services are:
- 3.4.1 Arts Council;
 - 3.4.2 Business & Industries;
 - 3.4.3 Bureau of Licensure & Certification;
 - 3.4.4 Department of Employment, Training and Rehabilitation;
 - 3.4.5 Department of Motor Vehicles;
 - 3.4.6 Department of Health and Human Services;
 - 3.4.7 Department of Transportation;
 - 3.4.8 State Museum and Railroad Museum; and
 - 3.4.9 Department of Welfare and Supportive Services.
- 3.5 The job classifications used most frequently are:
- 3.5.1 Administrative Assistants 1-4;
 - 3.5.2 Art Programmer;
 - 3.5.3 Clerical Trainee;
 - 3.5.4 Curatorial Assistant;
 - 3.5.5 Dispatcher;
 - 3.5.6 Eligibility Worker;
 - 3.5.7 Laborer (light and heavy); and
 - 3.5.8 Research Assistant.
- 3.6 *Attachment M - Listing of Position Classifications & Pay Rate* includes a listing of position classifications/titles, pay grade and approximate employee pay rate; however, the listing is not meant to be all-inclusive. Agencies may request other temporary positions by way of providing the contractor(s) with the employee pay rate, position classification/title and description of duties. These additional positions shall be captured on reports submitted to the State by the contractor(s).
- 3.7 Agencies may refer a person to be hired to the contractor to sign up to perform specific services needed or may request the contractor(s) to recruit and provide the temporary employee.

- 3.8 Upon notification from the agency, the contractor(s) will provide expedient temporary employment services. An e-mail, facsimile, or telephone call from the agency will constitute a request for service.
- 3.8.1 The agency reserves the right to interview the candidate to determine their qualifications for the required position.
- 3.8.2 The agency may reject and/or remove any individual who does not meet the requested experience or is deficient in the performance of the assignment.
- 3.9 Agencies may select from contractor(s) within their geographic region based on the preference of the agency. Multiple contractors may be contacted to fill the same position.
- 3.10 As a result of this RFP, if contracts are awarded to new vendors, any long term assignments will be required to transition to the new contracts.

4. TEMPORARY ASSIGNMENT RESPONSIBILITIES

4.1 AGENCY RESPONSIBILITIES

- 4.1.1 Prior to contacting the contractor(s), the agency is responsible to define details of the request to include, but not be limited to:
- 4.1.1.1 Number of individuals needed;
 - 4.1.1.2 Job duties;
 - 4.1.1.3 Equipment to be used;
 - 4.1.1.4 Knowledge, skills and experience;
 - 4.1.1.5 Computer software to be used;
 - 4.1.1.6 Hours of work;
 - 4.1.1.7 Expected length of assignment;
 - 4.1.1.8 Job related attire;
 - 4.1.1.9 Position location;
 - 4.1.1.10 Agency contact person; and
 - 4.1.1.11 Other pertinent job-related information.
- 4.1.2 Depending on the amount of detail required, it is recommended the using agency submit this information in writing via e-mail or facsimile to reduce the possibility of an inappropriate temporary assignment.
- 4.1.3 The agency is responsible for requesting additional background investigations beyond normal references prior to the temporary assignment.
- 4.1.3.1 Should an additional background check be required due to the nature of the assignment, the agency may be responsible for the cost of the additional checks.
 - 4.1.3.2 It is reasonable to expect employment eligibility and references will be required for all temporary employees; background checks for referrals by the State will be at the discretion of the agency.

- 4.1.3.3 Standard checks which would include employment eligibility and reference checks shall be at the cost of the contractor(s).
 - 4.1.3.4 Other background checks will be at the discretion of each requesting agency.
 - 4.1.3.5 Additional checks will vary by agency and may be at the expense of the employee or the requesting agency.
 - 4.1.3.6 It is the agency's discretion if temporary employees will be allowed to start work pending successful completion of one or more of these verifications.
- 4.1.4 In lieu of the aforementioned, agencies reserve the right to request and conduct pre-employment background checks and drug testing prior to the potential temporary assignment's starting date at the agency.
- 4.1.4.1 State agencies will limit their background checks and drug testing requirements to the same as required of their own permanent full-time employees holding the same or similar positions to be filled by the temporary assigned individual.
 - 4.1.4.2 Requirements for background and drug screens will vary by the individual requesting agency.
- 4.1.5 Due to job requirements and environment (i.e., law enforcement), hiring decisions may be partially based on the results of the background checks and/or drug tests.

4.2 CONTRACTOR(S) RESPONSIBILITIES

- 4.2.1 The contractor is responsible to obtain the information as described in *Section 4.1.1*, and any other information necessary to determine what job category satisfies the service request. The contractor will inform the agency contact of the proposed job classification and applicable rate to obtain authorization to proceed with the service request. **Placing temporarily assigned individuals out of applicable job classification is considered an abuse of the contract. Periodic checks of requests and assignments will be performed to ensure this does not occur.**
- 4.2.2 The contractor is responsible for conducting appropriate background and reference checks on its employees prior to any potential assignments and should be prepared to conduct more extensive background investigations when required as identified in *Section 4.1.3*.

- 4.2.2.1 Contractor(s) should identify in their proposals the cost of additional background checks and tests.
- 4.2.2.2 Failure to provide this information will be considered "no charge" to the State for background checks and tests.
- 4.2.3 The contractor will be responsible for federal and state payroll requirements, including but not limited to payroll taxes, payroll reports, workers' compensation, and liability insurance.
- 4.2.4 The contractor will be responsible for having insurance coverage for any person sent to the State as employees under their Workers' Compensation policy and provide evidence thereof.
- 4.2.5 The contractor is responsible for conducting periodic quality assurance checks with the agency's contact person to verify that the agency's requirements are being fulfilled by the temporarily assigned individual.

At a minimum, these checks should be completed at the end of the first week of any assignment and monthly on long-term assignments.
- 4.2.6 Temporarily assigned individuals may be changed to permanent placement if the individual elects to accept employment with the State within or outside of the contract agency. This will incur no fee to the State.
- 4.2.7 The State will not be responsible for the contractor's employees who voluntarily leave the contractor's employment or engage in employment with any other company of entity.
 - 4.2.7.1 The frequency of conversions to State service is unknown, but is by no means common.
 - 4.2.7.2 The State will not pay a placement or conversion fee for individuals who are a direct referral from the State.
- 4.2.8 The contractor will have the ability to bond temporarily assigned individuals as directed by the agency. The fee for this service will be borne by the agency. Selection of the bonding insurer is at the contractor's discretion; however, each insurance policy shall be:
 - 4.2.8.1 Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - 4.2.8.2 Currently rated by A.M. Best as "A- VII" or better.

- 4.2.9 In the event a temporary employee requires travel, the only reimbursable travel costs authorized are those that are incurred for official State business and authorized in writing in advance by an authorized contract agency representative.
 - 4.2.9.1 Travel expenses must be submitted on the State's Claim for Travel Expenses form with original receipts for airfare, rental cars, parking and/or hotel receipt;
 - 4.2.9.2 Valid travel costs will be reimbursed at the current State of Nevada travel rates found on the GSA site www.gsa.gov;
 - 4.2.9.3 The temporarily assigned individual and the agency's contact person must sign the travel expense form;
 - 4.2.9.4 The form must be submitted with the contractor's invoice for services with the travel expense as a separate line item on the invoice; and
 - 4.2.9.5 The type of position requiring travel will vary based on the individual agency's requirements.
- 4.2.10 The contractor must provide assistance to the agencies in problem resolutions, in regard to temporary assigned individuals, at no additional cost to the State.
- 4.2.11 The contractor's temporarily assigned individuals agree to be bound by the State's security regulations, policies and standards as required by the agency (e.g., Department of Corrections). This will vary based on the individual agency's requirements.
- 4.2.12 The temporarily assigned individual will complete a weekly timesheet supplied by the contractor. The timesheet should include the following:
 - 4.2.12.1 Name of the agency;
 - 4.2.12.2 Name of the temporarily assigned individual;
 - 4.2.12.3 Dates worked;
 - 4.2.12.4 Beginning and ending time;
 - 4.2.12.5 Number of regular hours worked each day; and
 - 4.2.12.6 If applicable, number of overtime hours worked each day, pursuant to *Section 7.2.9*.
- 4.2.13 The contractor shall be responsible for the proper care and custody of any State-owned personal tangible property and real property furnished for the use in connection with the performance of the contract.
 - 4.2.13.1 The contractor will reimburse the State for such property's loss or damage caused by the contractor's assigned individual, with the exception of normal wear and tear.

- 4.2.13.2 The equipment used may include computers, copy machines, phones, printers, etc. Equipment may vary depending on the employee assignments.
- 4.2.13.3 Temporary assigned individuals should use reasonable care with State property; willful or negligent actions may result in the State seeking reimbursement from the contractor.
- 4.2.14 Unless specifically excluded by the agency in its description of job duties or equipment to be used, Contractor shall assume that temporarily assigned individuals may drive State of Nevada motor vehicles as authorized by the agency, and Contractor will be responsible for having insurance coverage for the temporarily assigned individual's authorized operation of motor vehicles owned or leased by the State of Nevada, *refer to Attachment E – Insurance Schedule for RFP 3296.*
 - 4.2.14.1 It is strongly recommended that any temporarily assigned individuals who will be driving a State vehicle enroll in Risk Management's Defensive Driving course.
 - 4.2.14.2 The course is held in Las Vegas, Carson City and Reno and is a four (4) hour classroom course.

4.3 STAFFING REQUIREMENTS

- 4.3.1 Terms of availability or unavailability in response to a temporary assignment request are as follows:
 - 4.3.1.1 Contractor will notify the requesting agency on availability within four (4) hours after a request is made for services that will commence within five (5) working days following the request;
 - 4.3.1.2 Contractor will notify the requesting agency on availability within two (2) days after a request is made for services that will commence later than five (5) working days following the request; and
 - 4.3.1.3 Contractor will confirm with the agency the arrival of its employee by telephone within one-half (1/2) hour after scheduled arrival time.
- 4.3.2 Contractor is responsible to communicate with its employee the agency's requirements regarding hours of work, duration, location, expectations, dress code and other information concerning the assignment.
- 4.3.3 All temporarily assigned individuals will be appropriately dressed for the assignment and shall maintain a professional demeanor. Dress code policy is established by the individual agencies. Temporary employees must dress according to the requirements of the agency requesting the assignment.
- 4.3.4 Temporarily assigned individuals should be available for the entire length of the assignment; however, if a replacement is required, a qualified replacement must

be provided within twenty-four (24) hours of notification, including weekends and holidays.

4.3.5 The agency reserves the right to reduce the length of the temporary assignment and will provide the contractor with as much notification as possible.

4.3.6 Work Hours

4.3.6.1 The exact work hours for temporarily assigned personnel will be determined by the agency. Generally, work hours begin at 8:00 a.m. and end at 5:00 p.m. Monday through Friday excluding State observed holidays (*refer to Section 2.1 – State Observed Holidays*).

4.3.6.2 Temporarily assigned personnel will work no more than eight (8) hours per day, excluding one (1) hour for lunch or a total of forty (40) hours per week.

4.3.6.3 Temporarily assigned individuals will not be paid for their lunch hour.

4.3.6.4 Agencies have the right to request temporarily assigned individuals for holiday, evening/night, weekend or shift work.

4.3.6.5 Hours may vary per requesting agency.

4.3.7 The State reserves the right to request a replacement of any individual. If for any reason a replacement is required within the first eight (8) hours of service, there will be no charge to the State. Any time beyond the initial eight (8) hours of service, the temporarily assigned individual is determined to be unsatisfactory; the contractor agrees to issue a credit invoice to the agency for the total charges from the point the agency notifies the contractor to request a replacement.

4.3.7.1 The contractor agrees to replace an unsatisfactory individual within one (1) business day; however, the agency has the option to contact a different contractor for the service.

4.3.7.2 The agency shall be the sole judge as to whether a temporarily assigned individual is satisfactory and is fulfilling the agency's requirements.

4.4 VENDOR RESPONSE TO STAFFING REQUIREMENTS

4.4.1 Vendors must describe how they will obtain and assign temporary staffing under the contract. The vendor's policies and responses must include the following:

4.4.1.1 Define skill testing and screening mechanisms, including a description of reference and/or background checks solicited for each applicant;

- 4.4.1.2 Describe any benefits and incentive programs, as well as, skill enhancement opportunities which are available to assignable staff; and
- 4.4.1.3 Explain the manner in which job assignments/job matching will be determined.
- 4.4.2 Vendors should describe their minimum pre-employment screening. This may be negotiated with selected vendor(s) to ensure consistency at entry level positions; additional requirements will be at the requesting agency's discretion.
- 4.4.3 Vendors should identify what they provide as a minimum for pre-employment background checks.

4.1 REPORTING REQUIREMENTS

- 4.1.1 Contractor(s) will provide quarterly reports of all temporary employment services invoiced under the contract. The attached report form, *Refer to Attachment L – Quarterly Report Form*, must be used.
- 4.1.2 Reports are to be submitted to the name and address listed on the form on or before the 15th of the month following the end of each State fiscal quarter.
 - 4.1.2.1 The State's fiscal quarters are as follows:
 - A. July 1 – September 30 – report due by October 15
 - B. October 1 – December 31 – report due by January 15
 - C. January 1 – March 31 – report due by April 15
 - D. April 1 – June 30 – report due by July 15
 - 4.1.2.2 **Failure to provide the quarterly reports in a timely manner may result in the assessment of one or more of the following penalties:**
 - A. Contract suspension; or
 - B. Contract termination.

5. COMPANY BACKGROUND AND REFERENCES

5.1 VENDOR INFORMATION

5.1.1 Vendors must provide a company profile in the table format below.

Question	Response
Company name:	
Ownership (sole proprietor, partnership, etc.):	
State of incorporation:	
Date of incorporation:	
# of years in business:	
List of top officers:	
Location of company headquarters:	

Question	Response
Location(s) of the company offices:	
Location(s) of the office that will provide the services described in this RFP:	
Number of employees locally with the expertise to support the requirements identified in this RFP:	
Number of employees nationally with the expertise to support the requirements in this RFP:	
Location(s) from which employees will be assigned for this project:	

5.1.2 **Please be advised**, pursuant to NRS 80.010, a corporation organized pursuant to the laws of another state must register with the State of Nevada, Secretary of State's Office as a foreign corporation before a contract can be executed between the State of Nevada and the awarded vendor, unless specifically exempted by NRS 80.015.

5.1.3 The selected vendor, prior to doing business in the State of Nevada, must be appropriately licensed by the State of Nevada, Secretary of State's Office pursuant to NRS76. Information regarding the Nevada Business License can be located at <http://nvsos.gov>.

Question	Response
Nevada Business License Number:	
Legal Entity Name:	

Is "Legal Entity Name" the same name as vendor is doing business as?

Yes		No	
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If "No", provide explanation.

5.1.4 Vendors are cautioned that some services may contain licensing requirement(s). Vendors shall be proactive in verification of these requirements prior to proposal submittal. Proposals that do not contain the requisite licensure may be deemed non-responsive.

5.1.5 Has the vendor ever been engaged under contract by any State of Nevada agency?

Yes		No	
-----	--	----	--

If "Yes", complete the following table for each State agency for whom the work was performed. Table can be duplicated for each contract being identified.

Question	Response
Name of State agency:	
State agency contact name:	

Question	Response
Dates when services were performed:	
Type of duties performed:	
Total dollar value of the contract:	

5.1.6 Are you now or have you been within the last two (2) years an employee of the State of Nevada, or any of its agencies, departments, or divisions?

Yes		No	
-----	--	----	--

If "Yes", please explain when the employee is planning to render services, while on annual leave, compensatory time, or on their own time?

If you employ (a) any person who is a current employee of an agency of the State of Nevada, or (b) any person who has been an employee of an agency of the State of Nevada within the past two (2) years, and if such person will be performing or producing the services which you will be contracted to provide under this contract, you must disclose the identity of each such person in your response to this RFP, and specify the services that each person will be expected to perform.

5.1.7 Disclosure of any significant prior or ongoing contract failures, contract breaches, civil or criminal litigation in which the vendor has been alleged to be liable or held liable in a matter involving a contract with the State of Nevada or any other governmental entity. Any pending claim or litigation occurring within the past six (6) years which may adversely affect the vendor's ability to perform or fulfill its obligations if a contract is awarded as a result of this RFP must also be disclosed.

Does any of the above apply to your company?

Yes		No	
-----	--	----	--

If "Yes", please provide the following information. Table can be duplicated for each issue being identified.

Question	Response	
Date of alleged contract failure or breach:		
Parties involved:		
Description of the contract failure, contract breach, or litigation, including the products or services involved:		
Amount in controversy:		
Resolution or current status of the dispute:		
If the matter has resulted in a court case:	Court	Case Number
Status of the litigation:		

- 5.1.8 Vendors must review the insurance requirements specified in *Attachment E, Insurance Schedule for RFP 3296*. Does your organization currently have or will your organization be able to provide the insurance requirements as specified in *Attachment E*.

Yes		No	
-----	--	----	--

Any exceptions and/or assumptions to the insurance requirements *must* be identified on *Attachment B, Technical Proposal Certification of Compliance with Terms and Conditions of RFP*. Exceptions and/or assumptions will be taken into consideration as part of the evaluation process; however, vendors must be specific. If vendors do not specify any exceptions and/or assumptions at time of proposal submission, the State will not consider any additional exceptions and/or assumptions during negotiations.

Upon contract award, the successful vendor *must* provide the Certificate of Insurance identifying the coverages as specified in *Attachment E, Insurance Schedule for RFP 3296*.

- 5.1.9 Company background/history and why vendor is qualified to provide the services described in this RFP. Limit response to no more than five (5) pages.
- 5.1.10 Length of time vendor has been providing services described in this RFP to the public and/or private sector. Please provide a brief description.
- 5.1.11 Financial information and documentation to be included in *Part III, Confidential Financial Information* of vendor's response in accordance with *Section 9.5, Part III – Confidential Financial Information*.
- 5.1.11.1 Dun and Bradstreet Number
- 5.1.11.2 Federal Tax Identification Number

5.2 SUBCONTRACTOR INFORMATION

- 5.2.1 Does this proposal include the use of subcontractors?

Yes		No	
-----	--	----	--

If "Yes", vendor must:

- 5.2.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.
- 5.2.1.2 If any tasks are to be completed by subcontractor(s), vendors must:
- A. Describe the relevant contractual arrangements;

B. Describe how the work of any subcontractor(s) will be supervised, channels of communication will be maintained and compliance with contract terms assured; and

C. Describe your previous experience with subcontractor(s).

5.2.1.3 Vendors must describe the methodology, processes and tools utilized for:

A. Selecting and qualifying appropriate subcontractors for the project/contract;

B. Ensuring subcontractor compliance with the overall performance objectives for the project;

C. Ensuring that subcontractor deliverables meet the quality objectives of the project/contract; and

D. Providing proof of payment to any subcontractor(s) used for this project/contract, if requested by the State. Proposal should include a plan by which, at the State's request, the State will be notified of such payments.

5.2.1.4 Provide the same information for any proposed subcontractors as requested in *Section 5.1, Vendor Information*.

5.2.1.5 Business references as specified in *Section 5.3, Business References* must be provided for any proposed subcontractors.

5.2.1.6 Vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the vendor.

5.2.1.7 Vendor must notify the using agency of the intended use of any subcontractors not identified within their original proposal and provide the information originally requested in the RFP in *Section 5.2, Subcontractor Information*. The vendor must receive agency approval prior to subcontractor commencing work.

5.3 BUSINESS REFERENCES

5.3.1 Vendors should provide a maximum of five (5) business references from similar projects performed for private, state and/or large local government clients within the last three (3) years.

5.3.2 Vendors must provide the following information for every business reference provided by the vendor and/or subcontractor:

The "Company Name" must be the name of the proposing vendor or the vendor's proposed subcontractor.

Reference #:	
Company Name:	
<i>Identify role company will have for this RFP project (Check appropriate role below):</i>	
	<i>VENDOR</i>
	<i>SUBCONTRACTOR</i>
Project Name:	
Primary Contact Information	
Name:	
Street Address:	
City, State, Zip:	
Phone, including area code:	
Facsimile, including area code:	
Email address:	
Alternate Contact Information	
Name:	
Street Address:	
City, State, Zip:	
Phone, including area code:	
Facsimile, including area code:	
Email address:	
Project Information	
Brief description of the project/contract and description of services performed, including technical environment (i.e., software applications, data communications, etc.) if applicable:	
Original Project/Contract Start Date:	
Original Project/Contract End Date:	
Original Project/Contract Value:	
Final Project/Contract Date:	
Was project/contract completed in time originally allotted, and if not, why not?	
Was project/contract completed within or under the original budget/cost proposal, and if not, why not?	

- 5.3.3 Vendors must also submit *Attachment F, Reference Questionnaire* to the business references that are identified in *Section 5.3.2*.
- 5.3.4 The company identified as the business references must submit the Reference Questionnaire directly to the Purchasing Division.
- 5.3.5 It is the vendor's responsibility to ensure that completed forms are received by the Purchasing Division on or before the deadline as specified in *Section 9, RFP Timeline* for inclusion in the evaluation process. Reference Questionnaires not

received, or not complete, may adversely affect the vendor's score in the evaluation process.

- 5.3.6 The State reserves the right to contact and verify any and all references listed regarding the quality and degree of satisfaction for such performance.

5.4 VENDOR STAFF RESUMES

A resume must be completed for each proposed key personnel responsible for performance under any contract resulting from this RFP per *Attachment G, Proposed Staff Resume*.

6. COST

Vendors must provide the administrative service markup fee to be charged for recruiting an individual and the markup fee for direct referrals from the agency. Clearly specify the costs and nature of all expenses included in the markup fee. *Refer to Attachment H, Cost Schedule*.

7. FINANCIAL

7.1 PAYMENT

- 7.1.1 Upon review and acceptance by the State, payments for invoices are normally made within 45 – 60 days of receipt, providing all required information, documents and/or attachments have been received.
- 7.1.2 Pursuant to NRS 227.185 and NRS 333.450, the State shall pay claims for supplies, materials, equipment and services purchased under the provisions of this RFP electronically, unless determined by the State Controller that the electronic payment would cause the payee to suffer undue hardship or extreme inconvenience.

7.2 BILLING

- 7.2.1 The State does not issue payment prior to receipt of goods or services.
- 7.2.2 The vendor must bill the State as outlined in the approved contract and/or payment schedule.
- 7.2.3 Vendors may propose an alternative payment option. Alternative payment options must be listed on *Attachment I, Cost Proposal Certification of Compliance with Terms and Conditions of the RFP*. Alternative payment options will be considered if deemed in the best interest of the State, project or service solicited herein.
- 7.2.4 Contractor may impose a cancellation charge for an assignment cancelled by an agency later than 3:00 p.m. on the day preceding scheduled arrival of temporarily assigned individuals. Such charge must not exceed two (2) hours of billable time for the job classification requested by the agency. Regarding the cancellation of an assignment standard employee eligibility and references will not be the

responsibility of the State; other background checks requested by the agency may be charged to the agency.

- 7.2.5 The cancellation charge amount may only be applied once per cancelled assignment regardless of the length of the assignment.
- 7.2.6 Contractor will not bill a cancellation charge for the dismissal of a temporarily assigned individual who is deemed unsatisfactory by the agency.
- 7.2.7 Advanced payments will not be made for temporarily assigned individuals.
- 7.2.8 With the exception as noted in *Section 4.3.7*, using agencies will be billed by the contractor for services rendered within their agency. The State will not be responsible for any mileage incurred by the temporarily assigned individual in traveling to or from the designated work location, nor will the State be responsible for any costs associated with parking.
- 7.2.9 Temporarily assigned individuals will not work overtime unless approved in advance and in writing by the agency. While the requirement of prior approval should be consistent with agencies, it is recognized that prior approval cannot always be obtained. Overtime worked without prior written authorization may be subject to non-payment. This requirement should be at the requesting agency's discretion. Overtime hours will be billed at one and a half (1.5) times the hourly rates for the temporary assignment.
- 7.2.10 Student Worker and Temporary Aid I would receive overtime pay after eight (8) hours in any given day per Nevada law. However, the requesting agency may have the temporary employee sign a flex agreement that the employee can flex time within a given week and not get paid for overtime.
- 7.2.11 Contractor must provide timesheets for their employees, signed by both the temporarily assigned individual and the agency representative. All signatures must be legible with the name of the signing party printed beneath their signature. Contractor must pay temporarily assigned individuals via check or direct deposit within five (5) working days of the timesheet submission. It will be the agency's decision if they will accept web-based timekeeping and supervisor authorization.
- 7.2.12 Invoices
 - 7.2.12.1 Contractor invoices must be submitted on a monthly basis directly to the agency for the periods covering the 1st through the end of the month.
 - 7.2.12.2 Invoices must include the appropriate timesheets and any other pertinent documentation (i.e., travel claim forms, receipts).
 - 7.2.12.3 Invoices shall not include time that is not for the specific reporting period. If by chance an employee turns in a late timesheet, outside of the reporting period, a separate invoice would need to be submitted for the late time period.

8. WRITTEN QUESTIONS AND ANSWERS

In lieu of a pre-proposal conference, the Purchasing Division will accept questions and/or comments in writing regarding this RFP as noted below:

8.1 QUESTIONS AND ANSWERS

- 8.1.1 The RFP Question Submittal Form is located on the Solicitation Opportunities webpage at <http://purchasing.nv.gov>. Select the Solicitation Status, Questions dropdown and then scroll to the RFP number and the "Question" link.
- 8.1.2 The deadline for submitting questions is as specified in *Section 9, RFP Timeline*.
- 8.1.3 All questions and/or comments will be addressed in writing. An email notification that the amendment has been posted to the Purchasing website will be issued on or about the date specified in *Section 9, RFP Timeline*.

9. RFP TIMELINE

The following represents the proposed timeline for this project. All times stated are Pacific Time (PT). These dates represent a tentative schedule of events. The State reserves the right to modify these dates at any time.

Task	Date/Time
Deadline for submitting questions	12/08/2016@ 12:00 PM
Answers posted to website	On or about 12/12/2016
Deadline for submittal of Reference Questionnaires	No later than 4:30 PM on 12/16/2016
Deadline for submission and opening of proposals	No later than 2:00 PM on 12/20/2016
Evaluation period (approximate time frame)	12/21/2016 – 01/04/2017
Selection of vendor	On or about 01/06/2017
Anticipated BOE approval	03/14/2017
Contract start date (contingent upon BOE approval)	04/01/2017

10. PROPOSAL SUBMISSION REQUIREMENTS, FORMAT AND CONTENT

10.1 GENERAL SUBMISSION REQUIREMENTS

- 10.1.1 Vendors' proposals must be packaged and submitted in counterparts; therefore, vendors must pay close attention to the submission requirements.
- 10.1.2 Proposals will have a technical response, which may be composed of two (2) parts in the event a vendor determines that a portion of their technical response qualifies as "confidential" as defined within *Section 2, Acronyms/Definitions*.

- 10.1.3 If complete responses cannot be provided without referencing confidential information, such confidential information must be provided in accordance with *Section 10.3, Part I B – Confidential Technical and Section 10.5, Part III Confidential Financial Information*.
- 10.1.4 Specific references made to the tab, page, section and/or paragraph where the confidential information can be located must be identified on *Attachment A, Confidentiality and Certification of Indemnification* and comply with the requirements stated in *Section 10.6, Confidentiality of Proposals*.
- 10.1.5 The remaining section is the Cost Proposal.
- 10.1.6 Vendors may submit their proposal broken out into the three (3) sections required, or four (4) sections if confidential technical information is included, in a single box or package for shipping purposes.
- 10.1.7 The required CDs or Flash Drives must contain information as specified in *Section 10.6.4*.
- 10.1.8 Detailed instructions on proposal submission and packaging follows and vendors must submit their proposals as identified in the following sections. Proposals and CDs or Flash Drives that do not comply with the following requirements may be deemed non-responsive and rejected at the State's discretion.
- 10.1.9 All information is to be completed as requested.
- 10.1.10 Each section within the technical proposal and cost proposal must be separated by clearly marked tabs with the appropriate section number and title as specified.
- 10.1.11 Although it is a public opening, only the names of the vendors submitting proposals will be announced per NRS 333.335(6). Technical and cost details about proposals submitted will not be disclosed. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFP opening is available. If special arrangements are necessary, please notify the Purchasing Division designee as soon as possible and at least two (2) days in advance of the opening.
- 10.1.12 If discrepancies are found between two (2) or more copies of the proposal, the master copy will provide the basis for resolving such discrepancies. If one (1) copy of the proposal is not clearly marked "MASTER," the State may reject the proposal. However, the State may at its sole option, select one (1) copy to be used as the master.
- 10.1.13 For ease of evaluation, the proposal must be presented in a format that corresponds to and references sections outlined within this RFP and must be presented in the same order. Written responses must be in *bold/italics* and placed immediately following the applicable RFP question, statement and/or section. Exceptions/assumptions to this may be considered during the evaluation process.

- 10.1.14 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

Unnecessarily elaborate responses beyond what is sufficient to present a complete and effective response to this RFP are not desired and may be construed as an indication of the proposer's lack of environmental and cost consciousness. Unless specifically requested in this RFP, elaborate artwork, corporate brochures, lengthy narratives, expensive paper, specialized binding, and other extraneous presentation materials are neither necessary nor desired.

The State of Nevada, in its continuing efforts to reduce solid waste and to further recycling efforts requests that proposals, to the extent possible and practical:

- 10.1.14.1 Be submitted on recycled paper;
 - 10.1.14.2 Not include pages of unnecessary advertising;
 - 10.1.14.3 Be printed on both sides of each sheet of paper; and
 - 10.1.14.4 Be contained in re-usable binders or binder clips as opposed to spiral or glued bindings.
- 10.1.15 For purposes of addressing questions concerning this RFP, the sole contact will be the Purchasing Division as specified on Page 1 of this RFP. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP will not answer questions or otherwise discuss the contents of this RFP with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal per NAC 333.155(3). This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- 10.1.16 Any vendor who believes proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Purchasing Division. To be considered, a request for review must be received no later than the deadline for submission of questions.

The Purchasing Division shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the RFP.

Administrative review of technical or contractual requirements shall include the reason for the request, supported by factual information, and any proposed changes to the requirements.

10.1.17 If a vendor changes any material RFP language, vendor's response may be deemed non-responsive per NRS 333.311.

10.2 PART I A – TECHNICAL PROPOSAL

10.2.1 The technical proposal must include:

10.2.1.1 One (1) original marked "MASTER"; and

10.2.1.2 Four (4) identical copies.

10.2.2 The technical proposal *must not include* confidential technical information (refer to *Section 10.3, Part IB, Confidential Technical*) or cost and/or pricing information. Cost and/or pricing information contained in the technical proposal may cause the proposal to be rejected.

10.2.3 Format and Content

10.2.3.1 Tab I – Title Page

The title page must include the following:

Part IA – Technical Proposal	
RFP Title:	Temporary Employment Services
RFP:	3296
Vendor Name:	
Address:	
Opening Date:	December 20, 2016
Opening Time:	2:00 PM

10.2.3.2 Tab II – Table of Contents

An accurate and updated table of contents must be provided.

10.2.3.3 Tab III – Vendor Information Sheet

The vendor information sheet completed with an original signature by an individual authorized to bind the organization must be included in this tab.

10.2.3.4 Tab IV – State Documents

The State documents tab must include the following:

A. The signature page from all amendments with an original signature by an individual authorized to bind the organization.

B. Attachment A – Confidentiality and Certification of Indemnification with an original signature by an individual authorized to bind the organization.

- C. Attachment C – Vendor Certifications with an original signature by an individual authorized to bind the organization.
- D. Attachment K – Certification Regarding Lobbying with an original signature by an individual authorized to bind the organization.
- E. Copies of any vendor licensing agreements and/or hardware and software maintenance agreements.
- F. Copies of applicable certifications and/or licenses.

10.2.3.5 Tab V - Attachment B, Technical Proposal Certification of Compliance with Terms and Conditions of RFP

- A. *Attachment B* with an original signature by an individual authorized to bind the organization must be included in this tab.
- B. If the exception and/or assumption require a change in the terms or wording of any section of the RFP, the contract, or any incorporated documents, vendors *must* provide the specific language that is being proposed on *Attachment B*.
- C. Only technical exceptions and/or assumptions should be identified on *Attachment B*.
- D. The State will not accept additional exceptions and/or assumptions if submitted after the proposal submission deadline. If vendors do not specify any exceptions and/or assumptions in detail at time of proposal submission, the State will not consider any additional exceptions and/or assumptions during negotiations.

10.2.3.6 Tab VI – Section 3 – Scope of Work

Vendors must place their written response(s) in *bold/italics* immediately following the applicable RFP question, statement and/or section.

10.2.3.7 Tab VII– Section 4 – Company Background and References

Vendors must place their written response(s) in *bold/italics* immediately following the applicable RFP question, statement and/or section. This section must also include the requested information in *Section 5.2, Subcontractor Information*, if applicable.

10.2.3.8 Tab VIII – Attachment G – Proposed Staff Resume

A. Vendors must include all proposed staff resumes per *Section 5.4, Vendor Staff Resumes* in this section.

B. This section should also include any subcontractor proposed staff resumes, if applicable.

10.2.3.9 Tab IX – Other Informational Material

Vendors must include any other applicable reference material in this section clearly cross referenced with the proposal.

10.3 PART IB – CONFIDENTIAL TECHNICAL PROPOSAL

10.3.1 Vendors only need to submit Part IB if the proposal includes any confidential technical information (*Refer to Attachment A, Confidentiality and Certification of Indemnification*).

10.3.2 The confidential technical proposal must include:

- 10.3.2.1 One (1) original marked “MASTER”; and
- 10.3.2.2 Four (4) copies.

10.3.3 Format and Content

10.3.3.1 Tab I – Title Page

The title page must include the following:

Part IB – Confidential Technical Proposal	
RFP Title:	Temporary Employment Services
RFP:	3296
Vendor Name:	
Address:	
Opening Date:	December 20, 2016
Opening Time:	2:00 PM

10.3.3.2 Tabs – Confidential Technical

Vendors must have tabs in the confidential technical information that cross reference back to the technical proposal, as applicable.

10.4 PART II – COST PROPOSAL

10.4.1 The cost proposal must include:

- 10.4.1.1 One (1) original marked “MASTER”; and
- 10.4.1.2 Four (4) identical copies.

10.4.2 The cost proposal must not be marked "confidential". Only information that is deemed proprietary per NRS 333.020(5)(a) may be marked as "confidential".

10.4.3 Format and Content

10.4.3.1 Tab I – Title Page

The title page must include the following:

Part II – Cost Proposal	
RFP Title:	Temporary Employment Services
RFP:	3296
Vendor Name:	
Address:	
Opening Date:	December 20, 2016
Opening Time:	2:00 PM

10.4.3.2 Tab II – Cost Proposal

Vendor's response for the cost proposal must be included in this tab.

10.4.3.3 Tab III – Attachment I, Cost Proposal Certification of Compliance with Terms and Conditions of RFP

- A. *Attachment I* with an original signature by an individual authorized to bind the organization must be included in this tab.
- B. In order for any cost exceptions and/or assumptions to be considered, vendors *must* provide the specific language that is being proposed in *Attachment I*.
- C. Only cost exceptions and/or assumptions should be identified on *Attachment I*.
- D. *Do not restate* the technical exceptions and/or assumptions on this form.
- E. The State will not accept additional exceptions and/or assumptions if submitted after the proposal submission deadline. If vendors do not specify any exceptions and/or assumptions in detail at time of proposal submission, the State will not consider any additional exceptions and/or assumptions during negotiations.

10.5 PART III – CONFIDENTIAL FINANCIAL INFORMATION

10.5.1 The confidential financial information part must include:

- 10.5.1.1 One (1) original marked "MASTER"; and
- 10.5.1.2 One (1) identical copy.

10.5.2 Format and Content

10.5.2.1 Tab I – Title Page

The title page must include the following:

Part III – Confidential Financial Information	
RFP Title:	Temporary Employment Services
RFP:	3296
Vendor Name:	
Address:	
Opening Date:	December 20, 2016
Opening Time:	2:00 PM

10.5.2.2 Tab II – Financial Information and Documentation

Vendors must place the information required per *Section 5.1.11* in this tab.

10.6 CONFIDENTIALITY OF PROPOSALS

- 10.6.1 As a potential contractor of a public entity, vendors are advised that full disclosure is required by law.
- 10.6.2 Vendors are required to submit written documentation in accordance with *Attachment A, Confidentiality and Certification of Indemnification* demonstrating the material within the proposal marked "confidential" conforms to NRS §333.333, which states "Only specific parts of the proposal may be labeled a "trade secret" as defined in NRS §600A.030(5)". Not conforming to these requirements will cause your proposal to be deemed non-compliant and will not be accepted by the State of Nevada.
- 10.6.3 Vendors acknowledge that material not marked as "confidential" will become public record upon contract award.
- 10.6.4 The required CDs or Flash Drives must contain the following:
 - 10.6.4.1 One (1) "Master" CD or Flash Drive with an exact duplicate of the technical and cost proposal contents only.
 - A. The electronic files must include all required sections of the technical and cost proposal.
 - B. The CD or Flash Drive must be packaged in a case and clearly labeled as follows:

Master CD or Flash Drive	
RFP No:	3296
Vendor Name:	
Contents:	Part IA – Technical Proposal Part IB – Confidential Technical Proposal Part II – Cost Proposal

10.6.4.2 One (1) “Public Records CD or Flash Drive” which must include the technical and cost proposal contents to be used for public records requests.

- A. This CD or Flash Drive **must not** contain any confidential or proprietary information.
- B. All electronic files **must** be saved in “PDF” format, with one file named Part IA – Technical Proposal and one (1) file named part II – Cost Proposal.
- C. The CD or Flash Drive must be packaged in a case and clearly labeled as follows:

Public Records CD or Flash Drive	
RFP No:	3296
Vendor Name:	
Contents:	Part IA – Technical Proposal for Public Records Request Part II – Cost Proposal for Public Records Request

10.6.5 The Public Records submitted on the CD or Flash Drive will be posted to the Purchasing Website upon the Notice of Award.

10.6.6 It is the vendor’s responsibility to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation.

10.6.7 Failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by release of said information.

10.7 PROPOSAL PACKAGING

10.7.1 If the separately sealed technical and cost proposals as well as confidential technical information and financial documentation, marked as required, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and be clearly marked as follows.

10.7.2 Vendors are encouraged to utilize the copy/paste feature of word processing software to replicate these labels for ease and accuracy of proposal packaging.

Annette Morfin, Purchasing Officer State of Nevada, Purchasing Division 515 E. Musser Street, Suite 300 Carson City, NV 89701	
RFP:	3296
OPENING DATE:	December 20, 2016
OPENING TIME:	2:00 PM
FOR:	Temporary Employment Services
VENDOR'S NAME:	

- 10.7.3 Proposals *must be received at the address referenced below no later than the date and time specified in Section 9, RFP Timeline*. Proposals that do not arrive by proposal opening time and date *will not be accepted*. Vendors may submit their proposal any time prior to the above stated deadline.
- 10.7.4 The State will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared.
- 10.7.5 Email, facsimile, or telephone proposals will NOT be considered; however, at the State's discretion, the proposal may be submitted all or in part on electronic media, as requested within the RFP document. Proposal may be modified by email, facsimile, or written notice provided such notice is received prior to the opening of the proposals.
- 10.7.6 The technical proposal shall be submitted to the State in a sealed package and be clearly marked as follows:

Annette Morfin, Purchasing Officer State of Nevada, Purchasing Division 515 E. Musser Street, Suite 300 Carson City, NV 89701	
RFP:	3296
COMPONENT:	PART IA – TECHNICAL PROPOSAL
OPENING DATE:	December 20, 2016
OPENING TIME:	2:00 PM
FOR:	Temporary Employment Services
VENDOR'S NAME:	

- 10.7.7 If applicable, confidential technical information shall be submitted to the State in a sealed package and be clearly marked as follows:

Annette Morfin, Purchasing Officer State of Nevada, Purchasing Division 515 E. Musser Street, Suite 300 Carson City, NV 89701	
RFP:	3296
COMPONENT:	PART IB – CONFIDENTIAL TECHNICAL PROPOSAL
OPENING DATE:	December 20, 2016
OPENING TIME:	2:00 PM
FOR:	Temporary Employment Services
VENDOR'S NAME:	

- 10.7.8 The cost proposal shall be submitted to the State in a sealed package and be clearly marked as follows:

Annette Morfin, Purchasing Officer State of Nevada, Purchasing Division 515 E. Musser Street, Suite 300 Carson City, NV 89701	
RFP:	3296
COMPONENT:	PART II – COST PROPOSAL
OPENING DATE:	December 20, 2016
OPENING TIME:	2:00 PM
FOR:	Temporary Employment Services
VENDOR'S NAME:	

- 10.7.9 Confidential financial information shall be submitted to the State in a sealed package and be clearly marked as follows:

Annette Morfin, Purchasing Officer State of Nevada, Purchasing Division 515 E. Musser Street, Suite 300 Carson City, NV 89701	
RFP:	3296
COMPONENT:	PART III - CONFIDENTIAL FINANCIAL INFORMATION
OPENING DATE:	December 20, 2016
OPENING TIME:	2:00 PM
FOR:	Temporary Employment Services
VENDOR'S NAME:	

- 10.7.10 The CDs or Flash Drives shall be submitted to the State in a sealed package and be clearly marked as follows:

Annette Morfin, Purchasing Officer State of Nevada, Purchasing Division 515 E. Musser Street, Suite 300 Carson City, NV 89701	
RFP:	3296
COMPONENT:	CDs or Flash Drives
OPENING DATE:	December 20, 2016
OPENING TIME:	2:00 PM
FOR:	Temporary Employment Services
VENDOR'S NAME:	

11. PROPOSAL EVALUATION AND AWARD PROCESS

The information in this section does not need to be returned with the vendor's proposal.

- 11.1 Proposals shall be consistently evaluated and scored in accordance with NRS 333.335(3) based upon the following criteria:

- 11.1.1 Demonstrated competence
- 11.1.2 Experience in performance of comparable engagements
- 11.1.3 Conformance with the terms of this RFP
- 11.1.4 Expertise and availability of key personnel
- 11.1.5 Cost

Note: Financial stability will be scored on a pass/fail basis.

Proposals shall be kept confidential until a contract is awarded.

- 11.2 The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada per NRS 333.335(5).
- 11.3 Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor's prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. Refer generally to NRS 333.335.
- 11.4 Clarification discussions may, at the State's sole option, be conducted with vendors who submit proposals determined to be acceptable and competitive per NAC 333.165. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing vendors. Any modifications made to the original proposal during the best and final negotiations will be included as part of the contract.
- 11.5 A Notification of Intent to Award shall be issued in accordance with NAC 333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Board of Examiners, when required. Negotiations shall be confidential and not subject to disclosure to competing vendors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the State upon written notice to all vendors may negotiate a contract with the next highest scoring vendor or withdraw the RFP.

- 11.6 Any contract resulting from this RFP shall not be effective unless and until approved by the Nevada State Board of Examiners (NRS 333.700).

12. TERMS AND CONDITIONS

12.1 PROCUREMENT AND PROPOSAL TERMS AND CONDITIONS

*The information in this section does not need to be returned with the vendor's proposal. However, if vendors have any exceptions and/or assumptions to any of the terms and conditions in this section, they **must** identify in detail their exceptions and/or assumptions on **Attachment B, Technical Proposal Certification of Compliance**. In order for any exceptions and/or assumptions to be considered they **MUST** be documented in **Attachment B**. The State will not accept additional exceptions and/or assumptions if submitted after the proposal submission deadline.*

- 12.1.1 This procurement is being conducted in accordance with NRS Chapter 333 and NAC Chapter 333.
- 12.1.2 The State reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the State to do so.
- 12.1.3 The State reserves the right to waive informalities and minor irregularities in proposals received.
- 12.1.4 For ease of responding to the RFP, vendors are encouraged to download the RFP from the Purchasing Division's website at <http://purchasing.nv.gov>.
- 12.1.5 The failure to separately package and clearly mark **Part IB and Part III** – which contains confidential information, trade secrets and/or proprietary information, shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.
- 12.1.6 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements and lease purchase agreements. The omission of these documents renders a proposal non-responsive.
- 12.1.7 The State reserves the right to reject any or all proposals received prior to contract award (NRS 333.350).
- 12.1.8 The State reserves the right to limit the scope of work prior to award, if deemed in the best interest of the State. (NRS 333.350)
- 12.1.9 The State shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the State of Nevada after all factors have been evaluated (NRS 333.335).

- 12.1.10 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.
- 12.1.11 A description of how any and all services and/or equipment will be used to meet the requirements of this RFP shall be given, in detail, along with any additional informational documents that are appropriately marked.
- 12.1.12 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 12.1.13 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 12.1.14 Proposals from employees of the State of Nevada will be considered in as much as they do not conflict with the State Administrative Manual, NRS Chapter 281 and NRS Chapter 284.
- 12.1.15 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered except as authorized by NRS 333.350(3).
- 12.1.16 Prices offered by vendors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their proposal.
- 12.1.17 The State is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the proposal or any other such expenses incurred by the vendor in responding to the RFP, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the State.
- 12.1.18 Proposals submitted per proposal submission requirements become the property of the State, selection or rejection does not affect this right; proposals will be returned only at the State's option and at the vendor's request and expense. The masters of the technical proposal, confidential technical proposal, cost proposal and confidential financial information of each response shall be retained for official files.
- 12.1.19 The Nevada Attorney General will not render any type of legal opinion regarding this transaction.
- 12.1.20 Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and Chapter 333 of the Nevada Administrative Code.
- 12.1.21 NRS 333.290 grants a preference to materials and supplies that can be supplied from a "charitable, reformatory or penal institution of the State" that produces such goods or services through the labor of inmates. The Administrator reserves

the right to secure these goods, materials or supplies from any such eligible institution, if they can be secured of equal quality and at prices not higher than those of the lowest acceptable bid received in response to this solicitation. In addition, NRS 333.410 grants a preference to commodities or services that institutions of the State are prepared to supply through the labor of inmates. The Administrator will apply the preferences stated in NRS 333.290 and 333.410 to the extent applicable.

12.2 CONTRACT TERMS AND CONDITIONS

*The information in this section does not need to be returned with the vendor's proposal. However, if vendors have any exceptions and/or assumptions to any of the terms and conditions in this section, they **must** identify in detail their exceptions and/or assumptions on Attachment B, Technical Proposal Certification of Compliance. In order for any exceptions and/or assumptions to be considered they **MUST** be documented in Attachment B. The State will not accept additional exceptions and/or assumptions if submitted after the proposal submission deadline.*

- 12.2.1 The awarded vendor will be the sole point of contract responsibility. The State will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.
- 12.2.2 The awarded vendor must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule of the contract form appended to this RFP. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.
- 12.2.3 The State will not be liable for Federal, State, or Local excise taxes per NRS 372.325.
- 12.2.4 *Attachment B and Attachment I* of this RFP shall constitute an agreement to *all* terms and conditions specified in the RFP, except such terms and conditions that the vendor expressly excludes. Exceptions and assumptions will be taken into consideration as part of the evaluation process; however, vendors *must* be specific. If vendors do not specify any exceptions and/or assumptions at time of proposal submission, the State will not consider any additional exceptions and/or assumptions during negotiations.
- 12.2.5 The State reserves the right to negotiate final contract terms with any vendor selected per NAC 333.170. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, any modifications and clarifications to the awarded vendor's proposal, the RFP,

and the awarded vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

- 12.2.6 Local governments (as defined in NRS 332.015) are intended third party beneficiaries of any contract resulting from this RFP and any local government may join or use any contract resulting from this RFP subject to all terms and conditions thereof pursuant to NRS 332.195. The State is not liable for the obligations of any local government which joins or uses any contract resulting from this RFP.
- 12.2.7 Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. 1352.
- 12.2.8 Pursuant to NRS Chapter 613 in connection with the performance of work under this contract, the contractor agrees not to unlawfully discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation apprenticeship.

The contractor further agrees to insert this provision in all subcontracts, hereunder, except subcontracts for standard commercial supplies or raw materials.

12.3 PROJECT TERMS AND CONDITIONS

*The information in this section does not need to be returned with the vendor's proposal. However, if vendors have any exceptions and/or assumptions to any of the terms and conditions in this section, they MUST identify in detail their exceptions and/or assumptions on **Attachment B, Technical Proposal Certification of Compliance**. In order for any exceptions and/or assumptions to be considered they MUST be documented in **Attachment B**. The State will not accept additional exceptions and/or assumptions if submitted after the proposal submission deadline.*

12.3.1 Award of Related Contracts

- 12.3.1.1 The State may undertake or award supplemental contracts for work related to this project or any portion thereof. The contractor shall be bound to cooperate fully with such other contractors and the State in all cases.
- 12.3.1.2 All subcontractors shall be required to abide by this provision as a condition of the contract between the subcontractor and the prime contractor.

12.3.2 State Owned Property

The awarded vendor shall be responsible for the proper custody and care of any State owned property furnished by the State for use in connection with the performance of the contract and will reimburse the State for any loss or damage.

12.3.3 Travel

If travel is required, the following processes must be followed:

12.3.3.1 All travel must be approved in writing in advance by the Department.

12.3.3.2 Requests for reimbursement of travel expenses must be submitted on the State Claim for Travel Expense Form with original receipts for all expenses.

12.3.3.3 The travel expense form, with original signatures, must be submitted with the vendor's invoice.

12.3.3.4 Vendor will be reimbursed travel expenses and per diem at the rates allowed for State employees at the time travel occurs.

12.3.3.5 The State is not responsible for payment of any premium, deductible or assessments on insurance policies purchased by vendor for a rental vehicle.

12.3.4 Right to Publish

12.3.4.1 All requests for the publication or release of any information pertaining to this RFP and any subsequent contract must be in writing and sent to the Administrator of Nevada State Purchasing or designee.

12.3.4.2 No announcement concerning the award of a contract as a result of this RFP can be made without prior written approval of the Administrator of Nevada State Purchasing or designee.

12.3.4.3 As a result of the selection of the contractor to supply the requested services, the State is neither endorsing nor suggesting the contractor is the best or only solution.

12.3.4.4 The contractor shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representation of any State facility, except with the specific advance written authorization of the Administrator of Nevada State Purchasing or designee.

12.3.4.5 Throughout the term of the contract, the contractor must secure the written approval of the State per *Section 12.3.4.2* prior to the release of any information pertaining to work or activities covered by the contract.

13. SUBMISSION CHECKLIST

This checklist is provided for vendor's convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and not considered for contract award.

Part IA – Technical Proposal Submission Requirements		Completed
Required number of Technical Proposals per submission requirements		
Tab I	Title Page	
Tab II	Table of Contents	
Tab III	Vendor Information Sheet	
Tab IV	State Documents	
Tab V	Attachment B – Technical Proposal Certification of Compliance with Terms and Conditions of RFP	
Tab VI	Section 3 – Scope of Work	
Tab VII	Section 4 – Company Background and References	
Tab VIII	Attachment G – Proposed Staff Resume(s)	
Tab IX	Other Informational Material	
Part IB – Confidential Technical Submission Requirements		
Required number of Confidential Technical Proposals per submission requirements		
Tab I	Title Page	
Tabs	Appropriate tabs and information that cross reference back to the technical proposal	
Part II – Cost Proposal Submission Requirements		
Required number of Cost Proposals per submission requirements		
Tab I	Title Page	
Tab II	Cost Proposal	
Tab III	Attachment I - Cost Proposal Certification of Compliance with Terms and Conditions of RFP	
Part III – Confidential Financial Information Submission Requirements		
Required number of Confidential Financial Proposals per submission requirements		
Tab I	Title Page	
Tab II	Financial Information and Documentation	
CDs or Flash Drives Required		
One (1)	Master CD or Flash Drive with the technical and cost proposal contents only	
One (1)	Public Records CD or Flash Drive with the technical and cost proposal contents only	
Reference Questionnaire Reminders		
Send out Reference Forms for Vendor (with Part A completed)		
Send out Reference Forms for proposed Subcontractors (with Part A and Part B completed, if applicable)		

ATTACHMENT A – CONFIDENTIALITY AND CERTIFICATION OF INDEMNIFICATION

Submitted proposals, which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “confidential” will not be accepted by the State of Nevada. Pursuant to NRS 333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS 600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors’ technical and cost proposals become public information.

In accordance with the Submittal Instructions of this RFP, vendors are requested to submit confidential information in separate binders marked “Part I B Confidential Technical” and “Part III Confidential Financial”.

The State will not be responsible for any information contained within the proposal. Should vendors not comply with the labeling and packing requirements, proposals will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains Confidential Information, Trade Secrets and/or Proprietary information as defined in *Section 2 “ACRONYMS/DEFINITIONS.”*

Please initial the appropriate response in the boxes below and provide the justification for confidential status.

Part IB – Confidential Technical Information			
YES		NO	
Justification for Confidential Status			

A Public Records CD or Flash Drive has been included for the Technical and Cost Proposal			
YES		NO (See note below)	
<i>Note: By marking “NO” for Public Record CD or Flash Drive included, you are authorizing the State to use the “Master CD or Flash Drive” for Public Records requests.</i>			

Part III – Confidential Financial Information			
YES		NO	
Justification for Confidential Status			

Company Name

Signature

Print Name

Date

This document must be submitted in Tab IV of vendor’s technical proposal

**ATTACHMENT B – TECHNICAL PROPOSAL CERTIFICATION OF COMPLIANCE
WITH TERMS AND CONDITIONS OF RFP**

I have read, understand and agree to comply with *all* the terms and conditions specified in this Request for Proposal.

YES _____ I agree to comply with the terms and conditions specified in this RFP.

NO _____ I do not agree to comply with the terms and conditions specified in this RFP.

If the exception and/or assumption require a change in the terms in any section of the RFP, the contract, or any incorporated documents, vendors *must* provide the specific language that is being proposed in the tables below. If vendors do not specify in detail any exceptions and/or assumptions at time of proposal submission, the State will not consider any additional exceptions and/or assumptions during negotiations.

Company Name

Signature

Print Name

Date

Vendors MUST use the following format. Attach additional sheets if necessary.

EXCEPTION SUMMARY FORM

EXCEPTION #	RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (Complete detail regarding exceptions must be identified)

ASSUMPTION SUMMARY FORM

ASSUMPTION #	RFP SECTION NUMBER	RFP PAGE NUMBER	ASSUMPTION (Complete detail regarding assumptions must be identified)

This document must be submitted in Tab V of vendor's technical proposal

ATTACHMENT C – VENDOR CERTIFICATIONS

Vendor agrees and will comply with the following:

- (1) Any and all prices that may be charged under the terms of the contract do not and will not violate any existing federal, State or municipal laws or regulations concerning discrimination and/or price fixing. The vendor agrees to indemnify, exonerate and hold the State harmless from liability for any such violation now and throughout the term of the contract.
- (2) All proposed capabilities can be demonstrated by the vendor.
- (3) The price(s) and amount of this proposal have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or potential vendor.
- (4) All proposal terms, including prices, will remain in effect for a minimum of 180 days after the proposal due date. In the case of the awarded vendor, all proposal terms, including prices, will remain in effect throughout the contract negotiation process.
- (5) No attempt has been made at any time to induce any firm or person to refrain from proposing or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- (6) All conditions and provisions of this RFP are deemed to be accepted by the vendor and incorporated by reference in the proposal, except such conditions and provisions that the vendor expressly excludes in the proposal. Any exclusion must be in writing and included in the proposal at the time of submission.
- (7) Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting a proposal in response to this RFP, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a vendor's proposal. An award will not be made where a conflict of interest exists. The State will determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.
- (8) All employees assigned to the project are authorized to work in this country.
- (9) The company has a written equal opportunity policy that does not discriminate in employment practices with regard to race, color, national origin, physical condition, creed, religion, age, sex, marital status, sexual orientation, developmental disability or handicap.
- (10) The company has a written policy regarding compliance for maintaining a drug-free workplace.
- (11) Vendor understands and acknowledges that the representations within their proposal are material and important, and will be relied on by the State in evaluation of the proposal. Any vendor misrepresentations shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.
- (12) Vendor must certify that any and all subcontractors comply with Sections 7, 8, 9, and 10, above.
- (13) The proposal must be signed by the individual(s) legally authorized to bind the vendor per NRS 333.337.

Vendor Company Name

Vendor Signature

Print Name

Date

This document must be submitted in Tab IV of vendor's technical proposal

ATTACHMENT D – CONTRACT FORM

The following State Contract Form is provided as a courtesy to vendors interested in responding to this RFP. Please review the terms and conditions in this form, as this is the standard contract used by the State for all services of independent contractors. It is not necessary for vendors to complete the Contract Form with their proposal.

If exceptions and/or assumptions require a change to the Contract Form, vendors *must* provide the specific language that is being proposed on *Attachment B, Technical Proposal Certification of Compliance with Terms and Conditions of RFP*.

Please pay particular attention to the insurance requirements, as specified in *Paragraph 16 of the embedded contract* and *Attachment E, Insurance Schedule for RFP 3296*.



Contract Form.doc

To open the document, double click on the icon.

If you are unable to access the above inserted file once you have doubled clicked on the icon, please contact Nevada State Purchasing at srvpurch@admin.nv.gov for an emailed copy.

ATTACHMENT E – INSURANCE SCHEDULE FOR RFP 3296

The following Insurance Schedule is provided as a courtesy to vendors interested in responding to this RFP. Please review the terms and conditions in the Insurance Schedule, as this is the standard insurance schedule used by the State for all services of independent contractors.

If exceptions and/or assumptions require a change to the Insurance Schedule, vendors *must* provide the specific language that is being proposed on *Attachment B, Technical Proposal Certification of Compliance with Terms and Conditions of RFP*.



Insurance Schedule

To open the document, double click on the icon.

If you are unable to access the above inserted file once you have double clicked on the icon, please contact Nevada State Purchasing at srvpurch@admin.nv.gov for an emailed copy.

ATTACHMENT F – REFERENCE QUESTIONNAIRE

The State of Nevada, as a part of the RFP process, requires proposing vendors to submit business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

INSTRUCTIONS TO PROPOSING VENDOR	
1.	Proposing vendor or vendor's proposed subcontractor MUST complete Part A and/or Part B of the Reference Questionnaire.
2.	Proposing vendor MUST send the Reference Questionnaire to EACH business reference listed for completion of Part D, Part E and Part F.
3.	Business reference is requested to submit the completed Reference Questionnaire via email or facsimile to: <div style="text-align: center;"> State of Nevada, Purchasing Division Subject: <i>RFP 3296</i> Attention: <i>Purchasing Division</i> Email: <i>rfpdocs@admin.nv.gov</i> Fax: <i>775-684-0188</i> </div> Please reference the RFP number in the subject line of the email or on the fax.
4.	The completed Reference Questionnaire MUST be received <i>no later than 4:30 PM PT December 16, 2016</i>
5.	Business references are NOT to return the Reference Questionnaire to the Proposer (Vendor).
6.	In addition to the Reference Questionnaire, the State may contact any and all business references by phone for further clarification, if necessary.
7.	Questions regarding the Reference Questionnaire or process should be directed to the individual identified on the RFP cover page.
8.	Reference Questionnaires not received, or not complete, may adversely affect the vendor's score in the evaluation process.



To open the document, double click on the icon.

If you are unable to access the above inserted file once you have doubled clicked on the icon, please contact Nevada State Purchasing at srvpurch@admin.nv.gov for an emailed copy.

ATTACHMENT G – PROPOSED STAFF RESUME

A resume must be completed for all proposed prime contractor staff and proposed subcontractor staff using the State format.



Proposed Staff
Resume

To open the document, double click on the icon.

*If you are unable to access the above inserted file
once you have doubled clicked on the icon,
please contact Nevada State Purchasing at
srvpurch@admin.nv.gov for an emailed copy.*

ATTACHMENT H – COST SCHEDULE

Vendor _____

Vendors must fill in the blanks for the administrative fee, any applicable vendor contribution taxes, and if applicable, benefit costs to be charged for each temporary position classification. *Refer to Attachment M – Listing of Position Classifications & Pay Rate* for the position classifications and approximate employee hourly rate; this list is not meant to be all inclusive. The salaries listed are estimates only. The administrative fee should be calculated on the hourly pay rate only. Please complete the following:

Agency Recruitment Administrative Fee: The requesting agency refers an individual to the contractor; the contractor does not do the recruitment.	
Contractor Recruitment Administrative Fee: The contractor does the recruitment on behalf of the requesting agency.	
Employers Tax Contribution: Applicable employer taxes.	
Benefit Cost: Cost of benefits provided to the temporary employee.	

The State is requesting an Administrative Fee, which would include the vendor's cost and profit, separate from any applicable employer taxes or benefit costs. There will be **no fee** incurred to the State should the temp employee accept a permanent position to the State regardless of the timeframe.

**ATTACHMENT I – COST PROPOSAL CERTIFICATION OF COMPLIANCE
WITH TERMS AND CONDITIONS OF RFP**

I have read, understand and agree to comply with *all* the terms and conditions specified in this Request for Proposal.

YES _____ I agree to comply with the terms and conditions specified in this RFP.

NO _____ I do not agree to comply with the terms and conditions specified in this RFP.

If the exception and/or assumption require a change in the terms in any section of the RFP, the contract, or any incorporated documents, vendors *must* provide the specific language that is being proposed in the tables below. If vendors do not specify in detail any exceptions and/or assumptions at time of proposal submission, the State will not consider any additional exceptions and/or assumptions during negotiations.

Note: Only cost exceptions and/or assumptions should be identified on this attachment. Do not restate the technical exceptions and/or assumptions on this attachment.

Company Name

Signature

Print Name

Date

Vendors MUST use the following format. Attach additional sheets if necessary.

EXCEPTION SUMMARY FORM

EXCEPTION #	RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (Complete detail regarding exceptions must be identified)

ASSUMPTION SUMMARY FORM

ASSUMPTION #	RFP SECTION NUMBER	RFP PAGE NUMBER	ASSUMPTION (Complete detail regarding assumptions must be identified)

**This document must be submitted in Tab III of vendor's cost proposal.
This form MUST NOT be included in the technical proposal.**

ATTACHMENT K – FEDERAL LAWS AND AUTHORITIES

The information in this section does not need to be returned with the vendor's proposal. Following is a list of Federal Laws and Authorities with which the awarded vendor will be required to comply.

ENVIRONMENTAL:

1. Archeological and Historic Preservation Act of 1974, PL 93-291
2. Clean Air Act, 42 U.S.C. 7506(c)
3. Endangered Species Act 16 U.S.C. 1531, ET seq.
4. Executive Order 11593, Protection and Enhancement of the Cultural Environment.
5. Executive Order 11988, Floodplain Management
6. Executive Order 11990, Protection of Wetlands
7. Farmland Protection Policy Act, 7 U.S.C. 4201 ET seq.
8. Fish and Wildlife Coordination Act, PL 85-624, as amended
9. National Historic Preservation Act of 1966, PL 89-665, as amended
10. Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended

ECONOMIC:

1. Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
2. Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans

SOCIAL LEGISLATION

1. Age Discrimination Act, PL 94-135
2. Civil Rights Act of 1964, PL 88-352
3. Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
4. Executive Order 11246, Equal Employment Opportunity
5. Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
6. Rehabilitation Act of 1973, PL 93, 112

MISCELLANEOUS AUTHORITY:

1. Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646
2. Executive Order 12549 – Debarment and Suspension

ATTACHMENT L – QUARTERLY REPORT FORM

YEAR _____ (Check appropriate quarter)

October-December	January-March	April-June	July-September
Vendor Name: _____			
Individual Submitting Report: _____			
Phone Number: _____		Email: _____	
State Agency: _____			
Region (Northern, Southern, or Rural): _____			

This Quarterly Report must be completed for each using agency. Send reports on or before **January 15, April 15, July 15, and October 15** annually throughout the life of contract. Email is the preferred method of submitting quarterly reports.

Email to:
 Attention: Annette Morfin
 Nevada State Purchasing Division
 515 E. Musser Street, Ste. 300
 Carson City NV 89701
 Phone: (775) 684-0185 • Fax: (775) 684-0188
 E-mail Address: amorfin@admin.nv.gov

Amount charged to agency for cancellation fee (as allowed by *Section 7.2.4* of the RFP): _____

Position Title	Billed Hours for Quarter	Hourly Rate Billed for Quarter	Total Invoiced for Quarter
TOTAL			

Insert data for the current quarter only, based on service provided during the quarter for each agency. Report each agency on separate form.

DUPLICATE FORM FOR USE THROUGHOUT THE LIFE OF THE CONTRACT

ATTACHMENT M – LISTING OF POSITION CLASSIFICATIONS & PAY RATE

This listing is not meant to be all inclusive. These are the minimum wage for the position listed. Vendors may access the job descriptions via the Department of Administration, Division of Human Resource Management website <http://hr.nv.gov> under “Class Specifications”.

State Position Classification/Title	Pay Grade	Per Hour Rate Paid to Employee *
Accounting Assistant IV	29	\$17.50 - \$25.59
Accounting Assistant III	27	\$16.13 - \$23.49
Accounting Assistant II	25	\$14.89 - \$21.53
Accounting Assistant I	23	\$13.76 - \$19.79
Administrative Aid	21	\$12.78 - \$18.22
Administrative Assistant IV	29	\$17.50 - \$25.59
Administrative Assistant III	27	\$16.13 - \$23.49
Administrative Assistant II	25	\$14.89 - \$21.53
Administrative Assistant I	23	\$13.76 - \$19.79
Clerical Trainee	20	\$12.28 - \$17.50
Admissions/Records Assistant IV	29	\$17.50 - \$25.59
Admissions/Records Assistant III	27	\$16.13 - \$23.49
Admissions/Records Assistant II	25	\$14.89 - \$21.53
Admissions/Records Assistant I	23	\$13.76 - \$19.79
Craft Worker in Training IV	29	\$17.50 - \$25.59
Craft Worker in Training III	28	\$16.80 - \$24.52
Craft Worker in Training II	27	\$16.13 - \$23.49
Craft Worker in Training I	25	\$14.89 - \$21.53
Curator I	31	\$19.00 - \$27.94
DMV Services Technician IV	29	\$17.50 - \$25.59
DMV Services Technician III	27	\$16.13 - \$23.49
DMV Services Technician II	25	\$14.89 - \$21.53
DMV Services Technician I	23	\$13.76 - \$19.79
Grounds Maintenance Worker IV	24	\$14.34 - \$20.68
Grounds Maintenance Worker III	23	\$13.76 - \$19.79
Grounds Maintenance Worker II	22	\$14.34 - \$20.68
Grounds Maintenance Worker I	20	\$12.28 - \$17.50
Landscape/Architect Assistant I	31	\$19.00 - \$27.94
Legal Assistant	29	\$17.50 - \$25.59
Legal Secretary II	29	\$17.50 - \$25.59
Legal Secretary I	27	\$16.13 - \$23.49

State Position Classification/Title	Pay Grade	Per Hour Rate Paid to Employee *
Legal Secretary Trainee	25	\$14.89 - \$21.53
Library Technician I	27	\$16.13 - \$23.49
Library Assistant III	25	\$14.89 - \$21.53
Library Assistant II	23	\$13.76 - \$19.79
Library Assistant I	21	\$12.78 - \$18.22
Mail Service Clerk II	23	\$13.76 - \$19.79
Mail Service Clerk I	21	\$12.78 - \$18.22
Maintenance Repair Aid IV	26	\$15.49 - \$22.48
Maintenance Repair Aid III	23	\$13.76 - \$19.79
Maintenance Repair Aid II	22	\$14.34 - \$20.68
Maintenance Repair Aid I	20	\$12.28 - \$17.50
Maintenance Repair Worker IV	28	\$16.80 - \$24.52
Maintenance Repair Worker III	27	\$16.13 - \$23.49
Maintenance Repair Worker II	25	\$14.89 - \$21.53
Maintenance Repair Worker I	23	\$13.76 - \$19.79
Museum Attendant II	23	\$13.76 - \$19.79
Museum Attendant I	21	\$12.78 - \$18.22
Personnel Technician I	25	\$14.89 - \$21.53
Property Inventory Clerk II	25	\$14.89 - \$21.53
Property Inventory Clerk I	23	\$13.76 - \$19.79
Purchasing Technician II	27	\$16.13 - \$23.49
Purchasing Technician I	25	\$14.89 - \$21.53
Retirement Technician	28	\$16.80 - \$24.52
Fire Control Dispatcher I	29	\$17.50 - \$25.59
Retail/Storekeeper IV	30	\$18.22 - \$26.74
Retail/Storekeeper III	28	\$16.80 - \$24.52
Retail/Storekeeper II	26	\$15.49 - \$22.48
Retail/Storekeeper I	24	\$14.34 - \$20.68
Student Worker	10	\$9.28
Temporary Aid II	16	\$10.91
Temporary Aid I	12	\$9.78

*Note: Amounts listed are the approximate current hourly rate paid to temporary employees. Pay rates listed are the minimum wage to be paid for the position classification, but may be negotiated with the requesting agency. All pay rates are the range pay level for a new State employee in the class specification and is not affected by geographic region.

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

December 17, 2018

LITIGATION HOLD NOTICE

VIA EMAIL, FACSIMILE, AND U.S. MAIL

Manpower
Attn: Patrick Harrigan
63 Keystone Ave., #202
Reno, NV 89503
pharrigan@mpreno.com
(775) 328-6030 (fax)

**Re: Notice to Preserve Information and to Prevent Deletion or
Destruction of Electronic and Paper Records**

**MM Development Company v. State of Nevada, Eighth Judicial District Court,
Clark County, Nevada, Case No. A-18-785818-W**

Dear Mr. Harrigan:

Please be advised that the State of Nevada, Department of Taxation ("State") has received an Order, dated December 13, 2018, from the Court in the above-referenced matter. The Order requires that the State and Manpower undertake certain activities to preserve information related to the claims made by the Plaintiff in the lawsuit.

The Order is enclosed. **Please review it carefully.**

As required by the Order, we are providing you with the Order and asking Manpower to comply with it. Therefore, please review and act in accordance with the Order. Please be advised that the Attorney General's Office does not represent Manpower and cannot give Manpower legal advice. Therefore, Manpower should obtain and/or consult with its own lawyers with regard to complying with the Order.

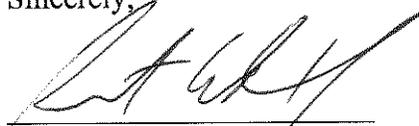
Manpower
Attn: Patrick Harrigan
Page 2
December 17, 2018

We also request that you forward this LITIGATION HOLD NOTICE along to your counsel and insurance carrier, as soon as possible. Please have your counsel contact this office immediately to assure Manpower and the State can complete the requirements identified in the attached Order within the timeframes identified.

Thank you in advance for your cooperation and prompt attention to these matters.

Please feel free to call if you have any questions or concerns.

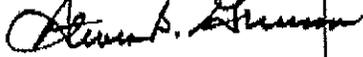
Sincerely,



Robert E. Werbicky
Deputy Attorney General
(702) 486-3105
rwerbicky@ag.nv.gov

REW/dw
Enclosure

APP000065



1 Will Kemp, Esq. (#1205)
2 Nathanael R. Rulis, Esq. (#11259)
3 n.rulis@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 MM DEVELOPMENT COMPANY, INC., a
10 Nevada corporation,

Case No.: A-18-785818-W
Dept. No.: XVIII

11 Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART EMERGENCY
MOTION FOR ORDER REQUIRING
THE SMC TO PRESERVE AND/OR
IMMEDIATELY TURN OVER
RELEVANT ELECTRONICALLY
STORED INFORMATION FROM
SERVERS, STAND-ALONE
COMPUTERS, AND CELL PHONES**

12 vs.

13 STATE OF NEVADA, DEPARTMENT OF
14 TAXATION; and DOES 1 through 10; and
15 ROE CORPORATIONS 1 through 10.

Date of Hearing: 12/13/18
Time of Hearing: 10:00 a.m.

16 Defendants.

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3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

17
18 Plaintiff MM Development having filed an Emergency Motion For Preservation Of
19 Electronic Data and having given the counsel for Department of Taxation notice of such
20 request, the Court conducting a hearing on December 13, 2018 at 10:00 a.m., Plaintiff appearing
21 by Will Kemp, Esq., and Nathanael R. Rulis, Esq., of the law firm of Kemp, Jones & Coulthard,
22 LLP, the State of Nevada, Department of Taxation (the "State") appearing by Robert Werbicky,
23 Esq., and David J. Pope, Esq., and it appearing that the State used employees retained by an
24 outside employment agency (i.e. Manpower) to evaluate and rate marijuana dispensary license
25 applications (hereinafter referred to as "Manpower"), and good cause appearing for the
26 preservation of electronic data of the State and Manpower, the Motion is GRANTED IN PART
27
28

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kjc@kempjones.com

1 regarding preservation and DENIED IN PART regarding immediate turnover and it is hereby
2 ORDERED, ADJUDGED and DECREED as follows:

3 ORDERED that the State shall preserve server or any standalone computers (including
4 laptops, iPads or thumb drives) in its possession and used in the evaluation and rating of
5 marijuana dispensary license applications as part of the September 2018 application period (the
6 “ESI” or “electronically-stored information”). The State shall also preserve communication
7 made with Manpower related to the hiring of the personnel by Manpower for the September
8 2018 application period. The State shall make the ESI available for copying by the State in the
9 presence of a computer expert retained by Plaintiff in the next 10 business days after notice of
10 entry of this order. The State shall make 3 copies of the hard drive of the ESI with one copy
11 being preserved by the State as a master copy retained by the State and one additional copy
12 retained by the State, and one copy provided to the Court under seal. To allow Plaintiff and the
13 State (i.e., the Nevada Department of Taxation) to determine the most efficient way to allow the
14 State to make such copies, the State shall make their primary IT persons available for a
15 conference call with the ESI expert for Plaintiff and counsel for the Plaintiff, counsel for the
16 State (and counsel and IT manager for Manpower if desired by Manpower) to identify in
17 general the types of servers (including standalone computers and laptops) that will be subject to
18 the copying protocol and types and amount of data maintained on such servers (including
19 standalone computers and laptops). The conference call shall be held no later than 5 business
20 days after notice of entry of this order.

21 ORDERED that the State shall provide Plaintiffs a list of Department personnel
22 including Manpower personnel that primarily assisted in the evaluation and rating of all
23 applications for dispensary licenses and/or evaluated such license applications received in the
24 September 2018 application period and provide a list of any full or partial cell phone numbers
25 known to the Department sufficient to allow the identification of the cell phone (including but
26 not limited to personal cell phone numbers) for each such person within 5 business days of after
27 notice of entry of this order. At the same time, the State may use reasonable identifiers, e.g.
28 “Manpower Employee 1,” instead of names if the State so desires. At the same time the State

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1 may designate up to 6 persons on a list that the State believes were primarily involved on behalf
2 of Manpower and/or the State in the processing of all applications for dispensary licenses and/or
3 the evaluation of such license applications. If the State has a pre-existing organizational chart
4 of the Manpower employees, it shall provide the same to Plaintiff at such time but the State is
5 not obligated to create an organizational chart. Again, the State may use reasonable identifiers
6 instead of names. Within 10 business days after receiving the foregoing list from the State,
7 Plaintiffs shall be allowed to take the telephonic deposition of the PMK for the State to identify
8 the names (or reasonable identifiers) and job descriptions of all persons (including temporary
9 employees, if any) that were involved on behalf of State in assisting in the evaluation and rating
10 of applications for dispensary licenses and/or evaluating such licenses for the September 2018
11 application period. The purpose of the PMK deposition is to reasonably identify persons whose
12 cell phone data may contain relevant discoverable materials to ensure that all such data is
13 preserved. At its option, the State may provide a written response in lieu of the PMK
14 deposition.

15 ORDERED that the State shall make all cell phones (personal and/or business) of each
16 such person that assisted in the processing of applications for dispensary licenses and/or
17 evaluated such license applications, including but not limited to Steve F. Gilbert and a Northern
18 Nevada State employee, available for copying in the 10 business days after notice of entry of
19 this order at a location convenient to State and Manpower, and that the State, in the presence of
20 Plaintiff's computer expert, shall make 3 copies of the data from each cell phone with one copy
21 being preserved as a master copy, one copy provided to counsel for the State and one copy
22 provided to the Court under seal. In the event any such cell phones are not available, the State
23 shall file a sworn declaration regarding any cell phone that is not available explaining why such
24 cell phone is not available within 10 business days after notice of entry of this order.

25 ORDERED that neither Plaintiff's counsel nor Plaintiff or their agents or employees
26 shall access the cell phone data until the State and Plaintiff agrees to a procedure to protect non-
27 discoverable confidential data or the Court allows such access by subsequent order. The State is
28 authorized to inform any such persons whose cell phone data is copied that any and all personal

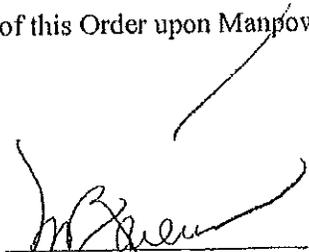
KEMP, JONES & COULTHARD, LLP
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Seventeenth Floor
Las Vegas, Nevada 89169
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kjc@kempjones.com

1 information will either be returned or destroyed at a later date. Plaintiff's counsel and Plaintiff
2 and their agents or employees are restricted from accessing ESI data except as authorized by a
3 confidentiality order or other order of the Court.

4 ORDERED that the State is directed to maintain any and all documents in its possession
5 regarding the processing of applications for dispensary licenses and/or evaluation of such
6 license applications, for the September 2018 application period including but not limited to the
7 following: (1) any and all communications between Manpower and the State; (2) any and all
8 directions provided by the State to Manpower regarding the processing of applications or the
9 evaluation of the applications and any requests for information from Manpower; (3) any and all
10 communications between Manpower or State employees and any applicant (or with the
11 attorneys or consultants for an applicant) regarding any subject matter; (4) the contract, if any,
12 between Manpower and the State and all invoices, if any, sent by Manpower to the State; (5)
13 any and all preliminary rankings of applicants by jurisdiction or otherwise by Manpower or the
14 State that pre-date the final ranking; (6) any and all work papers (including notes) used by
15 Manpower or the State in the processing of applications for dispensary licenses and/or
16 evaluation of such license applications; (7) any and all spread sheets created by Manpower or
17 the State regarding the applications for dispensary licenses; and (8) any and all notes of formal
18 or informal meetings among Manpower or the State personnel regarding the processing of
19 applications for dispensary licenses and/or evaluation of such license applications. The State
20 shall not be required to produce the documents set forth in categories 1 through 8 at an
21 expedited pace but shall be required to identify the same with specificity at the Rule 16.1
22 conference subject to all privileges and objections by the State to such production.

23 ORDERED that the State shall serve a copy of this Order upon Manpower within one
24 business day of notice of entry of this Order.

25 DATED this 13th day of December, 2018

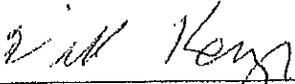
26
27 
28 DISTRICT JUDGE

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Seventeenth Floor
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kjc@kempjones.com

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Respectfully Submitted by:

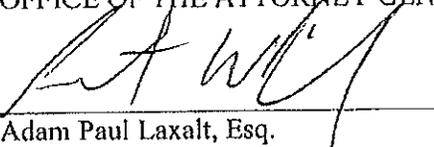
KEMP, JONES & COULTHARD, LLP



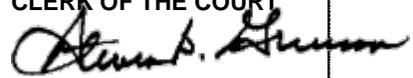
Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Approved as to content and form

OFFICE OF THE ATTORNEY GENERAL



Adam Paul Laxalt, Esq.
Robert Werbicky, Esq.
David J. Pope, Esq.
555 East Washington Ave., Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendant
State of Nevada, Department of Taxation



1 **DECL**
ADAM PAUL LAXALT
2 Attorney General
David J. Pope (Bar No. 8617)
3 Acting Chief Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
5 Deputy Attorney General
Office of the Attorney General
6 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
7 (702) 486-3420 (phone)
(702) 486-3416 (fax)
8 DPope@ag.nv.gov
VRakowsky@ag.nv.gov
9 RWerbicky@ag.nv.gov

10 *Attorneys for Defendant,*
State of Nevada,
11 *Department of Taxation*

12
13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
Nevada corporation

16 Plaintiff,

17 vs.

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

21 Defendants.

Case No. A-18-785818-W
Dept. No. XVIII

**DECLARATION REGARDING ANY CELL
PHONE THAT IS NOT AVAILABLE**

22 The STATE OF NEVADA, DEPARTMENT OF TAXATION by and through their counsel,
23 ADAM PAUL LAXALT, Attorney General and DAVID POPE, Acting Chief Deputy Attorney General,
24 ROBERT WERBICKY, Deputy Attorney General, and VIVIENNE RAKOWSKY, Deputy Attorney
25 General, and hereby submit this Declaration Regarding Any Cell Phone That Is Not Available pursuant
26 to this Court's order of December 13, 2018.

27 ///

28 ///

1 Attached as Exhibit A is the Declaration of Talova V. Davis, in her official capacity as
2 Cybercrime Investigator II, Investigations Division, Nevada Office of the Attorney General.

3
4 DATED this 3rd day of January, 2019.

5
6 ADAM PAUL LAXALT
Attorney General

7
8 By: /s/Vivienne Rakowsky
9 VIVIENNE RAKOWSKY (Bar No. 9160)
Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 3rd day of January, 2019, I filed the foregoing **DECLARATION REGARDING ANY CELL PHONE THAT IS NOT AVAILABLE** via this Court’s electronic filing system. Parties that are registered with this Court’s EFS will be served electronically.

/s/ Michele Caro

An Employee of the Office of the Attorney General

EXHIBIT “A”

EXHIBIT “A”

1 DECL
ADAM PAUL LAXALT
2 Attorney General
David J. Pope (Bar No. 8617)
3 Acting Chief Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
5 Deputy Attorney General
Office of the Attorney General
6 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
7 (702) 486-3420 (phone)
(702) 486-3416 (fax)
8 DPope@ag.nv.gov
RWerbicky@ag.nv.gov
9 VRakowsky@ag.nv.gov

10 *Attorneys for Defendant,*
11 *State of Nevada,*
Department of Taxation

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
Nevada corporation

16 Plaintiff,

17 vs.

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

21 Defendants.

Case No. A-18-785818-W
Dept. No. XVIII

22 **DECLARATION OF TALOVA V. DAVIS**

23 1. I, Talova V. Davis, first being duly sworn, present this Declaration regarding the status of
24 imaging cellular phones pursuant to the Court's Order dated December 13, 2018 and entered December
25 14, 2018 ("Court Order").

26 2. I have personal knowledge of, and am competent to testify, regarding these matters.

27 3. I am employed as a Cybercrime Investigator II by the Investigations Division of the
28 Nevada Office of the Attorney General, having been so employed by the State of Nevada since 2007. I

1 hereby affirm that I am a certified digital forensic specialist with extensive training and experience in the
2 preservation and examination of digital evidence.

3 4. I have been assigned the task of obtaining and forensically imaging cellular phones and
4 hard drives pursuant to the Court Order. On December 24, 2018, Nevada Office of the Attorney General
5 Chief of Investigations Roland D. Swanson II provided me with a list of names and phone numbers to
6 contact Manpower employees, asking that I begin contacting said employees on December 26, 2018.

7 5. This Court Ordered that in the event that any such cellular phone is not available, that the
8 State is to provide a sworn declaration explaining why the cellular phone is not available.

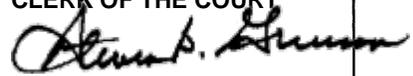
9 6. This is my sworn declaration explaining why the cellular phones below are not available
10 in compliance with the Court's Order.

11 7. At approximately 2:14 p.m. on December 26, 2018, I spoke with Manpower 1 regarding
12 the imaging of Manpower 1's personal cellular phone. Manpower 1 was willing to meet with me at 8
13 a.m. on the morning of December 27, 2018 to have the cellular phone imaged. Manpower 1 called back
14 at 8:08 a.m. on December 27, 2018 and said that after speaking with a few people, Manpower 1 is going
15 to decline having the cellular phone imaged until a subpoena requires Manpower 1 to do so.

16 8. At approximately 1:55 p.m. on December 26, 2018, I spoke with Manpower 2 regarding
17 the imaging of Manpower 2's personal cellular phone. Manpower 2 declined to have the cellular device
18 imaged, citing concerns about having personal pictures and personal identifiable information available
19 to others, even with a court order in place. Manpower 2 mentioned that the cellular phone was not used
20 for any work-related activity.

21 9. At approximately 8:33 a.m. on December 27, 2018, I left a voice mail message for
22 Manpower 3 regarding the forensic imaging of Manpower 3's cellular phone. On December 28, 2018 at
23 6:50 a.m., I received a voice mail message from Manpower 3 stating that Manpower 3 is not willing to
24 have the personal cellular phone copied as it was not used for business.

25 10. At approximately 9:05 a.m. on December 27, 2018, I left a voice mail message for
26 Manpower 4 regarding the forensic imaging of Manpower 4's cellular phone. On December 28, 2018 at
27 8:11 a.m., I received a voice mail message from Manpower 4 stating that Manpower 4 is not prepared to
28 authorize the forensic imaging of the cellular phone at this time.



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

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 v.

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

21 Defendants.

CASE NO.: A-19-787540-W

DEPT. NO.: Department 18

**COMPLAINT AND PETITION FOR
JUDICIAL REVIEW OR WRIT OF
MANDAMUS**

Arbitration Exemption Claimed:

- *Involves Declaratory Relief*
- *Presents Significant Issue of Public Policy*
- *Involves Equitable or Extraordinary Relief*

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

27 **I.**

28 **PARTIES & JURISDICTION**

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

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

APP000078

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Reconsideration, has exhausted its administrative remedies.

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

4 **III.**

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Relief)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

12 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

24 **FIFTH CLAIM FOR RELIEF**

25 **(Equal Protection Violation)**

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

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

1 regulations; and

2 c. Other relief consistent with those determinations.

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

6 **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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IV.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

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

V.

JURY DEMAND

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

DATED this 14th day of January, 2019.

PARKER, NELSON & ASSOCIATES, CHTD.



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

Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1



STATE OF NEVADA
DEPARTMENT OF TAXATION

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

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

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

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

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

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

January 10, 2019

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

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

Mr. Theodore Parker,

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

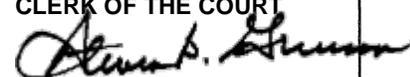
The Department scored timely submitted applications using an impartial and numerically scored competitive process in accordance with NRS 453D.210(6). After scoring the applications, the Department ranked the applications from first to last. Pursuant to Sec. 80 of Permanent Regulation LCB File No. R092-17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

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

Thank you for your interest in this application process.

Jorge Pupo
Deputy Executive Director
Marijuana Enforcement Division

APP000090



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

6 *Attorneys for Plaintiff*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 v.

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

15 Defendants.

CASE NO.:
DEPT. NO.:

A-19-787540-W

Department 18

SUMMONS

16 **NOTICE: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**
17 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ**
18 **THE INFORMATION BELOW.**

19 **TO THE DEFENDANT:** A civil Complaint has been filed by Plaintiff against you for the
relief set forth in the Complaint.

20 **State of Nevada, Department of Taxation**
21 **1550 College Parkway, Suite 115**
Carson City, NV 89706-7937

22 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
23 you exclusive of the day of service, you must do the following:
24 a. File with the Clerk of this Court, whose address is shown below, a formal
written response to the Complaint in accordance with the rules of the court.
25 b. Serve a copy of your response upon the attorney whose name and address is
shown below.

26 2. Unless you respond, your default will be entered upon application of the Plaintiffs
27 and this Court may enter a judgment against you for the relief demanded in the Complaint, which
could result in the taking of money or property or other relief requested in the Complaint.
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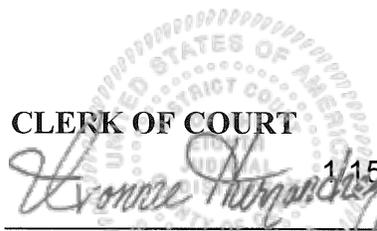
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at direction of:

PARKER NELSON & ASSOCIATES, CHTD.

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

Attorney for Plaintiff



CLERK OF COURT
By:  1/15/2019
DEPUTY CLERK
County Courthouse
200 Lewis Avenue
Las Vegas, Nevada 89155

Attorney or Party without Attorney: Parker, Nelson & Associates, Chtd. Theodore Parker, III, Esq. (SBN 4716) 2460 Professional Court Suite 200 Las Vegas, NV 89128 Telephone No: (702) 868-8000 Attorney For: Plaintiff			For Court Use Only		
Ref. No. or File No.: NV WELLNESS CENTER/DEPT					
Insert name of Court, and Judicial District and Branch Court: District Court Clark County Nevada					
Plaintiff: NEVADA WELLNESS CENTER, LLC, a Nevada Limited Liability Company, Defendant: STATE OF NEVADA, DEPARTMENT OF TAXATION, et al.					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: A-19-787540-W

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons, Complaint and Petition for Judicial Review or Writ of Mandamus
3.
 - a. Party served: State of Nevada, Department of Taxation
 - b. Person served: Tina Padovano - Executive Assistant, A person of suitable age and discretion, authorized to accept service at address shown in item 4.
4. Address where the party was served: 1550 College Parkway, Suite 115
Carson City, NV 89706
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed, Jan 16 2019 (2) at: 01:55 PM

Fee for Service: \$0.00

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. Person Who Served Papers:
 - a. Toni Ruckman (R-052005, Washoe)
 - b. FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
 - c. (702) 671-4002

19 Jan 19 (Date) Toni Ruckman (Signature)

7. STATE OF NEVADA, COUNTY OF Washoe

Subscribed and sworn to (or affirmed) before on this 19 day of Jan, 2019 by Toni Ruckman (R-052005, Washoe) proved to me on the basis of satisfactory evidence to be the person who appeared before me.



Jessica Marquis
 (Notary Signature)



AFFIDAVIT OF SERVICE

2980520
(55104735)

APP000093

CLERK OF THE COURT

Steven D. Grierson

Attorney or Party without Attorney: Parker, Nelson & Associates, Chtd. Theodore Parker, III, Esq. (SBN 4716) 2460 Professional Court Suite 200 Las Vegas, NV 89128 Telephone No: (702) 868-8000 Attorney For: Plaintiff		Ref. No. or File No.: NV WELLNESS CENTER/DEPT			
Insert name of Court, and Judicial District and Branch Court: District Court Clark County Nevada					
Plaintiff: NEVADA WELLNESS CENTER, LLC, a Nevada Limited Liability Company, Defendant: STATE OF NEVADA, DEPARTMENT OF TAXATION, et al.					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: A-19-787540-W

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the Summons, Complaint and Petition for Judicial Review or Writ of Mandamus
- Party served: State of Nevada, Department of Taxation
 - Person served: Diana Herrera, Administrative Aide II, a person of suitable age and discretion authorized to accept service.
- Address where the party was served: 100 N. Carson Street, Carson City, NV 89701
- I served the party:
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Mon, Mar 18 2019 (2) at: 01:10 PM

Fee for Service: \$0.00

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. Person Who Served Papers:

- Toni Ruckman (R-052005, Washoe)
- FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
c. (702) 671-4002

22 Mar 19 (Date) Toni L Ruckman (Signature)

7. STATE OF NEVADA, COUNTY OF Washoe
 Subscribed and sworn to (or affirmed) before on this 22 day of March, 2019 by Toni Ruckman (R-052005, Washoe)
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.



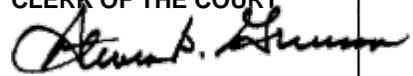
Jessica Marquis
 (Notary Signature)



AFFIDAVIT OF SERVICE

3174546
(55110940)

APP000094



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

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 v.

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

21 Defendants.

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

Date of Hearing: March 29, 2019
Time of Hearing: 9:30 a.m.

DISCOVERY COMMISSIONER

22 **PLAINTIFF'S REPLY IN SUPPORT OF EMERGENCY MOTION FOR ORDER**
23 **REQUIRING THE SMC, MS. KARA CRONKHITE AND MR. DAMON HERNANDEZ**
24 **OF DEPARTMENT OF TAXATION TO PRESERVE AND/OR IMMEDIATELY TURN**
25 **OVER RELEVANT ELECTRONICALLY STORED INFORMATION FROM SERVERS,**
26 **STAND-ALONE COMPUTERS, AND CELL PHONES ON**
27 **ORDER SHORTENING TIME**

28 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "Plaintiff"),
by and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
NELSON & ASSOCIATES, CHTD., and hereby files this Reply in Support of Emergency Motion
for Order Requiring the SMC, Ms. Kara Cronkhite and Mr. Damon Hernandez of Department of
Taxation to Preserve and/or Immediately Turn over Relevant Electronically Stored Information from
Servers, Stand-Alone Computers, and Cell Phones on Order Shortening Time.

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APP000095

1 This Reply is made and based upon the pleadings and papers on file herein, the points and
2 authorities included herewith, and such oral argument as the Court may entertain at the time of the
3 hearing of this matter.

4 DATED this 25th day of March, 2019.

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

6 
7 THEODORE PARKER, III, ESQ.
8 Nevada Bar No. 4716
9 2460 Professional Court, Suite 200
10 Las Vegas, Nevada 89128

Attorneys for Plaintiff

11 **MEMORANDUM OF POINTS & AUTHORITIES**

12 **I.**

13 **STATEMENT OF FACTS**

14 On March 8, 2019 this matter came on for hearing. The day before the hearing, the State of
15 Nevada, Department of Taxation filed an Opposition within which it claimed that service had not
16 been perfected. Following the hearing, Plaintiff's counsel provided proof to the State of Nevada,
17 Department of Taxation's counsel, Robert E. Werbicky, Esq., that service was properly perfected
18 and provided a copy of the Affidavit of Service. Attached as **Exhibit 1** is a copy of the
19 correspondence sent to Mr. Werbicky, along with the Affidavit of Service. Since then, further efforts
20 towards service have been made making this issue moot.

21 With regards to the substance of Plaintiff's motion, it is important for the Court to understand
22 the status of a very similar order filed before the Honorable Judge Bailus, which was also heard and
23 ruled upon by the Honorable Judge David Barker.

24 The Contract between the State of Nevada and Manpower related to the review and scoring
25 of the applications for marijuana licenses is attached hereto as **Exhibit 2**. The Contract was effective
26 from April 1, 2017 through March 31, 2021. Under paragraph 9 there is an "Inspection & Audit"
27 right which allows the State to inspect, examine, review and audit and copy relevant books, records
28 (written, electronic, computer related or otherwise), including, without limitation, relevant

1 accounting procedures and practices of Contractor or its subcontractors, financial statement and
2 supporting documentation, and copying at any office or location of Contractor where such records
3 may be found, with or without notice by the State Auditor, ...¹ It is this right that the State
4 contractually has to inspect that Nevada Wellness Center would like to utilize for purposes of this
5 litigation.

6 On December 13, 2018, MM Development Company, Inc. received an Order Granting In Part
7 and Denying In Part Emergency Motion for Order Requiring the SMC to Preserve and/or
8 Immediately Turn over Relevant Electronically Stored Information from Servers, Stand-Alone
9 Computers, and Cell Phones. A copy of this Order is attached as **Exhibit 3**. MM Development
10 Company, Inc. sought and was granted the same relief that Nevada Wellness Center is seeking. The
11 State of Nevada filed an almost identical opposition to this motion, but the Court ordered that the
12 State shall preserve the server or any standalone computers (including laptops, iPads or thumb
13 drives) in its possession and used in the evaluation and rating of marijuana dispensary license
14 applications as part of the September 2018 application period. The Court also ordered that the State
15 shall provide Plaintiff a list of Department personnel including Manpower personnel that primarily
16 assisted in the evaluation and rating of all applications for dispensary licenses and evaluated such
17 license applications received in the September 2018 application period. The Court ordered that the
18 State shall make all cell phones (personal and business) of each such person that assisted in the
19 processing of applications for dispensary licenses and/or evaluated such license applications
20 available for copying in the 10 business days after notice of entry of this order. The Court ordered
21 that neither Plaintiff's counsel nor Plaintiff or their agents or employees shall access the cell phone
22 data until the State and Plaintiff agrees to a procedure to protect non-discoverable confidential data
23 or the Court allows such access by subsequent order. Finally, the Court ordered that the State was
24 directed to maintain any and all documents in its possession regarding the processing of applications
25 for dispensary licenses and/or evaluation of such license applications, for the September 2018
26 application period. Finally, the Order indicated that the State shall serve a copy of the Order upon

27
28 ¹ See Section 9B.

1 Manpower within one business day of notice of entry of the order.

2 On January 3, 2019, the State of Nevada, Department of Taxation filed a Declaration
3 regarding any cell phone that is not available. This Declaration, attached as **Exhibit 4**, from Talova
4 V. Davis, indicates that the six (6) Manpower representatives involved after agreeing to provide their
5 phones, have determined that they will not make their phones available for forensic imaging. Ms.
6 Davis is a Cybercrime Investigator II employed by the Investigations Divisions of the Nevada Office
7 of the Attorney General. It is based upon this Declaration that it became even more important that
8 Nevada Wellness Center file this motion to protect and preserve information contained on these
9 phones in addition to laptops, computers, thumb drives, and desktops.

10 On February 5, 2019, the District Court heard the State's Motion for Reconsideration related
11 to an Order of Contempt Against the State of Nevada for Failure to Preserve Relevant Electronically
12 Stored Information from Cell Phones on an Order Shortening Time. The Minutes, which are
13 attached as **Exhibit 5**, indicate that Mr. Werbicky was advised originally that four of the six
14 Manpower employees indicated they had no opposition to the imaging of their phones, then changed
15 their minds. Further, Mr. Werbicky noted that the motion was filed when they began imaging
16 laptops. Mr. Kemp, on behalf of MM Development Company, Inc., argued against the motion,
17 however, requested the Manpower employees be deposed. The Court, by virtue of the hearing,
18 allowed for depositions for limited purposes of Manpower employees.

19 Attached as **Exhibit 6** is a copy of the Order electronically filed on March 7, 2019. The
20 Court ordered that pursuant to Rules 30 and 45 of the Nevada Rules of Civil Procedure, Plaintiffs
21 are given leave to take limited depositions of the six (6) Manpower employees. The depositions
22 were limited to the following questions: (1) "Please provide the make(s), model(s), and operating
23 system of your personal cellular telephone(s) used from July 2018 - December 2018."; (2) "Please
24 provide the name of the service provider(s) for each personal cellular telephone used from July 2018
25 - December 2018."; and (3) "Do you understand the December 13, 2018 Order Granting in Part and
26 Denying in Part Plaintiff's Emergency Motion (the "Preservation Order") issued in this case does
27 not permit the disclosure of any of your personal information unless and until ordered by the Court?"

28 ///

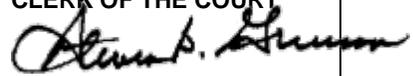
CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 25th day of March, 2019, I served a true and correct copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF EMERGENCY MOTION FOR ORDER REQUIRING THE SMC, MS. KARA CRONKHITE AND MR. DAMON HERNANDEZ OF DEPARTMENT OF TAXATION TO PRESERVE AND/OR IMMEDIATELY TURN OVER RELEVANT ELECTRONICALLY STORED INFORMATION FROM SERVERS, STAND-ALONE COMPUTERS, AND CELL PHONES ON ORDER SHORTENING TIME** on the party(s) set forth below by:

- 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.
- Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

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12 *Attorneys for Defendants*
13 *State of Nevada Department of Taxation*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

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

13 Plaintiff,

14 vs.

15
16 STATE OF NEVADA, DEPARTMENT OF
17 TAXATION; and DOES I through X; and ROE
18 CORPORATIONS I through X, inclusive.

18 Defendants.

Case No. A-19-787540-W
Dept. No. XVIII

19 **ANSWER TO COMPLAINT AND PETITION FOR JUDICIAL REVIEW OR WRIT OF**
20 **MANDAMUS**

21 The State of Nevada ex rel. Department of Taxation (the “Department”) answers Plaintiff’s
22 Complaint as follows:

23 **I.**

24 **PARTIES & JURISDICTION**

25 1. Answering Paragraph 1, the Department is without sufficient knowledge and information
26 to form a belief as to the truth of the allegations and therefore denies the same.

27 ...

28 ...

1 12. Answering Paragraph 12, the Department states that because it was not involved with the
2 medical marijuana licensing procedure, it is unable to form a belief as to the truth of the allegations
3 contained in Paragraph 12.

4 13. Answering Paragraph 13, the Department states that because the terms “substantially
5 similar” and “factors” are vague and ambiguous and because the Department was not involved with the
6 medical marijuana licensing procedure, the Department is unable to form a belief as to the truth of the
7 allegations contained in Paragraph 13.

8 14. Answering Paragraph 14, the Department states that because the term “major difference”
9 is vague and ambiguous and because the Department was not involved with the medical marijuana
10 licensing procedure, the Department is unable to form a belief as to the truth of the allegations
11 contained in Paragraph 14.

12 15. Answering Paragraph 15, the Department admits the allegations.

13 16. Answering Paragraph 16, the Department states that because the term “exceptional
14 ranking” is vague and ambiguous and because the Department was not involved with the medical
15 marijuana licensing procedure, the Department is unable to form a belief as to the truth of the
16 allegations contained in Paragraph 16 except that the Department admits that around December 5,
17 2018, the Plaintiffs were sent a notice of rejection setting forth the reasons why the Department did not
18 approve their license application.

19 17. Answering Paragraph 17, the Department denies the allegation.

20 18. Answering Paragraph 18, the Department denies the allegation.

21 19. Answering Paragraph 19, the Department admits Plaintiff submitted a letter with a subject
22 line of Nevada Wellness Center, LLC - Petition for Redetermination with an enclosure entitled Appeal and
23 Petition for Reconsideration to the Department on or about January 4, 2019. The Department denies the
24 remainder of the allegations contained in Paragraph 19.

25 20. Answering Paragraph 20, the Department admits Plaintiff met with the Department on or
26 about January 17, 2019.

27 21. Answering Paragraph 21, the Department admits the allegation.

28 22. Answering Paragraph 22, the Department denies the allegations.

1 **FOURTH CLAIM FOR RELIEF**

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

3 50. Answering Paragraph 50, the Department states that this incorporating reference does not
4 require a response.

5 51. Answering Paragraph 51, the Department states that this is a legal conclusion to which no
6 response is required. To the extent that a response is required, the Department denies the allegations
7 contained therein.

8 52. Answering Paragraph 52, the Department states that this is a legal conclusion to which no
9 response is required. To the extent that a response is required, the Department denies the allegations
10 contained therein.

11 53. Answering Paragraph 53, the Department states that this is a legal conclusion to which no
12 response is required. To the extent that a response is required, the Department denies the allegations
13 contained therein.

14 54. Answering Paragraph 54, the Department states that this is a legal conclusion to which no
15 response is required. To the extent that a response is required, the Department denies the allegations
16 contained therein.

17 **FIFTH CLAIM FOR RELIEF**

18 **(Equal Protection Violation)**

19 55. Answering Paragraph 55, the Department states that this incorporating reference does not
20 require a response.

21 56. Answering Paragraph 56, the Department states that this is a legal conclusion to which no
22 response is required. To the extent that a response is required, the Department denies the allegations
23 contained therein.

24 57. Answering Paragraph 57, the Department states that this is a legal conclusion to which no
25 response is required. To the extent that a response is required, the Department denies the allegations
26 contained therein.

27 ...

28 ...

1 **SEVENTH CLAIM FOR RELIEF**

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

3 67. Answering Paragraph 67, the Department states that this incorporating reference does not
4 require a response.

5 68. Answering Paragraph 68, the Department states that this is a legal conclusion to which no
6 response is required. To the extent that a response is required, the Department denies the allegations
7 contained therein.

8 69. Answering Paragraph 69, the Department states that this is a legal conclusion to which no
9 response is required. To the extent that a response is required, the Department denies the allegations
10 contained therein.

11 70. Answering Paragraph 70, the Department states that this is a legal conclusion to which no
12 response is required. To the extent that a response is required, the Department denies the allegations
13 contained therein.

14 71. Answering Paragraph 71, the Department states that this is a legal conclusion to which no
15 response is required. To the extent that a response is required, the Department denies the allegations
16 contained therein.

17 72. Answering Paragraph 72, the Department states that this is a legal conclusion to which no
18 response is required. To the extent that a response is required, the Department denies the allegations
19 contained therein.

20 **GENERAL DENIALS**

21 The Department denies any and all allegations in the Complaint not specifically admitted in this
22 Answer.

23 The Department denies that Plaintiff is entitled to any of the relief prayed for in the Complaint.

24 **AFFIRMATIVE DEFENSES**

25 The Department denies any and all liability in this matter and asserts the following affirmative
26 defenses:

- 27 1. Plaintiff has failed to state a claim for which relief can be granted.
28 2. Plaintiff does not have a property right in a privilege license that they do not have.

- 1 3. Plaintiff does not have a fundamental right to a privilege license.
- 2 4. Chapter 453D does not provide for a hearing when a retail marijuana license is not issued.
- 3 5. The Nevada Administrative Procedures Act, NRS Chapter 233B, does not provide for a
- 4 hearing when a retail marijuana license is not issued.
- 5 6. The Department's actions were neither arbitrary, capricious, nor an abuse of discretion.
- 6 7. The Department's interpretation of the statutes and regulations it is authorized to execute
- 7 is given great deference.
- 8 8. The Department used an impartial and numerically scored competitive bidding process.
- 9 9. Plaintiff did not have a statutory entitlement to a license.
- 10 10. The U.S. Constitution does not protect the right to engage in a business that is illegal under
- 11 federal law.
- 12 11. Plaintiff does not have standing.
- 13 12. Plaintiff has failed to exhaust their administrative remedies.
- 14 13. The Complaint fails to present a justiciable controversy.
- 15 14. This Court lacks jurisdiction to hear Plaintiff's claims.
- 16 15. The Department is immune from liability pursuant to Nevada Revised Statutes 41.031, et.
- 17 seq.
- 18 16. Plaintiff failed to name the Department properly as required by NRS 41.031(2).
- 19 17. Plaintiff's claims, including the declaratory and/or equitable claims are barred by the
- 20 doctrines of waiver, ratification, estoppel, unclean hands and other equitable defenses.
- 21 18. Plaintiff's claims are barred by the applicable statute of limitations and/or the doctrine of
- 22 laches.
- 23 19. Plaintiff's claims are barred based on impossibility.
- 24 20. Plaintiff's claims have been waived because of the wrongful acts, omissions and conduct
- 25 of Plaintiff.
- 26 21. Plaintiff would be unjustly enriched if awarded damages.
- 27 22. The Department has no contractual relationship with Plaintiff to give rise to any
- 28 declaratory relief.

1 23. The damages sustained by the Plaintiff, if any, were caused by the acts of unknown third
2 persons who were not agents, servants, or employees of the Department, and who were not acting on
3 behalf of the Department in any manner or form, and, as such, the Department is not liable in any manner
4 to Plaintiff.

5 24. The Department is not legally responsible for the actions and/or omissions of other third
6 parties.

7 25. Plaintiff failed to name a party necessary for full and adequate relief essential in this
8 action.

9 26. Plaintiff failed to comply with a condition precedent.

10 27. Plaintiff has not suffered any damages attributable to the actions of the Department.

11 28. Plaintiff has failed to timely protect and/or enforce their alleged rights.

12 29. Plaintiff's claims are barred as Plaintiff has failed, refused, or neglected to take reasonable
13 steps to mitigate damages, therefore barring or diminishing the ability to recover.

14 30. The Department has an objective good faith belief that it acted reasonably and in good
15 faith and the Department's actions were legally justified.

16 31. The Department substantially complied with NRS and NAC Chapter 453D.

17 32. The Department, at all relevant times, acted with due care and circumspection in the
18 performance of its duties; exercised the degree of skill and learning ordinarily possessed and exercised
19 by members of its profession in good standing, practicing in similar localities and that at all times, used
20 reasonable care and diligence in the exercise of its skills and the application of its learning, and at all
21 times acted according to its best judgment and met the applicable standard of care.

22 33. Plaintiff's claims for relief are barred as Plaintiff's alleged damages are speculative and
23 cannot be calculated with any certainty or reliability.

24 34. Each purported claim for relief is barred by the doctrines of *res judicata* and/or collateral
25 estoppel.

26 35. Each purported claim for relief is barred as Plaintiff is estopped from pursuing any claim
27 against the Department in accordance with equitable principles of jurisprudence.

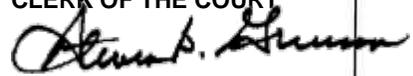
28 ...

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on May 2, 2019, I filed the foregoing document via this Court’s electronic filing system. Parties that are registered with this Court’s EFS will be served electronically.

/s/ Danielle Wright
Danielle Wright, an employee of the
Office of the Nevada Attorney General

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1 **DCRR**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
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9 Email: tparker@pnalaw.net

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

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

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

15 Plaintiff,

16 v.

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

21 Defendants.

22 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

23 **Date of Hearing:** March 29, 2019

24 **Time of Hearing:** 9:30 a.m.

25 **Attorney for Plaintiff:** Theodore Parker, III, Esq., of the law firm of PARKER, NELSON &
26 ASSOCIATES, CHTD.

27 **Attorney for Defendant:** Robert Werbicky, Esq., and David J. Pope, Esq. of the OFFICE OF
28 THE ATTORNEY GENERAL

I.

FINDINGS

Plaintiff Nevada Wellness Center, LLC ("Plaintiff" or "NWC") having filed a Plaintiffs' Emergency Motion for Order Requiring the SMC, Ms. Karen Cronkita and Mr. Damon Hernandez of Department of Taxation to Preserve and/or Immediately Turn Over Relevant Electronically Stored Information from Servers, Stand-Alone Computers, and Cell Phones on Order Shortening Time.

APP000114

1 The State of Nevada, Department of Taxation (“the State”) used Manpower employees
2 (hereinafter referred to as the “Manpower”) to evaluate and rate marijuana dispensary license
3 applications. The State’s employees trained the Manpower employees regarding the evaluation,
4 grading, and scoring of the marijuana dispensary license applications. Plaintiff has stated sufficiently
5 to satisfy the Sedona principles, that there is a real danger of evidence destruction, based on the
6 position taken by the unidentified Manpower employees with regard to the evidence.

7 **II.**

8 **RECOMMENDATIONS**

9 Plaintiff’s Motion is hereby GRANTED as follows:

10 IT IS THEREFORE RECOMMENDED that the State shall preserve server, any standalone
11 computers (including laptops, iPads or thumb drives), or cellular devices in its possession or in the
12 possession of a State employee used in the evaluation and rating process for marijuana dispensary
13 license applications as part of the September 2018 application period (the “ESI” or
14 “electronically-stored information”). The State shall also preserve communication made with
15 Manpower related to the hiring of the personnel by Manpower for the September 2018 application
16 period or the training of any Manpower employees. Though not an exclusive list of State employees
17 subject to this order, the work devices of Steve Gilbert, Kara Cronkhite, Damon Hernandez, Jorge
18 Pupo and a Northern Nevada State employee identified as “Kyle” are subject to this order as well
19 as any personal devices (e.g., laptop, home computer, tablet or phone) that were utilized for work
20 purposes.

21 IT IS FURTHER RECOMMENDED that the State shall provide Plaintiff a list of State
22 personnel, including any and all Manpower personnel, that assisted in the evaluation and rating of
23 all applications for dispensary licenses, trained and/or assisted in the training of the Manpower
24 personnel, and/or evaluated such license applications received in the September 2018 application
25 period and provide a list of any full or partial cell phone numbers known to the Department sufficient
26 to allow the identification of the cell phone (including but not limited to personal cell phone
27 numbers, for personal phones used for work purposes ^{only}) for each such person within 5 business
28 days after notice of entry of this order. At the same time, the State may use reasonable identifiers,

1 e.g. "Manpower Employee 1," instead of names of the Manpower Employees if the State so desires.
2 At the same time the State may designate up to 6 persons on a list that the State believes were
3 primarily involved on behalf of Manpower and/or the State in the processing of all applications for
4 dispensary licenses and/or the evaluation of such license applications. If the State has a pre-existing
5 organizational chart of the Manpower employees, it shall provide the same to Plaintiff, but the State
6 is not obligated to create an organizational chart. The State must identify all personal and work
7 devices used by State and Manpower employees for the purposes referenced above.

8 Upon learning the identities of any of the State personnel or Manpower personnel, Plaintiff
9 shall have the opportunity to serve depositions upon written questions related to asking whether
10 individuals used personal electronic devices for work purposes ^{only}. The State will have 14 calendar
11 days – instead of the normal 30 calendar days – to provide responses to Plaintiff's depositions upon
12 written questions.

13 The State shall make the ESI available to be imaged by Plaintiff's contractor or by the State
14 in the presence of a computer expert retained by Plaintiff in the next 10 business days after notice
15 of entry of this order. The State shall make 3 copies of any hard drives of the ESI, at Plaintiff's
16 expense, with all 3 copies to be held by the State. To allow Plaintiff and the State (i.e., the Nevada
17 Department of Taxation) to determine the most efficient way to allow the State to make such copies,
18 the State shall make their primary IT persons available for a conference call with the ESI expert for
19 Plaintiff and counsel for the Plaintiff, counsel for the State (and counsel and IT manager for
20 Manpower if desired by Manpower) to identify in general the types of servers (including standalone
21 computers and laptops) that will be subject to the copying protocol and types and amount of data
22 maintained on such servers (including standalone computers and laptops). The conference call shall
23 be held no later than 5 business days after notice of entry of this order.

24 IT IS FURTHER RECOMMENDED that the State shall make all cell phones (personal - only
25 if used for work purposes - and/or business) of each such person that assisted in the processing of
26 applications for dispensary licenses and/or evaluated such license applications, available for copying
27 in the 10 business days after notice of entry of this order at a location convenient to State and
28 Manpower, and that the State, in the presence of Plaintiff's computer expert, shall make 3 copies of

1 the data from each cell phone. In the event any such cell phones are not available, the State shall file
2 a sworn declaration regarding any cell phone that is not available explaining why such cell phone
3 is not available within 10 business days after notice of entry of this order.

4 IT IS FURTHER RECOMMENDED that neither Plaintiff's counsel nor Plaintiff or their
5 agents or employees shall access the cell phone data until the State and Plaintiff agrees to a
6 procedure to protect non-discoverable confidential data or the Court allows such access by
7 subsequent order. The State is authorized to inform any such persons whose cell phone data is
8 copied that any and all personal information will either be returned or destroyed at a later date.
9 Plaintiff's counsel and Plaintiff and their agents or employees are restricted from accessing ESI data
10 except as authorized by a confidentiality order or other order of the Court.

11 IT IS FURTHER RECOMMENDED that the State is directed to maintain any and all
12 documents in its possession regarding the processing of applications for dispensary licenses and/or
13 evaluation of such license applications, for the September 2018 application period.

14 IT IS FURTHER RECOMMENDED that the State shall serve a copy of this Order upon
15 Manpower within three (3) business days of notice of entry of this Order.

16 The Discovery Commissioner, met with counsel for the parties, having discussed the issues
17 noted above and having reviewed any materials proposed in support thereof, hereby submits the
18 above recommendations.

19 DATED this 10th day of May, 2019.

20 

21 DISCOVERY COMMISSIONER

22 Respectfully submitted by:

Approved as to form and content by:

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

OFFICE OF THE ATTORNEY
GENERAL

25 
26 THEODORE PARKER, III, ESQ.
27 Nevada Bar No. 4716
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Attorneys for Plaintiff,
28 Nevada Wellness Center, LLC


ROBERT E. WERBICKY, ESQ.
Nevada Bar No. 6166
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendant,
State of Nevada, Department of Taxation

NOTICE

Pursuant to NRCPC 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on May 24 2019.

A copy of the foregoing Discovery Commissioner's Report was:

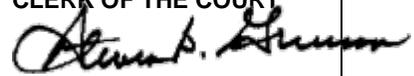
Mailed to Plaintiff/Defendant at the following address on the _____ day of _____ 2019:

Electronically filed and served counsel on May 10, 2019, Pursuant to N.E.F.C.R. Rule 9.

The Commissioner's Report is deemed received three (3) days after mailing or e-serving to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

By: Natalie Lee

COMMISSIONER DESIGNEE



1 **ODCR**
2 AARON D. FORD
3 Attorney General
4 Robert E. Werbicky (Bar No. 6166)
5 Deputy Attorney General
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12 *Attorneys for Defendants*
13 *State of Nevada Department of Taxation*

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

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

18 Plaintiff,

19 vs.

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

24 Defendants.

Case No. A-19-787540-W
Dept. No. XVIII

**WRITTEN OBJECTIONS TO
DISCOVERY COMMISSIONERS'
REPORT AND RECOMMENDATIONS**

25 The STATE OF NEVADA, ex rel. its DEPARTMENT OF TAXATION (“Department”
26 or “State”) by and through its counsel, AARON D. FORD, Attorney General and ROBERT
27 WERBICKY, Deputy Attorney General, hereby files its Written Objections to the Discovery
28 Commissioner’s Report and Recommendations dated May 10, 2019.

These written objections are based on the attached Points and Authorities, all papers
and pleadings on file herein, and any argument allowed at a hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter deals with the issuance of recreational marijuana licenses and is one of
several different cases which have been brought by numerous plaintiffs. The first was MM

1 Development Company, Inc. v. The State of Nevada, Dept. of Taxation, 8th Judicial District
2 Case No. A-18-785818-W which was initiated on December 10, 2018 (the “MM Development
3 Case”). The MM Development Case is presently before the Honorable David Barker,
4 Eighth Judicial District Court. Another case, Serenity Wellness Center, et al. v. The State
5 of Nevada, Dept. of Taxation, 8th Judicial District Case No. A-19-786962-B (the “Serenity
6 Wellness Case”) is currently pending before the Honorable Elizabeth Gonzalez, Eighth
7 Judicial District Court. Judge Gonzalez is coordinating the discovery regarding the
8 majority of the marijuana licensing cases, but, at present, only for the purposes of an
9 evidentiary hearing which is beginning on May 24, 2019.

10 Nevada Wellness Center, LLC (“Nevada Wellness”) filed a Complaint and completed
11 service on March 18, 2019. Before the Complaint was served, Plaintiff filed a motion for a
12 preservation order with the Discovery Commissioner. After being rescheduled to allow the
13 Department to be served, a follow up hearing before the Discovery Commissioner was held
14 on March 29, 2019. The Department filed its Answer on May 2, 2019, and no Early Case
15 Conference has been held or requested by the Plaintiff.

16 On March 29, 2019 the Discovery Commissioner ruled in favor of the Plaintiff and
17 ultimately issued a Discovery Commissioner Report and Recommendation on May 10,
18 2019.

19 **II. THE DISCOVERY COMMISSIONER’S REPORT AND**
20 **RECOMMENDATIONS**

21 In her Report and Recommendation, p. 2, lines 3-6, the Discovery Commissioner
22 found:

- 23 - “The State’s employees trained the Manpower employees regarding the
24 evaluation, grading, and scoring of the marijuana dispensary applications.”
- 25 - “Plaintiff has stated sufficiently to satisfy the Sedona principles, that there is
26 real danger of evidence destruction, based upon the position taken by the
27 unidentified Manpower employees with regard to the evidence.”

28 . . .

1 Based on these findings, the Discovery Commissioner recommended, among other
2 things:

- 3 - That the State provide a list of all employees, including Manpower employees,
4 who “assisted” in the evaluation or rating of all marijuana applications, or
5 who “trained and/or assisted” in the training of the Manpower employees.
- 6 - Allowing the Plaintiff to serve written questions asking whether these
7 employees ever used their personal devise(s) for work purposes.
- 8 - Allowing the Plaintiff to image all devices, whether work or personal, of all
9 such State employees even those who merely assisted in the evaluation or
10 rating of marijuana applications or the training of the Manpower employees.
- 11 - That the State make the Manpower employee devices available for imaging
12 by the Plaintiff.
- 13 - That the State serve the Manpower employees with the Order.

14 The Department objects to the DCRR on numerous grounds:

- 15 1) The Department established it is properly preserving relevant evidence.
- 16 2) The Manpower employees are employees of Manpower, an independent
17 contractor.
- 18 3) The Discovery Commissioner improperly used the actions of Manpower
19 employees as the basis to order intrusive electronic discovery of State
20 employees and their personal property.
- 21 4) The Discovery Commissioner’s Report and Recommendation is unduly broad
22 and vague.
- 23 5) The evidence did not show that the Manpower employees threatened to
24 destroy evidence.
- 25 6) The Manpower employees are not State employees.
- 26 7) The Department should not be required to serve a copy of any Order on the
27 Manpower employees.

28 . . .

1 **III. LEGAL ARGUMENT**

2 **A. Standard of Review**

3 Pursuant to the Advisory Committee Notes regarding the 2019 adoption of NRC
4 16.3, the court reviews a discovery commissioner's report and recommendation de novo.
5 Civ. Proc. Rules, Rule 16.3, NV ST RCP Rule 16.3.

6 **B. The Department is properly preserving and disclosing relevant, non-
7 privileged evidence.**

8 Importantly, the Department is properly complying with evidence and discovery
9 rules. This was the case before the DCRR was even issued. The Department's standalone
10 computers are preserved – and those used by Manpower employees were imaged.
11 Department employees were advised to preserve Electronically Stored Information (ESI).
12 Relevant documents in the Department's possession are being maintained. The Manpower
13 employees were identified. Much of this information was provided on the Department's
14 website, produced pursuant to NRC 16.1 in the MM Development Case or disclosed in the
15 Serenity Wellness Case. The Department continues to preserve its communications with
16 Manpower. The laptops, Steve Gilbert's personal and work phones and Kyril Plaskon's
17 personal phone were all imaged and have been partially produced pursuant to appropriate
18 and agreed upon Court Orders in the Serenity Wellness Case. The State continues to
19 preserve its communications with Manpower. In fact, in February 2019 Senior Judge
20 Barker in the MM Development Case held the State was properly preserving evidence and
21 ruled against MM Development's Contempt Motion. Tr. Feb. 9, 2019, p. 32, ll. 8-9.

22 **C. The Manpower employees are not under State control.**

23 The premise of the Discovery Commissioner's order was since the Manpower
24 employees refused to turn over their personal cell phones, there was sufficient evidence
25 that information may be destroyed. As a result, Department employees would be required
26 to surrender their personal cell phones, if used for work, to the Plaintiff for imaging. If
27 Manpower employees are not under State control, then the basis of the Discovery
28 Commissioner's Recommendation is fundamentally flawed.

1 The contract between Manpower, a temporary employment agency, and the State of
2 Nevada, is entitled: Contract for Services of Independent Contractor. Exhibit A. To make
3 it quite clear the Contract specifically provides Manpower is an Independent Contractor on
4 p. 5 of the Contract. This provision specifically provides:

5 Neither Contractor nor its employees, agents, nor
6 representatives shall be considered employees, agents, or
representatives of the State. . .

7 Contract, p. 5. Further, the Request for Proposal which resulted in the Contract (and is
8 incorporated into the Contract as Attachment AA) provides:

9 3.1 This RFP is soliciting proposals from Temporary
10 Employment Companies to provide services relating to
administrative and office support. These services are as needed
11 and upon request from State agencies and political subdivisions.
Contractor(s) will be responsible for hiring, firing, taxes,
12 workers' compensation, etc., for the temporary assigned
individuals **who are not employees of the State of Nevada.**

13 (emphasis added).¹ Further, NRS 333.700(4) provides:

14 An independent contractor is not in the classified or unclassified
15 service of the State and has none of the rights or privileges
available to officers or employees of the State of Nevada.

16 Thus, the Contract, the RFP, and statute show that the Manpower employees are
17 independent contractors and not employees of the State.

18 The law in Nevada is that a person who hires an independent contractor to provide
19 a service is not ordinarily liable for the acts the independent contractor commits. *See e.g.*
20 *San Juan v. PSC Indus. Outsourcing*, 126 Nev. 355, 362-363, 240 P.3d 1026, 1031
21 (2010)(discussing Restatement 2nd of Torts); *McCrosky v. Carson Tahoe Reg'l Med. Ctr.*,
22 408 P.3d 149, 153 (Nev. 2017)(indicating employer is liable for the negligence of its
23 employee but not the negligence of an independent contractor).

24 Whether the Manpower's employees' refusal to turn over their personal phones was
25 justified or not, it is inappropriate to hold the Department responsible for their actions.
26

27 ¹ The entire document is available at:
28 <http://purchasing.nv.gov/uploadedFiles/purchasingnv.gov/content/Contracts/Documents/3296-RFP.pdf>

1 Thus, the actions of the Manpower employees cannot be used as justification for a finding
2 that the Department might destroy evidence. Without a finding that a real danger of
3 evidence destruction by the Department exists, a preservation order cannot be issued
4 against the Department.

5 **D. The Discovery Commissioner improperly used the actions of**
6 **employees of an independent contractor as the basis to demand State**
7 **employees to hand over their personal property to the Plaintiff for**
8 **imaging.**

9 The Sedona Principles and the commentaries² thereto are the leading authorities on
10 electronic document retrieval and production. *Ford Motor Co. v. Edgewood Properties, Inc.*,
11 257 F.R.D. 418, 424 (D.N.J. 2009) (citation omitted); *William A. Gross Const. Assc., Inc. v.*
12 *Am. Mfrs. Mut. Ins. Co.*, 256 F.R.D. 134, 136 (S.D.N.Y.2009) (“[t]his Court strongly endorses
13 The Sedona Conference Cooperation Proclamation”); *John B. v. Goetz*, 531 F.3d 448 (6th
14 Cir.2008) (following principles); *Aguilar v. Immigration and Customs Enforc. Div. of U.S.*
15 *Dep't of Homeland Sec.*, 255 F.R.D. 350, 354 (S.D.N.Y.2008) (citing the The Sedona
16 Principles Second Edition).

17 Comment 5 f of the Sedona Principles deals with preservation orders and provides,
18 in part:

19 In general, courts should not issue a preservation order over
20 objection unless the party requesting such an order
21 demonstrates its necessity, which may require an evidentiary
22 hearing in some circumstances. Because all litigants are
23 obligated to preserve relevant information in their possession,
24 custody, or control, **a party seeking a preservation order**
25 **must first demonstrate a real danger of evidence**
26 **destruction, the lack of any other available remedy, and**
27 **that a preservation order is an appropriate exercise of the**
28 **court’s discretion and is tailored to require only**
preservation of information relevant to the claims and
defenses.

(emphasis added).

² *The Sedona Principles*, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 Sedona Conf. J. 1 (2018). The copyright notice indicates the Journal is available on a complementary basis to courthouses.

1 Under these principles, Plaintiff was required to establish that there was a real
2 danger that evidence in the hands of the Department was going to be destroyed before a
3 preservation order could issue. The Discovery Commissioner did not make a finding that
4 any Department employee was likely to destroy or conceal evidence relevant to the claims
5 of the Plaintiff.³

6 **E. The Discovery Commissioner's Recommendation is unduly broad and**
7 **vague.**

8 Even if there was a finding that evidence was likely to be destroyed, any preservation
9 order must be narrowly tailored to preserve only the evidence "relevant to the claims and
10 defenses." See Comment 5, Sedona Principles, *supra*. The Plaintiff's claims are less than
11 clear, and Plaintiff provides no indication that any relevant evidence exists in the personal
12 cell phones of Department employees.

13 The Recommendation itself is extremely vague as to which private phones of State
14 employees must be seized for the Plaintiff's benefit. The Recommendation requires anyone
15 who "assisted" in the scoring or rating or anyone who "assisted" in the training of the
16 Manpower employees. Personnel forwarded or created spreadsheet forms, organized
17 meetings, set aside the rooms, provided laptops, provided security training, delivered
18 lunch, forwarded phone calls, etc. Are any employees who assisted in any way required to
19 turn over their phone to Plaintiffs for imaging?

20 The Recommendation provides no specifics but is a sweeping mandate that every
21 State employee who remotely "assisted" the Manpower employees must hand over their
22 personal property to Plaintiffs for a completely unwarranted and unnecessary fishing
23 expedition. The Recommendation is simply too broad and vague in this regard.

24 An oft quoted Sedona principle is:

25 [C]ivil litigation should not be approached as if information
26 systems were crime scenes that justify forensic investigation at
27 every opportunity to identify and preserve every detail...
[M]aking forensic image backups of computers is only the first

28 ³ Indeed, in the MM Development Case Senior Judge Barker placed in the record that the State had acted properly in its efforts to preserve evidence.

1 step of an expensive, complex, and difficult process of data
2 analysis that can divert litigation into side issues and satellite
3 disputes involving the interpretation of potentially ambiguous
forensic evidence.

4 *John B. v. Goetz*, 531 F.3d 448, 460 (6th Cir. 2008) (*quoting* The Sedona Principles: Best
5 Practices, Recommendations & Principles for Addressing Electronic Production, Second
6 Edition, 34, 47 (2007), available at [https://thesedonaconference.org/publication/The%](https://thesedonaconference.org/publication/The%20Sedona%20Principles)
7 [20Sedona% 20Principles](https://thesedonaconference.org/publication/The%20Sedona%20Principles)).⁴ The *Goetz* court further explained:

8 Nevertheless, “[c]ourts have been cautious in requiring the
9 mirror imaging of computers where the request is extremely
10 broad in nature and the connection between the computers and
11 the claims in the lawsuit are unduly vague or unsubstantiated
12 in nature.” *Balboa Threadworks*, 2006 WL 763668, at *3; *see also*
13 *Balfour Beatty Rail, Inc. v. Vaccarello*, No. 3:06–CV–551–J–
14 20MCR, 2007 WL 169628, at *2–*3 (M.D.Fla. Jan.18, 2007);
15 *Diepenhorst v. City of Battle Creek*, No. 1:05–CV–734, 2006 WL
1851243, at *2–*4 (W.D. Mich. June 30, 2006). As the Tenth
Circuit has noted, albeit in an unpublished opinion, mere
skepticism that an opposing party has not produced all relevant
information is not sufficient to warrant drastic electronic
discovery measures. *See McCurdy Group, LLC v. Am. Biomedical*
Group, Inc., 9 Fed.Appx. 822, 831 (10th Cir.2001).

16 *Goetz, supra*, 531 F.3d at 459–60 (emphasis added). In *Advante Int’l Corp. v. Intel*
17 *Learning Tech.*, No. C 05 01022 JW(RS), 2006 WL 1806151 (N.D. Cal. June 29, 2006) the
18 court required specific, concrete evidence of concealment or destruction of evidence to
19 warrant intrusive discovery:

20 The mere fact that this case involves electronic data does not
21 change the basic concepts or rules of the discovery process. Had
22 Intel made the same basic accusations in an earlier age, its
23 claims of incomplete document production, inconsistencies, or
24 even perjury and destruction of evidence, would not
25 automatically entitle it to an order permitting it to enter
26 Advante’s offices to rummage through filing cabinets and desks.
The relief Intel is asking for here is no different and no more
warranted. Furthermore, notwithstanding the breadth of
accusations Intel has leveled, it has not presented specific,
concrete evidence of concealment or destruction of evidence
sufficient to conclude that a forensic examination of the vast

27 . . .

28 ⁴ *Goetz* seems to be cited heavily in electronic discovery cases in federal courts.

1 scope it proposes is warranted at this juncture, even under an
2 examination protocol that would protect the other parties'
legitimate privacy and other interests.

3 *Id.* at 1 (emphasis added).

4 Because several third parties did not hand over their personal property for forensic
5 imaging, the Discovery Commissioner ruled that the Plaintiff is entitled to image several,
6 if not dozens, of Department employee personal cell phones and devices. This is
7 unwarranted and inappropriate.

8 Even as to the personnel who interacted directly with the Manpower employees,
9 there is no justification for requiring them to turn over their personal phones for imaging
10 by the Plaintiff. These individual's rights to privacy are at least equally worthy of
11 protection as is Plaintiff's right to discovery when the required finding of "a real danger of
12 evidence destruction" has not even been presented.

13 In addition, Plaintiff is demanding discovery far out of proportion to legitimate
14 discovery purposes. Sedona Principle 2 provides:

15 When balancing the cost, burden, and need for electronically
16 stored information, courts and parties should apply the
17 proportionality standard embodied in Fed. R. Civ. P. 26(b)(1) and
18 its state equivalents, which requires consideration of the
19 importance of the issues at stake in the action, the amount in
20 controversy, the parties' relative access to relevant information,
the parties' resources, the importance of the discovery in
resolving the issues, and whether the burden or expense of the
proposed discovery outweighs its likely benefit.

21 Comment 2 d further provides:

22 Evaluating the need to produce ESI requires that a balance be
23 struck between the burdens and need for ESI, taking into
account the technological feasibility and realistic costs involved.

24 Discovery burdens should be proportional to the amount in
25 controversy and the nature of the case, including consideration
26 of the importance of issues at stake in the litigation. See
27 Comment 2.a. In fact, Rule 26(g)(1)(B)(iii) requires counsel to
28 certify that discovery requests are proportional. **If
proportionality is not observed, discovery costs may
prevent the just, speedy, and inexpensive determination
of litigation as Rule 1 contemplates.**

...

1 Costs cannot be calculated solely in terms of the expense of
2 computer technicians to retrieve the ESI, but must factor in
3 other litigation costs, including the accessibility of the ESI, the
4 interruption and disruption of routine business processes and IG
5 practices, and the costs of reviewing the ESI. These burdens on
6 information technology personnel and the resources required to
7 review ESI for relevance, privilege, confidentiality, and privacy
8 should be considered in any calculus of whether to allow
9 discovery, and, if so, under what terms. **In addition, the non-**
10 **monetary costs (such as the invasion of privacy rights,**
11 **risks to business and legal confidences, and risks to**
12 **privileges) should be considered.**

13 (emphasis added). Thus, the relevance of the phone data to the Plaintiff's allegations
14 should be examined before a preservation order is issued. Further, the non-monetary
15 impact of the Plaintiffs' requests should also be explored. The Discovery Commissioner did
16 not comment on these considerations and does not appear to have taken them into account.

17 **F. The evidence did not show the Manpower Employees threatened to**
18 **destroy evidence.**

19 As noted, the Sedona Principles require a court to consider the non-monetary costs
20 of ESI discovery such as the invasion of privacy rights. In response to an Order issued by
21 another Court, which recognized the State could not mandate the turn-over of the phones,
22 the Manpower employees ultimately decided not to voluntarily allow their cell phones to
23 be imaged. The first employee insisted on a subpoena being issued first. The second
24 employee cited privacy concerns and indicated the phone wasn't used for work. The third
25 also indicated the phone was not used for business. The fourth wasn't willing to allow
26 forensic imaging. The fifth and sixth employees did not respond. See Exhibit B.
27 Declaration of Talova Davis.

28 In this case, the Discovery Commissioner ruled these responses represented **a real**
danger of evidence destruction. Thus, the request that the proper legal procedure be
used (the issuance of a subpoena), the assertion of the right to privacy (a factor a Court
must consider), an indication the phones would not have relevant information on them
(another consideration), and two non-responses from two parties not subject to the
proceedings was used as evidence of likely evidence **destruction.**

EXHIBIT A

EXHIBIT A

For Purchasing Use Only:
RFP/Contract #3296/18404

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting by and Through Its

Various State Agencies

Monitored By: Department of Administration
Purchasing Division

515 E Masser Street, Room 300

Carson City NV 89701

Contact: Annette Morfin, Purchasing Officer

Phone: (775) 684-0185 Fax: (775) 684-0188

Email: amorfin@admin.nv.gov

and

Manpower

63 Keystone Ave. #202

Reno NV 89503

Contact: Patrick Harrigan

Phone: (775) 328-6020 Fax: (775) 328-6030

Email: pharrigan@mpreno.com

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners (BOE), services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada.

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.**
 - A. "State" – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
 - B. "Independent Contractor" – means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract.
 - C. "Fiscal Year" – is defined as the period beginning July 1st and ending June 30th of the following year.
 - D. "Current State Employee" – means a person who is an employee of an agency of the State.
 - E. "Former State Employee" – means a person who was an employee of any agency of the State at any time within the preceding 24 months.
3. **CONTRACT TERM:** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 10, Contract Termination*. Contract is subject to Board of Examiners' approval (anticipated to be March 14, 2017).

Effective from:	April 1, 2017	To:	March 31, 2021
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4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of termination for default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, posted prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	REQUEST FOR PROPOSAL 3296 AND AMENDMENT #1
ATTACHMENT BB:	INSURANCE SCHEDULE
ATTACHMENT CC:	CONTRACTOR'S RESPONSE

A Contractor's attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 5, Incorporated Documents* at a cost as noted below:

Total Contract or installments payable at:	Invoices will be done on a weekly basis to avoid possible timecard fraud. Invoices will be paid upon receipt of invoice and using agency's approval, invoices will be paid within 30 days. Agency Recruitment Invoices: will be paid per temporary employee hourly pay rate plus 24% Agency Recruitment Administrative Markup Fee. Contractor Recruitment Invoices: will be paid per temporary employee hourly pay rate plus 34% Contractor Recruitment Administrative Markup Fee. Both markup fees include a 20.89% for SUTA, FUTA, FICA, Modified Business Tax, General Liability, Bonding and Works Compensation (Self-Insured). Health Insurance, Employer Sponsored Health Insurance, Training, General Management, Administration and Operations Expenses are included in the markup rate. Manpower is compliant with the Patient Protection and Affordable Care Act (PPACA). Temporary employees may be required to drive State vehicles and contractor must maintain the \$1,000,000.00 automobile liability on their insurance policy to cover this requirement. There will be no fee incurred to the State should the temp employee accept a permanent position to the State regardless of the timeframe.
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Total Contract Not to Exceed:	\$7,000,000.00 for the contract term.
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The contractual authority, as identified by the not to exceed amount, does not obligate the State of Nevada to expend funds or purchase goods or services up to that amount; the purchase amount will be controlled by the individual using agency's purchase orders or other authorized means of requisition for services and/or goods, as submitted to and accepted by the contractor.

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriate may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on Incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the state no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a state claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the state of processing the billing as a state claim and that this amount will be deducted from the state claim payment due to the Contractor.
9. **INSPECTION & AUDIT.**
- A. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.
- B. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors; financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant State agency or its contracted examiners; the department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the state Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this Section.
- C. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the state, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.
10. **CONTRACT TERMINATION.**
- A. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.
- B. State Termination for Non-Appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the state Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason for the contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- C. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
- 1) If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - 2) If any State, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

- 5) If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - 6) If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- D. Time to Correct. Termination upon declared default or breach may be exercised only after service of formal written notice as specified in *Section 4, Notice*, and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- E. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this Section survive termination:
- 1) The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - 2) Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - 3) Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - 4) Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with *Section 21, State Ownership of Proprietary Information*.
11. **REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that the Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
12. **LIMITED LIABILITY.** The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the Contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
13. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
14. **INDEMNIFICATION.** To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the state only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the state whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the state; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work, relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

QUESTION		CONTRACTOR'S INITIALS	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	PH	
2.	Will the Contracting Agency be providing training to the independent contractor?	PH	
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	PH	
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?		PH
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	PH	
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?		PH
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?		PH

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the state, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior to approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

A. Insurance Coverage. The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in *Attachment BB*, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

- 1) Final acceptance by the State of the completion of this Contract; or
- 2) Such time as the insurance is no longer required by the State under the terms of this Contract; whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

B. General Requirements.

- 1) Additional Insured: By endorsement to the general liability insurance policy, the State of Nevada, its officers, employees and immune contractors, as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- 2) Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- 3) Cross Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- 4) Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- 5) Policy Cancellation: Except for ten (10) days notice for non-payment of premiums, each insurance policy shall be endorsed to state that, without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this Section shall be sent by certified mail to the address shown on page one (1) of this contract.
- 6) Approved Insurer: Each insurance policy shall be:
 - a) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - b) Currently rated by A.M. Best as "A-VII" or better.

C. Evidence of Insurance.

Prior to the start of any work, Contractor must provide the following documents to the contracting State agency:

- 1) Certificate of Insurance: The Acoird 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The State project/Contract number; description and Contract effective dates shall be noted on the

certificate, and upon renewal of the policies listed, Contractor shall furnish the State with replacement certificates as described within *Section 16A, Insurance Coverage*.

Mail all required insurance documents to the State Contracting Agency identified on Page one of the Contract.

- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per *Section 16 B, General Requirements*.
 - 3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.
 - 4) Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.
17. **COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any State, county, city or federal license, authorization, waiver, permit qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.
 18. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
 19. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
 20. **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.
 21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepare or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark, or copyright protection.
 22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.
24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:
- A. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt 67, Section 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - B. Contractor and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted there under contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
 - C. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
- A. Any federal, State, county or local agency, legislature, commission, council or board;
 - B. Any federal, State, county or local legislator, commission member, council member, board member, or other elected official; or
 - C. Any officer or employee of any federal, State, county or local agency; legislature, commission, council or board.
26. **WARRANTIES.**
- A. General Warranty. Contractor warrants that all services, deliverables, and/or work products under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry, shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
 - B. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State.
27. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.
28. **NOTIFICATION OF UTILIZATION OF CURRENT OR FORMER STATE EMPLOYEES.** Contractor has disclosed to the State all persons that the Contractor will utilize to perform services under this Contract who are Current State Employees or Former State Employees. Contractor will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this Contract without first notifying the Contracting Agency of the identity of such persons and the services that each such person will perform, and receiving from the Contracting Agency approval for the use of such persons.
29. **ASSIGNMENT OF ANTITRUST CLAIMS.** Contractor irrevocably assigns to the State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to

control any such litigation on such claim for relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to the State, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

30. **GOVERNING LAW; JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

31. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

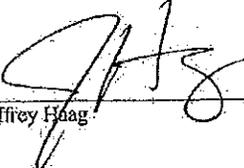
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.



Independent Contractor's Signature 1/26/17
Date

General Manager

Independent Contractor's Title



Jeffrey Hoag 1-30-2017
Date

Administrator, Nevada State Purchasing



Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

On: 2/14/17

Date

Approved as to form by:



Deputy Attorney General for Attorney General

On: 30 Jan 17

Date

**ATTACHMENT BB
INSURANCE SCHEDULE**



**ATTACHMENT BB
INSURANCE SCHEDULE**

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

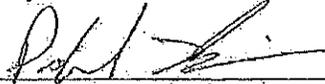
a. Policy shall contain a waiver of subrogation against the State of Nevada.

b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** Contractor shall for each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided or canceled except after providing thirty (30) days prior written notice been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Annette Morfin, Purchasing Officer, Nevada State Purchasing Division, 515 East Musser Street, Suite 300, Carson City, NV 89701. Should contractor fail to provide State timely notice, contractor will be considered in breach and subject to cure provisions set forth within this contract.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- All certificates required by this Contract shall be sent directly to Annette Morfin, Purchasing Officer, Nevada State Purchasing Division, 515 East Musser Street, Suite 300, Carson City, NV 89701. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.
- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

 1/26/17 General Manager
Independent Contractor's Signature Date Independent Contractor's Title

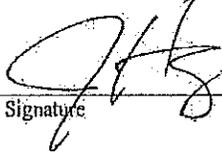
 1-30-2017 Administrator
Signature Date Title

EXHIBIT B

EXHIBIT B

1 DECL
ADAM PAUL LAXALT
2 Attorney General
David J. Pope (Bar No. 8617)
3 Acting Chief Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
5 Deputy Attorney General
Office of the Attorney General
6 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
7 (702) 486-3420 (phone)
(702) 486-3416 (fax)
8 DPope@ag.nv.gov
RWerbicky@ag.nv.gov
9 VRakowsky@ag.nv.gov

10 *Attorneys for Defendant,*
11 *State of Nevada,*
Department of Taxation

12
13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
Nevada corporation

16 Plaintiff,

17 vs.

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

21 Defendants.

Case No. A-18-785818-W
Dept. No. XVIII

22 **DECLARATION OF TALOVA V. DAVIS**

23 1. I, Talova V. Davis, first being duly sworn, present this Declaration regarding the status of
24 imaging cellular phones pursuant to the Court's Order dated December 13, 2018 and entered December
25 14, 2018 ("Court Order").

26 2. I have personal knowledge of, and am competent to testify, regarding these matters.

27 3. I am employed as a Cybercrime Investigator II by the Investigations Division of the
28 Nevada Office of the Attorney General, having been so employed by the State of Nevada since 2007. I

1 hereby affirm that I am a certified digital forensic specialist with extensive training and experience in the
2 preservation and examination of digital evidence.

3 4. I have been assigned the task of obtaining and forensically imaging cellular phones and
4 hard drives pursuant to the Court Order. On December 24, 2018, Nevada Office of the Attorney General
5 Chief of Investigations Roland D. Swanson II provided me with a list of names and phone numbers to
6 contact Manpower employees, asking that I begin contacting said employees on December 26, 2018.

7 5. This Court Ordered that in the event that any such cellular phone is not available, that the
8 State is to provide a sworn declaration explaining why the cellular phone is not available.

9 6. This is my sworn declaration explaining why the cellular phones below are not available
10 in compliance with the Court's Order.

11 7. At approximately 2:14 p.m. on December 26, 2018, I spoke with Manpower 1 regarding
12 the imaging of Manpower 1's personal cellular phone. Manpower 1 was willing to meet with me at 8
13 a.m. on the morning of December 27, 2018 to have the cellular phone imaged. Manpower 1 called back
14 at 8:08 a.m. on December 27, 2018 and said that after speaking with a few people, Manpower 1 is going
15 to decline having the cellular phone imaged until a subpoena requires Manpower 1 to do so.

16 8. At approximately 1:55 p.m. on December 26, 2018, I spoke with Manpower 2 regarding
17 the imaging of Manpower 2's personal cellular phone. Manpower 2 declined to have the cellular device
18 imaged, citing concerns about having personal pictures and personal identifiable information available
19 to others, even with a court order in place. Manpower 2 mentioned that the cellular phone was not used
20 for any work-related activity.

21 9. At approximately 8:33 a.m. on December 27, 2018, I left a voice mail message for
22 Manpower 3 regarding the forensic imaging of Manpower 3's cellular phone. On December 28, 2018 at
23 6:50 a.m., I received a voice mail message from Manpower 3 stating that Manpower 3 is not willing to
24 have the personal cellular phone copied as it was not used for business.

25 10. At approximately 9:05 a.m. on December 27, 2018, I left a voice mail message for
26 Manpower 4 regarding the forensic imaging of Manpower 4's cellular phone. On December 28, 2018 at
27 8:11 a.m., I received a voice mail message from Manpower 4 stating that Manpower 4 is not prepared to
28 authorize the forensic imaging of the cellular phone at this time.

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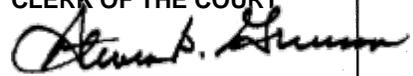
11. At approximately 9:08 a.m. on December 27, 2018, I left a voice mail message for Manpower 5 regarding the forensic imaging of Manpower 5's cellular phone. As of 11:00 a.m. on December 31, 2018, I have not received any communications from Manpower 5.

12. At approximately 9:39 a.m. on December 27, 2018, I left a voice mail message for Manpower 6 regarding the forensic imaging of Manpower 6's cellular phone. As of 11:00 a.m. on December 31, 2018, I have not received any communications from Manpower 6.

Dated this 3rd day of January, 2019.

ADAM PAUL LAXALT
Attorney General

By: 
Talova V. Davis
Cybercrime Investigator II



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

10 *Attorneys for Plaintiff,*
11 *Nevada Wellness Center, LLC*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

15 **Case No.:** A-19-787004-B

16 **Consolidated with:**

17 A-18-785818-W
18 A-18-786357-W
19 A-19-786962-B
20 A-19-787035-C
21 A-19-787540-W
22 A-19-787726-C
23 A-19-801416-B

24 **Dept. No.:** XI

25 **ORDER DENYING THE DEPARTMENT OF TAXATION OBJECTION TO**
26 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

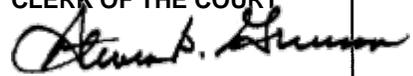
27 Defendant The Department of Taxation having a Motion for Hearing on Objection to the
28 Discovery Commissioner's Report and Recommendations. The matter having come on for hearing
on December 2, 2019. The Court finds and orders as follows:

The Department of Taxation's objection to Discovery Commissioner's Report and
Recommendation is overruled and the Department of Taxation's Objection is DENIED

IT IS SO ORDERED.

Dated this 30 day of December, 2019.


ELIZABETH GONZALEZ, DISTRICT COURT JUDGE



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

10 *Attorneys for Plaintiff,*
11 *Nevada Wellness Center, LLC*

HEARING REQUESTED

Date: January 13, 2020

Time: 9:00 a.m.

DISTRICT COURT

CLARK COUNTY, NEVADA

12 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

**NEVADA WELLNESS CENTER, LLC'S MOTION TO COMPEL ON AN ORDER
SHORTENING TIME**

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19 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "NWC"), by
20 and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
21 NELSON & ASSOCIATES, CHTD., and hereby files this motion to compel on an order shortening
22 time.
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01-07-20P01:18 RCVD

APP000150

1 This Motion is made and based upon the pleadings and papers on file herein, the points and
2 authorities included herewith, the exhibits attached hereto, and such oral argument as the Court may
3 entertain at the time of the hearing of this matter.

4 DATED this 7th day of January, 2020

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

6 

7 THEODORE PARKER, III, ESQ.
8 Nevada Bar No. 4716
9 2460 Professional Court, Suite 200
10 Las Vegas, Nevada 89128
11 Telephone: (702) 868-8000
12 Facsimile: (702) 868-8001
13 Email: tparker@pnlaw.net

14 *Attorneys for Plaintiff,*
15 *Nevada Wellness Center, LLC*

16 **ORDER SHORTENING TIME**

17 Upon Affidavit of counsel and good cause appearing therefore:

18 IT IS HEREBY ORDERED that the hearing of the above-titled matter will be heard by the

19  on the 13 day of January, 2020 at 9 a.m., or
20 as soon thereafter as counsel may be heard.

21 DATED this 7th day of January, 2020

22 

23 **DISTRICT COURT JUDGE**

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1 5. I reiterated NWC's position in a letter dated December 26, 2019. I requested
2 Mr. Shervorski provide certain documents by Friday January 3, 2019. Alternatively, I requested Mr.
3 Shervorski provide a response by close of business on December 31 2019, with an explanation as
4 to when the documents would be produced, what documents D.O.T. was willing to produce, and
5 how much time D.O.T. needed to produce the documents. To date D.O.T. has not produce the
6 requested documents or responded.

7 6. Clearly, an agreement could not be reached at the meet and confer, prompting the
8 filing of the instant Motion to Compel.

9 7. As this court is aware, this case is on an expedited schedule. Trial is set for
10 April 20, 2020, necessitating a speedy resolution to the issue.

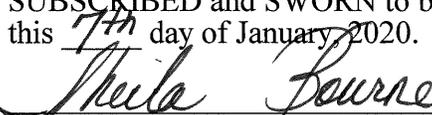
11 8. Counsel request this Motion be heard on or before January 13, 2020 given the
12 impending trial date.

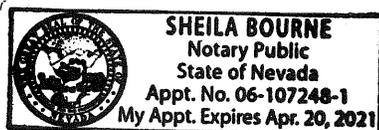
13 9. This request for order shortening time is made in good faith and without dilatory
14 motive.

15 FURTHER AFFIANT SAYETH NAUGHT.

16 
17 **THEODORE PARKER, III, ESQ.**

18 SUBSCRIBED and SWORN to before me
19 this 7th day of January 2020.

20 
21 NOTARY PUBLIC in and for
22 said County and State



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 On February 27, 2019, Plaintiff NWC filed an emergency motion for an order requiring the
5 SMC Ms. Karen Cronkhite and Mr. Damon Hernandez of Department of Taxation to preserve and/or
6 immediately turn over relevant electronically stored information from servers, stand-alone computers
7 and cell phones on and order shortening time. The Discovery Commissioner's Report and
8 Recommendations ("DCRR") were filed on May 10, 2019. The D.O.T. filed written objections to
9 the DCRR. The Court denied the D.O.T. objections to DCRR. See Exhibit 1. The DCRR provides
10 in pertinent part as follows:
11

12 "IT IS FURTHER RECOMMENDED that the State shall make all cell phones (personal -
13 only if used for work purposes - and/or business) of each such person that assisted in the
14 processing of applications for dispensary licenses and/or evaluated such license applications,
15 available for copying in the 10 business days after notice of entry of this order at a location
16 convenient to State and Manpower, and that the State, in the presence of Plaintiff's computer
expert, shall make 3 copies of the data from each cell phone. In the event any such cell
phones are not available, the State shall file a sworn declaration regarding any cell phone that
is not available explaining why such cell phone is not available within 10 business days after
notice of entry of this order." See Exhibit 2.

17 **II.**

18 **STATEMENT OF FACTS**

19 On December 2, 2019, based upon the Court's decision denying the Department of
20 Taxation's Objections to the DCRR, Plaintiff NWC requested the information required by the
21 Discovery Commissioner as identified in the Order. See Exhibit 3. Specifically, Plaintiff NWC
22 requested D.O.T. provide the telephones, both personal and work related phones, if used in any way
23 with regards to the 2018 application process, immediately to allow for extraction reports to be
24 prepared of the graders. NWC requested the D.O.T. make phones available for inspections by no
25 later than Friday, December 13, 2019. Alternatively NWC requested a response from D.O.T. by
26 close of business Wednesday, December 4, 2019. To date the D.O.T. has not produced the requested
27 telephones nor provided a response.
28

1 D.O.T. counsel has argued that the graders phone are not within the custody of control of the
2 D.O.T. However, as the Discovery Commissioner has found and this Court has indicate the contract
3 between the D.O.T. and Manpower afford the D.O.T. the ability to inspect electronic devices
4 including phones, laptops, and desktop computers. Notably this court has recognized Nevada
5 Supreme Court Case Comstock Residents Assn v. Lyon Cty. Bd. of Commissioners, 134 Nev. Adv.
6 Op. 19, 414 P.3d 318, 323 (2018) that “records concerning the performance of the public’s business
7 are public, and their storage on private devices does not alter that determination.” Comstock, 414
8 P.3d at 322 (internal citations omitted); see also Las Vegas Metropolitan. Police Dept. v. Blackjack
9 Bonding, Inc., 131 Nev. 80, 343 P.3d 608 (2015) (when a private entity or employee possesses
10 records of a governmental entity performing “a service rendered in the public interest,” those records
11 constitute public records and are in control of the governmental entity).
12

13 In addition, on December 26, 2019, NWC requested the D.O.T. provide certain documents
14 identified in D.O.T.’s a privilege log related to D.O.T.’s Eighth Supplement. See Exhibit 4. It is
15 NWC’s position that the privilege log was over inclusive and is contrary to the Court’s prior orders
16 in this case, NRCP 26 and applicable Nevada case law. The D.O.T. agreed to review the privilege
17 log in order to determine whether or not certain documents were withheld inappropriately based upon
18 perhaps a liberal view of certain privileges. D.O.T. has responded nor produced the requested
19 documents.

20 Counsel conferred regarding the D.O.T.’s failure to provide the telephones as well as the
21 requested documents. The D.O.T. agreed as of January 7, 2020 for the matter to be considered by
22 the Court. As this Court is well aware, the central claim in this case is that the Department of
23 Taxation’s ranking and scoring process was corrupt and favored certain applicants over others. NWC
24 is challenging the entire licensing and scoring process. The information sought is clearly relevant
25 information and falls with the information discoverable pursuant to NRCP 26. Further, D.O.T. has
26 “custody, possession, or control,” as defined under NRCP 36. As such, Plaintiff requests the Motion
27 to Compel be granted.
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II.
DISCUSSION

A. APPLICABLE AUTHORITY

1. Discoverable Documents

NRCP16.1(a)(1)(B) requires that a party “must, without awaiting a discovery request, provide to other parties: (B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that in the possession, custody, or control of the party and which are discoverable under NRCP 26(b).” NRCP 26(b) provides that:

[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things.

NRCP 34 requires Plaintiff to produce discoverable items within Plaintiff’s possession, custody, or control. “The ‘phrase ‘possession, custody, or control’ is disjunctive and only one of the enumerated requirements need be met.” Kiser v. Pride Communs., Inc., 2011 U.S. Dist. LEXIS 124124, 10-12 (D. Nev. Oct. 26, 2011)(*citing* Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D.Cal. 1995)(*quoting* Cumis Ins. Society, Inc. v. South-Coast Bank, 610 F.Supp. 193, 196 (N.D. Ind. 1985)). Thus, “actual possession” is not required. Soto, 162 F.R.D. at 619. Rather, Nevada Courts have agreed with a majority of jurisdictions that a “party may be ordered to produce a document in the possession of a non-party entity if that party has a legal right to obtain the document or has control over the entity who is in possession of the document.” Kiser, 2011 U.S. Dist. LEXIS 124124, at 10-12 (D. Nev. Oct. 26, 2011) *citing* Soto, 162 F.R.D. at 619 (internal citation omitted). Here, the fact that Plaintiff asserts he does not actually possess the tax documents does not matter. Plaintiff clearly has a legal right to obtain his own tax returns.

Courts have broadly interpreted “control” in the context of document production. See Camden Iron & Metal, Inc. v. Marubeni Am. Corp., 138 F.RD. 438, 441 (D.N.J. 1991) (“Control is

1 defined as the legal right, authority or ability to obtain documents upon demand." (citations
2 omitted)). In Gerling Int'l Ins. Co. v. Comm'r of Internal Revenue, the Third Circuit established that
3 "control" is present for Rule 34(a) when a corporation either can secure documents from the related
4 entity to meet its business needs or acted with it in the transaction that gave rise to the suit. 839 F.2d
5 131, 140-41 (3d Cir. 1988); See also Camden Iron, 138 F.R.D. at 443. In Gerling, it was established
6 that a corporation can be required to produce documents from a sister company, when it acted with
7 its sister company in the transaction at issue. See Davis v. Gamesa Tech. Corp., 2009 U.S. Dist.
8 LEXIS 97507, 2009 WL 3473391, at *5-*6 (E.D. Pa. Oct. 29, 2009); See also Sanofi-Aventis v.
9 Sandoz, Inc., 272 F.R.D. 391, 394 (D.N.J. 2011).

10 The analysis of document production under the Rules of Civil Procedure is subject to a broad
11 approach, as the "rule is to be liberally, rather than narrowly, construed, and its provisions have the
12 force and effect of a statute." See 8 Charles A. Wright & Arthur R. Miller, Federal Practice and
13 Procedure § 2202 (1970). "A party may be required to produce documents and things that he
14 possesses even though they belong to a third person who is not a party to the action. And if a party
15 has possession, custody or control, he must produce documents and things even though the
16 documents and things are themselves beyond the jurisdiction of the court." (See Japan Halon Co.
17 v. Great Lakes Chem. Corp., 155 F.R.D. 626, 627-628 (N.D. Ind. 1993) *citing* 8 Charles A. Wright
18 & Arthur R. Miller, 8 Federal Practice and Procedure § 2210 (1970)).

19 In Comstock Residents Assn v. Lyon Cty. Bd. of Commissioners, 134 Nev. Adv. Op. 19, 414
20 P.3d 318, 323 (2018) the Nevada Supreme Court considered whether personal and work phones
21 would be subject to discovery and found Petitioners were entitled to a writ of mandamus to compel
22 disclosure of records where county commissioners conducted county business on private cell phones
23 and email accounts because where a private entity possessed records of a governmental entity
24 performing "a service rendered in the public interest," those records constituted public records under
25 Nev. Rev. Stat. § 239.010(1) and were subject to disclosure pursuant to the Nevada Public Records
26 Act (NPRA), Nev. Rev. Stat. ch. 239.

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2. Motion to Compel

NRCP 37(a)(2) provides in pertinent part:

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34,

fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

NRCP 37(a)(4)(A) provides:

If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, responses or objection was substantially justified, or that other circumstances make an award of expenses unjust.

B. ARGUMENT

Plaintiff has refused to produce the telephones as well as certain relevant documents that are not privileged. Plaintiff cannot hide behind the excuse that it does not possess the documents. D.O.T.'s cellular phones and related documents are clearly within its custody, control, and possession given the contract between the D.O.T. and Manpower. A copy of the contract is attached hereto. The Discovery Commissioner and this Court previously reviewed and considered this contract in rendering its prior decision on this subject.

Likewise, D.O.T.'s claim that the documents are confidential/privileged is disingenuous. This would be akin to a Plaintiff claiming that their medical records are confidential in a personal injury

1 action. The D.O.T. alleges the majority of the requested documents are privileged based upon the
2 deliberative process. The deliberative process privilege is not absolute. *NLRB v. Sears, Roebuck &*
3 *Co.*, 421 U.S. 132, 148, 44 L. Ed. 2d 29, 95 S. Ct. 1504 (1975). Even if properly asserted, a litigant
4 seeking a document can overcome the privilege by demonstrating an overriding need for the
5 document. *EPA v. Mink*, 410 U.S. 73, 90-1, 93 S. Ct. 827, 35 L. Ed. 2d 119 (1972). The ability of
6 a private litigant to override a privilege claim set up by the Government, with respect to an otherwise
7 disclosable document, may itself turn on the extent of the litigant's need in the context of the facts
8 of his particular case; or on the nature of the case. *EPA v. Mink*, 410 U.S., at 86 n. 13; *Hickman v.*
9 *Taylor*, 329 U.S. 495, 511-512 (1947); *Jencks v. United States*, 353 U.S. 657 (1957); *United States*
10 *v. Nixon*, 418 U.S. 683 (1974).

11 The claims in this case is involve the Department of Taxation's ranking and scoring process.
12 NWC is challenging the entire licensing and scoring process. Plaintiff seeks documents related to
13 the licensing process. This information is sought given the documentary evidence produced and
14 testimony elicited to date. Given the documents and testimony, it is disingenuous to claim that the
15 privilege claim set up by the D.O.T. outweighs NWC's need for the documents in the context of the
16 facts of this particular case.

17
18 **III.**

19 **CONCLUSION**

20 Based on the foregoing, Plaintiff NWC., respectfully requests the Court grant the Motion to
21 Compel on Order Shortening Time and order Defendant D.O.T. to immediately provide the
22 telephones and requested documents to Plaintiff.

23 DATED this 7th day of January, 2020.

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

25 
26 THEODORE PARKER, III, ESQ.
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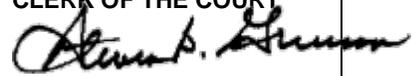
CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 8th day of January, 2020, I served a true and correct copy of the foregoing **NEVADA WELLNESS CENTER, LLC'S MOTION TO COMPEL ON AN ORDER SHORTENING TIME** on all parties currently on the electronic service list as set forth below:

- By 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.
- Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.



An employee of PARKER, NELSON & ASSOCIATES, CHTD.



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11 *Attorneys for Defendant*
12 *State of Nevada of Nevada, Department of Taxation*

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

15 IN RE DOT

16 Case No. A-19-787004-B
17 A-18-785818-W (Sub Case)
18 A-18-786357-W (Sub Case)
19 A-19-786962-B (Sub Case)
20 A-19-787035-C (Sub Case)
21 A-19-787540-W (Sub Case)
22 A-19-787726-C (Sub Case)
23 A-19-801416-B (Sub Case)

24 Dept. No. XI

25 **OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO COMPEL**

26 The State of Nevada ex. rel. the Department of Taxation, by and through its counsel,
27 opposes Nevada Wellness Center, LLC's motion to compel.

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

I. INTRODUCTION

This Court should deny the Motion to Compel filed by Nevada Wellness Center, LLC (Wellness). **First**, the Department of Taxation complied with the Discovery Commissioner's Report and Recommendation (DCRR). **Second**, Wellness has not demonstrated that the cell phones it seeks are relevant, or even that any relevant, public records exist on them to its claims. **Third**, the Department of Taxation has no right to seize the private property of the Manpower individuals. **Fourth**, Wellness failed to . . .

1 demonstrate that it was unable to obtain the materials with less intrusive means while
2 respecting the privacy rights of the Manpower individuals.

3 This Court should also reject the portion of Wellness’s motion that seeks the
4 disclosure of material protected by deliberative-process privilege. Wellness has not made
5 the showing of overriding need required to overcome that privilege.

6 Strictly in the alternative, should the Court be inclined to grant Wellness any relief
7 under the December 31, 2019 order, the Court should stay compliance to permit the State
8 to file a writ petition, as it did in the MM Development case, which raised analogous non-
9 party privacy issues concerning Mr. Tenorio’s private cell phone.¹

10 **II. BACKGROUND**

11 **A. Wellness’ allegations**

12 Wellness alleges causes of action for declaratory relief, injunctive relief, violation of
13 procedural due process, violation of substantive due process, violation of equal protection,
14 petition for judicial review, and petition for writ of mandamus. (**Ex. B**). Wellness in its
15 complaint alleges it was wrongfully denied a (conditional) license to operate a marijuana
16 business, because in the 2015 licensing procedure under NRS 453A, it received the highest
17 ranks when applying for a *medical* marihuana dispensary in Henderson and Las Vegas,
18 whereas in 2018, it was denied licenses for *recreational* marijuana retail stores in Clark
19 County, Las Vegas, North Las Vegas, and Reno. (*Id.* at ¶¶ 11-13, 16).

20 **B. Department of Taxation’s prior compliance with prior preservation**
21 **order on Manpower Contractors personal phones**

22 On December 13, 2018, the court in the *MM Development* case issued an order to the
23 Department of Taxation to: preserve certain ESI, including communications regarding the
24 hiring of Manpower personnel; make such ESI available for copying; provide a list of

25 ¹ In that case, Department VIII issued an order compelling the Department of Taxation
26 to seize and turn over for copying non-party Department of Taxation employee Rino
27 Tenorio’s personal cell phone. The Department of Taxation filed an emergency writ to stay
28 that court’s order and vacate the order to compel. The Nevada Supreme Court granted the
request for a stay and ordered a response to the writ. See NSC Case 79825 and
accompanying order. **Ex. A.**

1 Department personnel, including Manpower personnel; provide a list of their phone
2 numbers; make personnel phones available, including those used by the pertinent
3 Manpower contractors; and, if such phones were not available, to provide a declaration
4 saying so and explaining why the cell phones were not available. (Ex. C). The next day,
5 the Department of Taxation sent a preservation letter to Manpower. (Ex. D). The
6 Department of Taxation also charged a Cybercrime Investigator II with the Attorney
7 General's Office to contact the six Manpower individuals to obtain their cell phones. (Ex.
8 E). She did so, but four refused and two of failed to respond. (*Id.* ¶¶ 7-12). The Department
9 of Taxation filed its declaration on January 3, 2019. (Ex. F).

10 C. Current dispute regarding Manpower Employee's personal phones

11 After this Court overruled the Department of Taxation's objection to the Discovery
12 Commissioner's report and recommendation, Wellness' counsel requested that the
13 Manpower phones be provided by December 13, 2019. Department of Taxation's counsel
14 advised that the Department of Taxation preserved all ESI devices used in the evaluation
15 process, as well as all communications with Manpower related to the hiring process, and
16 invited Mr. Parker to make arrangements for copying the records. (Ex. F). Further, the
17 Department of Taxation's counsel asserted that he provided a list of Manpower personnel
18 who assisted in license application rating and evaluations, that the phones of certain
19 individuals had been imaged with a third-party ESI vendor, Holo Discovery, and that the
20 Office of the Attorney General had sent a preservation letter to Manpower a year earlier.
21 *Id.* at 1-2 (F-1). However, the Department of Taxation does not have custody, possession,
22 or control of the Manpower Contractors' personal phones.

23 Wellness then filed its Motion to Compel.

24 III. LEGAL ARGUMENT

25 A. Wellness' motion lacks compliance with *Okada's* interpretation of 26 Nevada Rule of Civil Procedure 37(a)'s pre-existing request element

27 A motion to compel seeks compliance with a preexisting discovery request. See
28 NRCP 37(a); *see also Okada v. Eighth Jud. Dist. Ct.*, 134 Nev. 6, 408 P.3d 566 (2018). A

1 pre-existing discovery request is an essential element of a motion to compel. *Id.* To be
2 sure, the Discovery Commissioner and this Court upheld a preservation order, but that is
3 not the same thing (and Wellness does not argue it is), as a discovery request under Nevada
4 Rule of Civil Procedure 34. For this reason alone, this Court should deny Wellness' motion.

5 It is true that, the Department of Taxation has an obligation under Rule 16.1 to
6 identify relevant records and supplement such identification under Rule 26(e)(1). But,
7 those Rules could hardly be the basis for a motion to compel where Wellness fails to point
8 out whether any even conceivably relevant information exists on the private cell phones of
9 the non-party Manpower Contractors.

10 Nothing prevents Wellness from contacting the Manpower Contractors. Wellness
11 could have inquired, or even served a subpoena to compel testimony under oath, of whether
12 the data or records it seeks even exist. Because this basic prerequisite or foundation has
13 not been met, there certainly is not a ripe dispute that could be the basis for a motion to
14 compel against the Department of Taxation.

15 **B. The Department of Taxation complied with the DCRR**

16 Wellness never explains how the Department of Taxation failed to comply with the
17 DCRR. The May 10, 2019 DCRR provides, in relevant part, that “[i]n the event [the
18 Manpower] cell phones are not available, the State shall file a sworn declaration . . .
19 explaining why such cell phone is not available within 10 business days after notice of this
20 order.” Br., Ex. 2 at 4. Wellness ignores that the Department of Taxation has been in
21 compliance with preservation requirements for approximately a year.

22 This case has been consolidated with the MM Development matter. Ms. Davis'
23 declaration detailing her efforts to obtain consent from the six Manpower Contractors was
24 filed on January 3, 2019. Wellness does not dispute that the Department of Taxation sent
25 a litigation hold letter to Manpower on December 14, 2018. Wellness does not dispute that
26 the Manpower Contractors have actual knowledge of the requirements of preservation.
27 There is no basis to compel the Department of Taxation to do what it already has done.

28 . . .

1 **C. Wellness' interpretation of the Manpower Contract is not correct**

2 Wellness' reliance on the Manpower contract for its argument that the Department
3 of Taxation must make the Manpower cell phones available, MTC at 6, is misplaced. The
4 court must interpret and enforce an unambiguous contract according to its plain meaning.
5 *See Farmers Ins. Exch. v. Young*, 108 Nev. 328, 332, 832 P.2d 376, 378 (1992). Wellness'
6 interpretation reads out of the contract an important limitation. The Manpower contract
7 is clearly not discussing subcontractor employee private cell phones because it discusses
8 "copying" such records at any office or location of Contractor where such records "may be
9 found." *See Br., Ex. 5 ¶ 9*. Private cell phones of the Manpower Contractors (i.e. cell
10 phones) are not within the contract. Further, the contract does not give the State the right
11 to obtain *possession* of *private* cell phones of the independent contractors hired by
12 Manpower that contain *personal* and *irrelevant* information. Thus, Wellness' argument
13 that the State has "control" of the private cell phones finds no support in the contract.

14 Also, even assuming section 9 of the Manpower contract provided the State with
15 "control" over the Manpower cell phones—it does *not*—the State would still have to respect
16 the privacy rights of Manpower 1 through 6, who are third parties. *See, e.g., Soto v. City of*
17 *Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (courts should give weight to
18 constitutionally-based privacy rights when discovery requests are made); *City of Ontario v.*
19 *Quon*, 560 U.S. 746, 756 (2010) (Fourth Amendment not limited to criminal investigations).
20 Thus, the analogy Wellness seeks to draw between the cell phones at issue that belong to
21 *third* parties and a *party's* tax returns or medical records, MTC at 7, 9-10, is simply
22 inapposite.

23 **D. Wellness fails to explain why it does not use a subpoena duces tecum**
24 **to obtain any putative records on the Manpower Contractors' private**
25 **cell phones**

26 Wellness' motion to compel ignores that discovery sought, and the means by which
27 it is sought, must be proportionate to the case's needs. Unlike former NRCP 26(b), which
28 Wellness quotes on page 7 of its Motion to Compel, the current version of NRCP 26(b) limits
discovery to "nonprivileged matter that is relevant to any party's *claims or defenses . . .*"

1 (emphasis added). New Rule 26(b) also requires that the discovery sought be "proportional
2 to the needs of the case, considering [factors such as] . . . the parties' relative access to
3 relevant information . . . the importance of the discovery in resolving the issues, and
4 whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.*

5 Here, Wellness has not even established that the Manpower cell phones are relevant
6 to its claims. Wellness does not allege in its complaint that the Department of Taxation's
7 ranking and scoring process was corrupt and favored some applicants over others, as it now
8 contends in its Motion to Compel. Wellness also does not allege that the scoring performed
9 in 2018 was incorrect, that Manpower failed to hire qualified personnel, or that Manpower
10 personnel engaged in any other untoward conduct. Without more, there is no basis to allow
11 Wellness any discovery into the decision-making process. *See Dep't of Commerce v. New*
12 *York*, 139 S. Ct. 2551, 2573, 204 L. Ed. 2d 978 (2019) ("court is ordinarily limited to
13 evaluating the agency's contemporaneous explanation in light of the existing record. . . .
14 court may not reject an agency's stated reasons for acting simply because the agency might
15 also have had other unstated reasons").

16 Wellness seems to mistakenly rely on Rule 34. Br. at 8:10-19. But, as explained,
17 Wellness cites to no request for production that is the basis for its motion to compel (a
18 prerequisite for such a motion, *Okada*, supra). Further, Rule 34 points to NRCP 45, under
19 which "a nonparty [such as Manpower] may be compelled to produce . . . electronically
20 stored information . . . or to permit an inspection." NRCP 34(c). Wellness could have used
21 a subpoena to obtain the cell phones from Manpower, which would have allowed the
22 Manpower individuals' right to voice objections based on privacy interests. *See* NRCP
23 45(c)(2)(B). Wellness offers no excuse or justification for its failure to use this alternative
24 discovery method.

25 **E. The NPRA is not relevant to Wellness' motion to compel**

26 Wellness relies on *Comstock Residents Ass'n v. Lyon Cnty. Bd. of Commissioners*,
27 134 Nev. ___, 414 P.3d 318, 322 (Adv. Op. 19, March 29, 2018) ("*Comstock*"), but that was
28 . . .

1 a public records case, not a discovery dispute under Rule 37(a). Moreover, *Comstock* did
2 not make the findings Wellness attributes to the case on page 8 of its Motion.

3 *Comstock* merely held that records held on private devices are not "categorically"
4 exempt from the NPRA. *Comstock*, 414 P.3d at 320. Notably, "the district court did not
5 make any findings as to which specific communications [on the commissioner's private
6 devices] were made in furtherance of the public's interests or would be exempt from the
7 NPRA," which is why the Nevada Supreme Court "remand[ed] this matter to the district
8 court with instructions to determine whether the requested records regard the provision of
9 a public service and are subject to disclosure." *Id.* at 322.

10 Wellness ignores that the *Comstock* court noted that commissioners who wished "to
11 challenge the disclosure of any particular record[] are free to do so in the district court."
12 *Id.* at 323 n.2. There, the record was insufficient to determine the "Board's argument that
13 the privacy rights of the commissioners could be violated by disclosing public records from
14 the commissioners' private devices and emails" *Id.* "Although only those records that
15 concern the public's business are subject to disclosure, there are **privacy protections**
16 available that allow the district court to determine the public records are protected as
17 confidential" *Id.* (emphasis added).

18 Here, no determination has been made to assess the privacy rights of the Manpower
19 individuals whose cell phones are being sought. Thus, even assuming their devices contain
20 materials relevant to Wellness' claims, the individuals were never provided with an
21 opportunity to challenge the disclosure of their devices.

22 Even if there were records that were pertinent to this case on the Manpower
23 Contractors' personal cell phones, it hardly follows that, absent a subpoena, Wellness could
24 compel their disclosure. Trial courts in other jurisdiction have determined "that a company
25 does not possess or control the text messages from the personal phones of its employees
26 and may not be compelled to disclose text messages from employees' personal phones."

27 *Lalumiere v. Willow Springs Care, Inc.*, No. 1:16-cv-3133-RMP, 2017 WL 6943148, at *2

28 . . .

1 (E.E. Wash. Sept. 18, 2017) (citing *Cotton v. Costco Wholesale Corp.*, No. 12-2731, 2013 WL
2 3819974, at *6 (D. Kan. July 24, 2013)).²

3 **F. Nevada Wellness has failed to show an “overriding need” for the**
4 **privilege-protected documents it seeks**

5 This Court should also deny Wellness’ motion to compel documents protected by the
6 deliberative process privilege. Before filing the motion to compel, Wellness’s counsel sent
7 counsel for the Department of Taxation a letter challenging as “improperly withheld” a
8 substantial proportion of the entries on the privilege log for the Department of Taxation’s
9 eighth supplemental disclosure. Br., Ex. 4, at 2. Although the letter took issue with the
10 Department of Taxation’s assertion of several different forms of privilege, the motion to
11 compel seeks to compel only those documents protected by deliberative-process privilege.

12 Deliberative-process privilege “protects materials or records that reflect a
13 government official’s deliberative or decision-making process.” *DR Partners v. Cty.*
14 *Comm’rs*, 116 Nev. 616, 623, 6 P.3d 465, 469 (2000) (citing *EPA v. Mink*, 410 U.S. 73, 89
15 (1973), *superseded on other grounds by* 5 U.S.C. § 552(a)(4)(B), (b)(1)). It thus “permits
16 agency decision-makers to engage in that frank exchange of opinions and recommendations
17 necessary to the formulation of policy without being inhibited by fear of later public
18 disclosure.” *Id.* (quoting *Mink*, 410 U.S. at 89) (quotation marks omitted). Deliberative-
19 process privilege applies where a document is (1) “predecisional” – meaning that the agency
20 can identify a decision or policy to which the document ultimately contributed – and (2)
21 “deliberative” – meaning that the materials contain “opinions, recommendations, or advice
22 about agency policies.” *Id.*

23 The Department of Taxation made a prima facie showing of the privilege’s
24 applicability by supplying an appropriate privilege log. *See In re Grand Jury Investigation*,
25 974 F.2d 1068, 1071 (1992); Craig R. Delk, *Nevada Civil Practice Manual* § 16.04[5] (5th
26 ed. 2014). The privilege log satisfied state and federal law requirements by identifying the

27
28 ² Cases interpreting the federal rules are persuasive authority. *Foster v. Dingwall*, 126
Nev. 49, 54, 228 P.3d 453, 456 (2010).

1 subject of each withheld document, the date it was transmitted, the sender and recipient(s)
2 and the privilege asserted, as well as by generally describing each document's contents.
3 *See* Mem. P. & A., *supra*, Ex. 4, at 8-25.

4 The privilege log shows that the vast majority of the entries are paradigmatic
5 examples of deliberative-process privilege. For example, the first two challenged entries
6 are an “[e]-mail with proposed changes to regulations” and “[d]raft [t]emporary
7 regulations.” Br., Ex. 4, at 8. An email describing the thought process behind proposed
8 edits to a regulation and a copy of the proposed edits are predecisional because they
9 contributed to the regulations that were ultimately promulgated. *See DR Partners*, 116
10 Nev. at 623, 6 P.3d at 469. And they are deliberative because they are proposed edits
11 circulated for discussion among agency staff. *See id.* Requiring disclosure of these types
12 of documents would strike at the heart of the privilege and jeopardize agency decision
13 makers’ ability to have frank discussions in the course of formulating policies. *See id.*³

14 Wellness does not dispute that the Department of Taxation has made the required
15 prima facie showing that deliberative-process privilege applies to the documents on the log.
16 *See* Br. at 10. Instead, it notes that “a litigant seeking a document can overcome
17 [deliberative-process] privilege by demonstrating an overriding need for the document.” *Id.*
18 (citing *Mink*, 410 U.S. at 90-91). That principle dooms Wellness’s argument because it has
19 not met its burden of showing an “overriding need” for the documents it is seeking.

20 Wellness’s complaint boils down to an allegation that the manner in which the
21 Department applied its policies to Nevada Wellness’s application was unlawful. *See*
22 Complaint and Petition for Judicial Review or Writ of Mandamus 5-10, *Nevada Wellness*
23 *Ctr., LLC v. State ex rel. Dep’t of Taxation*, No. A-19-787540-W (8th Jud. Dist. Ct. Nev. Jan.
24 15, 2019). Its complaint is shot through with allegations that the Department
25 misinterpreted or misapplied the relevant laws and regulations. *See, e.g., id.* at 6 (alleging

26 ³ Upon receiving Nevada Wellness’s motion to compel, the Department undertook an
27 independent review of the entries on the privilege log for which deliberative-process
28 privilege was asserted. It has reconsidered its assertion of privilege with respect to a small
number of the documents. It will produce those documents by January 17, 2020.

1 that Nevada Wellness “would have ranked high enough to entitle it to ‘conditional’ licenses
2 had the Department properly applied the provisions of [among other things, chapter 453D
3 of the Nevada Administrative Code and Regulation 092-17]”); *id.* at 7 (¶ 39); *id.* at 9 (¶¶ 62-
4 63). That set of allegations is based on the implicit premise that the regulations were valid.
5 Separately, the complaint alleges that the license-application procedures and the denial of
6 the license to Wellness were unconstitutional. *Id.* at 7-9. That set of allegations has
7 nothing to do with the regulations one way or the other.

8 For both the misinterpretation claims and the constitutional claims, the Department
9 of Taxation’s deliberative process in formulating emergency, temporary and then final
10 regulations is irrelevant. What matters to Wellness’s case is how the Department of
11 Taxation applied the regulations on the books to the record in front of it – not how those
12 regulations made it into the books in the first place. *See Dep’t of Commerce v. New York*,
13 139 S. Ct. 2551, 2573 (2019) (explaining that except in extraordinary circumstances a court
14 is “limited to evaluating the agency’s contemporaneous explanation in light of the existing
15 administrative record”). Because the documents sought are tangential at best to Wellness’s
16 claims, it has failed to show an overriding need for the privileged documents.

17 **IV. CONCLUSION**

18 As our court recognized in *Comstock*, the privacy rights of individuals with respect
19 to their private cell phones are not chopped liver. This Court should not compel the
20 Department of Taxation to seize private property for copying. Moreover, Wellness could
21 use less burdensome means such as a subpoena duces tecum, which would allow the owners
22 of those phones to object and protect the privacy of information on their property.
23 Alternatively, this Court should stay any order requiring the Department of Taxation to
24 seize and copy the private cell phones of the non-party Manpower Contractors so that this

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1 matter can be consolidated with the existing writ pending with the Nevada Supreme Court
2 regarding Mr. Tenorio's private cell phones.

3 Respectfully submitted January 10, 2020.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Steve Shevorski
7 Steve Shevorski (Bar No. 8256)
8 Chief Litigation Counsel

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EXHIBIT “A”

APP000173

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA
DEPARTMENT OF TAXATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
TREVOR L. ATKIN, DISTRICT JUDGE,
Respondents,
and
MM DEVELOPMENT COMPANY, INC.;
AND LIVFREE WELLNESS, LLC,
Real Parties in Interest.

No. 79825

FILED

OCT 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

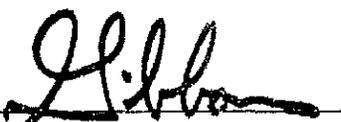
ORDER DIRECTING ANSWER AND IMPOSING TEMPORARY STAY

This emergency petition for a writ of mandamus challenges an October 14, 2019, district court order granting a motion to preserve and/or turn over electronic data. The order directs petitioner to make available for copying, for purposes of preservation and potential access to, the electronically stored information on the personal cell phone of petitioner's employee.

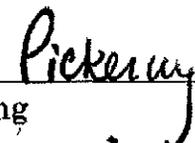
Having reviewed the petition and supporting documents, we conclude that an answer may assist this court in resolving the petition. Therefore, real parties in interest, on behalf of respondents, shall have 21 days from the date of this order within which to file and serve an answer, including authorities, against issuance of the requested writ. NRAP 21(b)(1). Petitioner shall have 14 days from service of the answer to file and serve any reply.

We temporarily stay enforcement of the district court's October 14 order pending our receipt and consideration of any opposition to the stay and further order of this court. Any opposition to the stay may be filed and served within 7 days from the date of this order. Nothing in this order precludes petitioner from seeking a further stay from the district court, as contemplated at the September 30, 2019, hearing on this matter.

It is so ORDERED.



Gibbons C.J.



Pickering J.

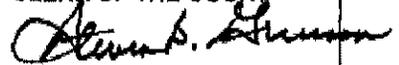


Cadish J.

cc: Attorney General/Carson City
Attorney General/Las Vegas
Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk

EXHIBIT “B”

APP000176



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

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 v.

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

21 Defendants.

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

24 **COMPLAINT AND PETITION FOR
25 JUDICIAL REVIEW OR WRIT OF
26 MANDAMUS**

27 Arbitration Exemption Claimed:

- 28 - *Involves Declaratory Relief*
- *Presents Significant Issue of Public Policy*
- *Involves Equitable or Extraordinary Relief*

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

34 **I.**

35 **PARTIES & JURISDICTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Reconsideration, has exhausted its administrative remedies.

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

4 **III.**

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Relief)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

///

1 **SECOND CLAIM FOR RELIEF**

2 **(Injunctive Relief)**

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

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

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

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

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

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

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

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

21 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

12 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

24 **FIFTH CLAIM FOR RELIEF**

25 **(Equal Protection Violation)**

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

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

1 regulations; and

2 c. Other relief consistent with those determinations.

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

6 **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

- 14 a. Providing proper pre-hearing notice of the denial; and
- 15 b. Arbitrarily and capriciously denying the application for no legitimate reason.

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

- 18 a. The Board lacked substantial evidence to deny the application; and
- 19 b. The Board denied the application solely to approve other competing
20 applicants without regard to the merit of Plaintiff's application.

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

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

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IV.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

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

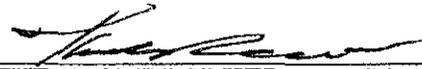
V.

JURY DEMAND

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

DATED this 14th day of January, 2019.

PARKER, NELSON & ASSOCIATES, CHTD.



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

Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1



STATE OF NEVADA
DEPARTMENT OF TAXATION

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

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

RENO OFFICE
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Reno, Nevada 89502
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STEVE SISOLAK
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
MELANIE YOUNG
Executive Director

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

January 10, 2019

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

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

Mr. Theodore Parker,

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

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

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

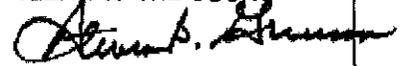
Thank you for your interest in this application process.

Jorge Pupo
Deputy Executive Director
Marijuana Enforcement Division

APP000189

EXHIBIT “C”

APP000190



1 Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
2 n.rulis@kempjones.com
3 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
4 Las Vegas, Nevada 89169
Telephone: (702) 385-6000
5 *Attorneys for Plaintiff*

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 MM DEVELOPMENT COMPANY, INC., a
9 Nevada corporation,

Case No.: A-18-785818-W
Dept. No.: XVIII

10
11 Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART EMERGENCY
MOTION FOR ORDER REQUIRING
THE SMC TO PRESERVE AND/OR
IMMEDIATELY TURN OVER
RELEVANT ELECTRONICALLY
STORED INFORMATION FROM
SERVERS, STAND-ALONE
COMPUTERS, AND CELL PHONES**

12 vs.

13 STATE OF NEVADA, DEPARTMENT OF
14 TAXATION; and DOES 1 through 10; and
15 ROE CORPORATIONS 1 through 10.

16 Defendants.

Date of Hearing: 12/13/18
Time of Hearing: 10:00 a.m.

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Seventeenth Floor
Las Vegas, Nevada 89169
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18 Plaintiff MM Development having filed an Emergency Motion For Preservation Of
19 Electronic Data and having given the counsel for Department of Taxation notice of such
20 request, the Court conducting a hearing on December 13, 2018 at 10:00 a.m., Plaintiff appearing
21 by Will Kemp, Esq., and Nathanael R. Rulis, Esq., of the law firm of Kemp, Jones & Coulthard,
22 LLP, the State of Nevada, Department of Taxation (the "State") appearing by Robert Werbicky,
23 Esq., and David J. Pope, Esq., and it appearing that the State used employees retained by an
24 outside employment agency (i.e. Manpower) to evaluate and rate marijuana dispensary license
25 applications (hereinafter referred to as "Manpower"), and good cause appearing for the
26 preservation of electronic data of the State and Manpower, the Motion is GRANTED IN PART
27
28

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1 regarding preservation and DENIED IN PART regarding immediate turnover and it is hereby
2 ORDERED, ADJUDGED and DECREED as follows:

3 ORDERED that the State shall preserve server or any standalone computers (including
4 laptops, iPads or thumb drives) in its possession and used in the evaluation and rating of
5 marijuana dispensary license applications as part of the September 2018 application period (the
6 “ESI” or “electronically-stored information”). The State shall also preserve communication
7 made with Manpower related to the hiring of the personnel by Manpower for the September
8 2018 application period. The State shall make the ESI available for copying by the State in the
9 presence of a computer expert retained by Plaintiff in the next 10 business days after notice of
10 entry of this order. The State shall make 3 copies of the hard drive of the ESI with one copy
11 being preserved by the State as a master copy retained by the State and one additional copy
12 retained by the State, and one copy provided to the Court under seal. To allow Plaintiff and the
13 State (i.e., the Nevada Department of Taxation) to determine the most efficient way to allow the
14 State to make such copies, the State shall make their primary IT persons available for a
15 conference call with the ESI expert for Plaintiff and counsel for the Plaintiff, counsel for the
16 State (and counsel and IT manager for Manpower if desired by Manpower) to identify in
17 general the types of servers (including standalone computers and laptops) that will be subject to
18 the copying protocol and types and amount of data maintained on such servers (including
19 standalone computers and laptops). The conference call shall be held no later than 5 business
20 days after notice of entry of this order.

21 ORDERED that the State shall provide Plaintiffs a list of Department personnel
22 including Manpower personnel that primarily assisted in the evaluation and rating of all
23 applications for dispensary licenses and/or evaluated such license applications received in the
24 September 2018 application period and provide a list of any full or partial cell phone numbers
25 known to the Department sufficient to allow the identification of the cell phone (including but
26 not limited to personal cell phone numbers) for each such person within 5 business days of after
27 notice of entry of this order. At the same time, the State may use reasonable identifiers, e.g.
28 “Manpower Employee 1,” instead of names if the State so desires. At the same time the State

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1 may designate up to 6 persons on a list that the State believes were primarily involved on behalf
2 of Manpower and/or the State in the processing of all applications for dispensary licenses and/or
3 the evaluation of such license applications. If the State has a pre-existing organizational chart
4 of the Manpower employees, it shall provide the same to Plaintiff at such time but the State is
5 not obligated to create an organizational chart. Again, the State may use reasonable identifiers
6 instead of names. Within 10 business days after receiving the foregoing list from the State,
7 Plaintiffs shall be allowed to take the telephonic deposition of the PMK for the State to identify
8 the names (or reasonable identifiers) and job descriptions of all persons (including temporary
9 employees, if any) that were involved on behalf of State in assisting in the evaluation and rating
10 of applications for dispensary licenses and/or evaluating such licenses for the September 2018
11 application period. The purpose of the PMK deposition is to reasonably identify persons whose
12 cell phone data may contain relevant discoverable materials to ensure that all such data is
13 preserved. At its option, the State may provide a written response in lieu of the PMK
14 deposition.

15 ORDERED that the State shall make all cell phones (personal and/or business) of each
16 such person that assisted in the processing of applications for dispensary licenses and/or
17 evaluated such license applications, including but not limited to Steve F. Gilbert and a Northern
18 Nevada State employee, available for copying in the 10 business days after notice of entry of
19 this order at a location convenient to State and Manpower, and that the State, in the presence of
20 Plaintiff's computer expert, shall make 3 copies of the data from each cell phone with one copy
21 being preserved as a master copy, one copy provided to counsel for the State and one copy
22 provided to the Court under seal. In the event any such cell phones are not available, the State
23 shall file a sworn declaration regarding any cell phone that is not available explaining why such
24 cell phone is not available within 10 business days after notice of entry of this order.

25 ORDERED that neither Plaintiff's counsel nor Plaintiff or their agents or employees
26 shall access the cell phone data until the State and Plaintiff agrees to a procedure to protect non-
27 discoverable confidential data or the Court allows such access by subsequent order. The State is
28 authorized to inform any such persons whose cell phone data is copied that any and all personal

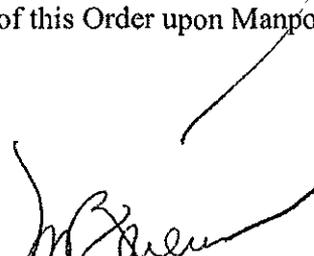
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1 information will either be returned or destroyed at a later date. Plaintiff's counsel and Plaintiff
2 and their agents or employees are restricted from accessing ESI data except as authorized by a
3 confidentiality order or other order of the Court.

4 ORDERED that the State is directed to maintain any and all documents in its possession
5 regarding the processing of applications for dispensary licenses and/or evaluation of such
6 license applications, for the September 2018 application period including but not limited to the
7 following: (1) any and all communications between Manpower and the State; (2) any and all
8 directions provided by the State to Manpower regarding the processing of applications or the
9 evaluation of the applications and any requests for information from Manpower; (3) any and all
10 communications between Manpower or State employees and any applicant (or with the
11 attorneys or consultants for an applicant) regarding any subject matter; (4) the contract, if any,
12 between Manpower and the State and all invoices, if any, sent by Manpower to the State; (5)
13 any and all preliminary rankings of applicants by jurisdiction or otherwise by Manpower or the
14 State that pre-date the final ranking; (6) any and all work papers (including notes) used by
15 Manpower or the State in the processing of applications for dispensary licenses and/or
16 evaluation of such license applications; (7) any and all spread sheets created by Manpower or
17 the State regarding the applications for dispensary licenses; and (8) any and all notes of formal
18 or informal meetings among Manpower or the State personnel regarding the processing of
19 applications for dispensary licenses and/or evaluation of such license applications. The State
20 shall not be required to produce the documents set forth in categories 1 through 8 at an
21 expedited pace but shall be required to identify the same with specificity at the Rule 16.1
22 conference subject to all privileges and objections by the State to such production.

23 ORDERED that the State shall serve a copy of this Order upon Manpower within one
24 business day of notice of entry of this Order.

25 DATED this 13th day of December, 2018

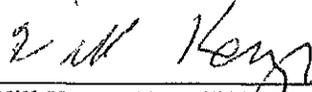
26
27 
28 DISTRICT JUDGE

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Respectfully Submitted by:

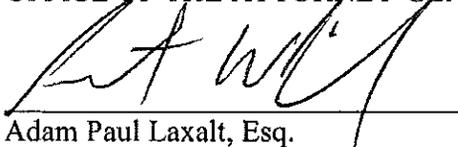
KEMP, JONES & COULTHARD, LLP



Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Approved as to content and form

OFFICE OF THE ATTORNEY GENERAL



Adam Paul Laxalt, Esq.
Robert Werbicky, Esq.
David J. Pope, Esq.
555 East Washington Ave., Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendant
State of Nevada, Department of Taxation

EXHIBIT “D”

APP000196

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

December 17, 2018

LITIGATION HOLD NOTICE

VIA EMAIL, FACSIMILE, AND U.S. MAIL

Manpower

Attn: Patrick Harrigan
63 Keystone Ave., #202
Reno, NV 89503
pharrigan@mpreno.com
(775) 328-6030 (fax)

**Re: Notice to Preserve Information and to Prevent Deletion or
Destruction of Electronic and Paper Records**

**MM Development Company v. State of Nevada, Eighth Judicial District Court,
Clark County, Nevada, Case No. A-18-785818-W**

Dear Mr. Harrigan:

Please be advised that the State of Nevada, Department of Taxation ("State") has received an Order, dated December 13, 2018, from the Court in the above-referenced matter. The Order requires that the State and Manpower undertake certain activities to preserve information related to the claims made by the Plaintiff in the lawsuit.

The Order is enclosed. **Please review it carefully.**

As required by the Order, we are providing you with the Order and asking Manpower to comply with it. Therefore, please review and act in accordance with the Order. Please be advised that the Attorney General's Office does not represent Manpower and cannot give Manpower legal advice. Therefore, Manpower should obtain and/or consult with its own lawyers with regard to complying with the Order.

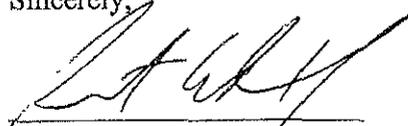
Manpower
Attn: Patrick Harrigan
Page 2
December 17, 2018

We also request that you forward this LITIGATION HOLD NOTICE along to your counsel and insurance carrier, as soon as possible. Please have your counsel contact this office immediately to assure Manpower and the State can complete the requirements identified in the attached Order within the timeframes identified.

Thank you in advance for your cooperation and prompt attention to these matters.

Please feel free to call if you have any questions or concerns.

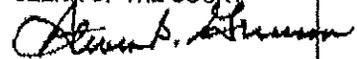
Sincerely,



Robert E. Werbicky
Deputy Attorney General
(702) 486-3105
rwerbicky@ag.nv.gov

REW/dw
Enclosure

APP000198



1 Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
2 n.rulis@kempjones.com
3 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
4 Las Vegas, Nevada 89169
Telephone: (702) 385-6000
5 *Attorneys for Plaintiff*

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 MM DEVELOPMENT COMPANY, INC., a
9 Nevada corporation,

Case No.: A-18-785818-W
Dept. No.: XVIII

10 Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART EMERGENCY
MOTION FOR ORDER REQUIRING
THE SMC TO PRESERVE AND/OR
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RELEVANT ELECTRONICALLY
STORED INFORMATION FROM
SERVERS, STAND-ALONE
COMPUTERS, AND CELL PHONES**

11 vs.

12 STATE OF NEVADA, DEPARTMENT OF
13 TAXATION; and DOES 1 through 10; and
14 ROE CORPORATIONS 1 through 10.

Date of Hearing: 12/13/18
Time of Hearing: 10:00 a.m.

15 Defendants.

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17 Electronic Data and having given the counsel for Department of Taxation notice of such
18 request, the Court conducting a hearing on December 13, 2018 at 10:00 a.m., Plaintiff appearing
19 by Will Kemp, Esq., and Nathanael R. Rulis, Esq., of the law firm of Kemp, Jones & Coulthard,
20 LLP, the State of Nevada, Department of Taxation (the "State") appearing by Robert Werbicky,
21 Esq., and David J. Pope, Esq., and it appearing that the State used employees retained by an
22 outside employment agency (i.e. Manpower) to evaluate and rate marijuana dispensary license
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24 preservation of electronic data of the State and Manpower, the Motion is GRANTED IN PART
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15 conference call with the ESI expert for Plaintiff and counsel for the Plaintiff, counsel for the
16 State (and counsel and IT manager for Manpower if desired by Manpower) to identify in
17 general the types of servers (including standalone computers and laptops) that will be subject to
18 the copying protocol and types and amount of data maintained on such servers (including
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20 days after notice of entry of this order.

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23 applications for dispensary licenses and/or evaluated such license applications received in the
24 September 2018 application period and provide a list of any full or partial cell phone numbers
25 known to the Department sufficient to allow the identification of the cell phone (including but
26 not limited to personal cell phone numbers) for each such person within 5 business days of after
27 notice of entry of this order. At the same time, the State may use reasonable identifiers, e.g.
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7 Plaintiffs shall be allowed to take the telephonic deposition of the PMK for the State to identify
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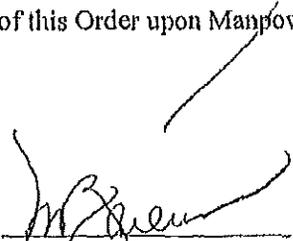
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8 directions provided by the State to Manpower regarding the processing of applications or the
9 evaluation of the applications and any requests for information from Manpower; (3) any and all
10 communications between Manpower or State employees and any applicant (or with the
11 attorneys or consultants for an applicant) regarding any subject matter; (4) the contract, if any,
12 between Manpower and the State and all invoices, if any, sent by Manpower to the State; (5)
13 any and all preliminary rankings of applicants by jurisdiction or otherwise by Manpower or the
14 State that pre-date the final ranking; (6) any and all work papers (including notes) used by
15 Manpower or the State in the processing of applications for dispensary licenses and/or
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17 the State regarding the applications for dispensary licenses; and (8) any and all notes of formal
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19 applications for dispensary licenses and/or evaluation of such license applications. The State
20 shall not be required to produce the documents set forth in categories 1 through 8 at an
21 expedited pace but shall be required to identify the same with specificity at the Rule 16.1
22 conference subject to all privileges and objections by the State to such production.

23 ORDERED that the State shall serve a copy of this Order upon Manpower within one
24 business day of notice of entry of this Order.

25 DATED this 13th day of December, 2018

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27 
28 DISTRICT JUDGE

KEMP, JONES & COULTHARD, LLP

3800 Howard Hughes Parkway

Seventeenth Floor

Las Vegas, Nevada 89169

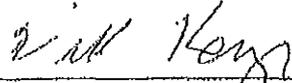
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Respectfully Submitted by:

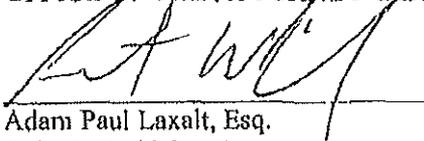
KEMP, JONES & COULTHARD, LLP



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Attorneys for Plaintiff

Approved as to content and form

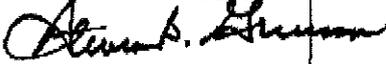
OFFICE OF THE ATTORNEY GENERAL



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Robert Werbicky, Esq.
David J. Pope, Esq.
555 East Washington Ave., Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendant
State of Nevada, Department of Taxation

EXHIBIT “E”

APP000204



1 **DECL**
ADAM PAUL LAXALT
2 Attorney General
David J. Pope (Bar No. 8617)
3 Acting Chief Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
5 Deputy Attorney General
Office of the Attorney General
6 555 E. Washington Ave., Ste. 3900
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7 (702) 486-3420 (phone)
(702) 486-3416 (fax)
8 DPope@ag.nv.gov
VRakowsky@ag.nv.gov
9 RWerbicky@ag.nv.gov

10 *Attorneys for Defendant,*
11 *State of Nevada,*
Department of Taxation

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
Nevada corporation

16 Plaintiff,

17 vs.

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

21 Defendants.

Case No. A-18-785818-W
Dept. No. XVIII

**DECLARATION REGARDING ANY CELL
PHONE THAT IS NOT AVAILABLE**

22 The STATE OF NEVADA, DEPARTMENT OF TAXATION by and through their counsel,
23 ADAM PAUL LAXALT, Attorney General and DAVID POPE, Acting Chief Deputy Attorney General,
24 ROBERT WERBICKY, Deputy Attorney General, and VIVIENNE RAKOWSKY, Deputy Attorney
25 General, and hereby submit this Declaration Regarding Any Cell Phone That Is Not Available pursuant
26 to this Court's order of December 13, 2018.

27 ///

28 ///

1 Attached as Exhibit A is the Declaration of Talova V. Davis, in her official capacity as
2 Cybercrime Investigator II, Investigations Division, Nevada Office of the Attorney General.

3
4 DATED this 3rd day of January, 2019.

5
6 ADAM PAUL LAXALT
7 Attorney General

8 By: /s/Vivienne Rakowsky
9 VIVIENNE RAKOWSKY (Bar No. 9160)
10 Deputy Attorney General
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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I am an employee of the Office of the Attorney General and that on
4 the 3rd day of January, 2019, I filed the foregoing **DECLARATION REGARDING ANY CELL**
5 **PHONE THAT IS NOT AVAILABLE** via this Court's electronic filing system. Parties that are
6 registered with this Court's EFS will be served electronically.

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9
10 /s/ Michele Caro
11 An Employee of the Office of the Attorney General
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EXHIBIT “A”

EXHIBIT “A”

1 DECL
ADAM PAUL LAXALT
2 Attorney General
David J. Pope (Bar No. 8617)
3 Acting Chief Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
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Office of the Attorney General
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RWerbicky@ag.nv.gov
9 VRakowsky@ag.nv.gov

10 *Attorneys for Defendant,*
State of Nevada,
11 *Department of Taxation*

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
Nevada corporation

16 Plaintiff,

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

21 Defendants.

Case No. A-18-785818-W
Dept. No. XVIII

22 **DECLARATION OF TALOVA V. DAVIS**

23 1. I, Talova V. Davis, first being duly sworn, present this Declaration regarding the status of
24 imaging cellular phones pursuant to the Court's Order dated December 13, 2018 and entered December
25 14, 2018 ("Court Order").

26 2. I have personal knowledge of, and am competent to testify, regarding these matters.

27 3. I am employed as a Cybercrime Investigator II by the Investigations Division of the
28 Nevada Office of the Attorney General, having been so employed by the State of Nevada since 2007. I

1 hereby affirm that I am a certified digital forensic specialist with extensive training and experience in the
2 preservation and examination of digital evidence.

3 4. I have been assigned the task of obtaining and forensically imaging cellular phones and
4 hard drives pursuant to the Court Order. On December 24, 2018, Nevada Office of the Attorney General
5 Chief of Investigations Roland D. Swanson II provided me with a list of names and phone numbers to
6 contact Manpower employees, asking that I begin contacting said employees on December 26, 2018.

7 5. This Court Ordered that in the event that any such cellular phone is not available, that the
8 State is to provide a sworn declaration explaining why the cellular phone is not available.

9 6. This is my sworn declaration explaining why the cellular phones below are not available
10 in compliance with the Court's Order.

11 7. At approximately 2:14 p.m. on December 26, 2018, I spoke with Manpower 1 regarding
12 the imaging of Manpower 1's personal cellular phone. Manpower 1 was willing to meet with me at 8
13 a.m. on the morning of December 27, 2018 to have the cellular phone imaged. Manpower 1 called back
14 at 8:08 a.m. on December 27, 2018 and said that after speaking with a few people, Manpower 1 is going
15 to decline having the cellular phone imaged until a subpoena requires Manpower 1 to do so.

16 8. At approximately 1:55 p.m. on December 26, 2018, I spoke with Manpower 2 regarding
17 the imaging of Manpower 2's personal cellular phone. Manpower 2 declined to have the cellular device
18 imaged, citing concerns about having personal pictures and personal identifiable information available
19 to others, even with a court order in place. Manpower 2 mentioned that the cellular phone was not used
20 for any work-related activity.

21 9. At approximately 8:33 a.m. on December 27, 2018, I left a voice mail message for
22 Manpower 3 regarding the forensic imaging of Manpower 3's cellular phone. On December 28, 2018 at
23 6:50 a.m., I received a voice mail message from Manpower 3 stating that Manpower 3 is not willing to
24 have the personal cellular phone copied as it was not used for business.

25 10. At approximately 9:05 a.m. on December 27, 2018, I left a voice mail message for
26 Manpower 4 regarding the forensic imaging of Manpower 4's cellular phone. On December 28, 2018 at
27 8:11 a.m., I received a voice mail message from Manpower 4 stating that Manpower 4 is not prepared to
28 authorize the forensic imaging of the cellular phone at this time.

1 11. At approximately 9:08 a.m. on December 27, 2018, I left a voice mail message for
2 Manpower 5 regarding the forensic imaging of Manpower 5's cellular phone. As of 11:00 a.m. on
3 December 31, 2018, I have not received any communications from Manpower 5.

4 12. At approximately 9:39 a.m. on December 27, 2018, I left a voice mail message for
5 Manpower 6 regarding the forensic imaging of Manpower 6's cellular phone. As of 11:00 a.m. on
6 December 31, 2018, I have not received any communications from Manpower 6.

7 Dated this 3rd day of January, 2019.

8 ADAM PAUL LAXALT
9 Attorney General

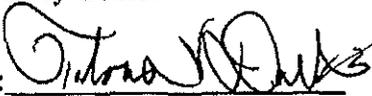
10 By: 
11 Talova V. Davis
12 Cybercrime Investigator II

EXHIBIT “F”

APP000212

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

December 11, 2019

Via U.S. Mail and Electronic Mail

Theodore Parker, III
Parker Nelson & Associates
2460 Professional Court, Suite 200
Las Vegas, NV 89128

Re: Response to December 2, 2019 letter regarding Court's denial of the State of Nevada ex. rel. Department of Taxation's objection to the Discovery Commissioner's Report and Recommendation

Dear Mr. Parker,

This letter responds to your letter regarding the District Court's denial of the Department of Taxation's objection to the Discovery Commissioner's Report and Recommendation. We have not seen an order from Judge Gonzalez denying the Department of Taxation's objection. However, in the spirit of cooperation, the Department of Taxation responds as follows.

First, the Department of Taxation has preserved all electronic devices used in the evaluation and rating process for the retail marijuana dispensary applications. The preservation was done with Holo Discovery in response to MM Development, Inc. and LivFree Wellness, LLC's request. The Department of Taxation has also preserved all communication made with Manpower relating to hiring of the personnel. This data is available for pick up or we can mail it to you, whichever you prefer. We would also refer you to the training materials produced in the Department of Taxation's initial disclosures

Second, the Department of Taxation has provided a list of State Personnel and Manpower personnel that assisted in the evaluation and rating of applications, trained and assisted in the training of the Manpower contractors, and/or evaluated such license applications. The Department of Taxation refers you to its answers to ETW Plaintiffs' Interrogatories, particular response to Rog #20 and #22.

Third, the phones of Steve Gilbert, Jorge Pupo, and Ky Plaskon have already been imaged with Holo Discovery. The phones of Kara Cronkite and Damon Hernandez have now also been imaged and are with Holo Discovery.

Theodore Parker, III
Page 2
December 11, 2019

The cellular phones of the Manpower employees are not within the Department of Taxation's possession, custody, or control. The Office of the Attorney General has made a good faith effort to preserve any data or information on such phones. The Office of the Attorney General sent out a litigation hold letter to Manpower, which enclosed with it Judge Bailus' preservation order. (Ex. A). Independently, Ms. Talova Davis, an employee with the Office of the Attorney General, contacted each Manpower contractor to see if they would allow their cell phones to be imaged but they refused. (Ex. B). Further, each Manpower contractor testified in deposition that they knew of the litigation hold on their cellular phones.

Sincerely,



Steve Shevorski
Chief Litigation Counsel
(702) 486-3783
SShevorski@ag.nv.gov

SGS:tap
Enclosures as stated

APP000214

EXHIBIT A

APP000215

ADAM PAUL LAXALT
Attorney General



J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Ave., #3900
Las Vegas, NV 89101

December 14, 2018

Manpower
Attn: Patrick Harrigan
63 Keystone Ave., #202
Reno, NV 89503
(775) 328 – 6030
pharrigan@mpreno.com

Re: MM Development Company v. State of Nevada, Department of Taxation
Case No. A-18-785818-W

Dear Mr. Harrigan:

MM Development Company, Inc. (“MM Development”) has filed a lawsuit in the Eighth Judicial District Court of the State of Nevada. MM Development is seeking monetary damages, injunctive relief, and declaratory relief arising out of the evaluation and rating of marijuana retail store license applications received by the State of Nevada Department of Taxation (the “Department”) in September 2018.

Manpower contracted with the State of Nevada to provide temporary employment services on an as needed basis. As part of this contract, Manpower secured the services of temporary employees who assisted in the evaluation and rating of retail marijuana licenses application received by the Department in September 2018. It is believed these employee were initially hired in the July to September 2018 time-period.

MM Development has initiated suit against the Department alleging the Department “improperly granted conditional licenses to applicants that were ranked substantially lower than [MM Development] on the 2015 rankings” which potentially implicates the services provided by the temporary employees. The Department has not yet answered the complaint and denies the allegations made by MM Development. Nevertheless, it is possible Manpower may also become involved in the lawsuit.

MM Development’s lawsuit will be governed by the Nevada Rules of Civil Procedure. Manpower is required by law to take steps to ensure that all data, including electronic data, that is potentially relevant to this litigation is preserved. While you may

Patrick Harrigan
December 14, 2018
Page 2

not be involved in this matter or personally have any knowledge, you may have relevant data.

This duty to preserve evidence is broad and extends to all documents, regardless of whether the document is stored electronically (such as email or cell phones) or in hard-copy and regardless of the type of document. For example, reports, spreadsheets, photographs, texts and videotapes are all considered documents that must be preserved. Furthermore, the duty to preserve this documentary evidence extends to all documents in existence as of the time you reasonably anticipated this litigation.

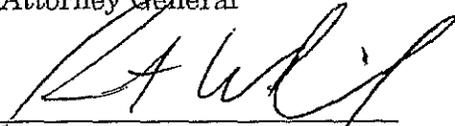
To ensure that all relevant documents are preserved, you should communicate directly with all employees who have possession or control of potentially relevant evidence, including but not limited to personnel who deal with email retention, deletion, and archiving. You should advise each of these employees to preserve any relevant documents in their custody. Furthermore, you should advise all such persons that any regularly scheduled and/or automatic deletion of email or other electronic documents must be discontinued with respect to any relevant data. In addition, any document destruction (such as shredding of documents) must cease with respect to any relevant documents. All relevant documents, both electronic and paper, must be preserved for the duration of this litigation.

If you have any questions about the details of these obligations, please contact me.

Sincerely,

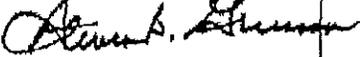
ADAM PAUL LAXALT
Attorney General

By:


David J. Pope,
Senior Deputy Attorney General
Robert Werbicky,
Deputy Attorney General

enc. Order filed 12/13/18

APP000217



1 Will Kemp, Esq. (#1205)
2 Nathanael R. Rulis, Esq. (#11259)
3 n.rulis@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 MM DEVELOPMENT COMPANY, INC., a
12 Nevada corporation,

Case No.: A-18-785818-W
Dept. No.: XVIII

13 Plaintiff,

14 vs.

15 STATE OF NEVADA, DEPARTMENT OF
16 TAXATION; and DOES 1 through 10; and
17 ROE CORPORATIONS 1 through 10.

**ORDER GRANTING IN PART AND
DENYING IN PART EMERGENCY
MOTION FOR ORDER REQUIRING
THE SMC TO PRESERVE AND/OR
IMMEDIATELY TURN OVER
RELEVANT ELECTRONICALLY
STORED INFORMATION FROM
SERVERS, STAND-ALONE
COMPUTERS, AND CELL PHONES**

18 Defendants.

Date of Hearing: 12/13/18
Time of Hearing: 10:00 a.m.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

18 Plaintiff MM Development having filed an Emergency Motion For Preservation Of
19 Electronic Data and having given the counsel for Department of Taxation notice of such
20 request, the Court conducting a hearing on December 13, 2018 at 10:00 a.m., Plaintiff appearing
21 by Will Kemp, Esq., and Nathanael R. Rulis, Esq., of the law firm of Kemp, Jones & Coulthard,
22 LLP, the State of Nevada, Department of Taxation (the "State") appearing by Robert Werbicky,
23 Esq., and David J. Pope, Esq., and it appearing that the State used employees retained by an
24 outside employment agency (i.e. Manpower) to evaluate and rate marijuana dispensary license
25 applications (hereinafter referred to as "Manpower"), and good cause appearing for the
26 preservation of electronic data of the State and Manpower, *the Motion is GRANTED IN PART*
27
28

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3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 regarding preservation and DENIED IN PART regarding immediate turnover and it is hereby
2 ORDERED, ADJUDGED and DECREED as follows:

3 ORDERED that the State shall preserve server or any standalone computers (including
4 laptops, iPads or thumb drives) in its possession and used in the evaluation and rating of
5 marijuana dispensary license applications as part of the September 2018 application period (the
6 "ESI" or "electronically-stored information"). The State shall also preserve communication
7 made with Manpower related to the hiring of the personnel by Manpower for the September
8 2018 application period. The State shall make the ESI available for copying by the State in the
9 presence of a computer expert retained by Plaintiff in the next 10 business days after notice of
10 entry of this order. The State shall make 3 copies of the hard drive of the ESI with one copy
11 being preserved by the State as a master copy retained by the State and one additional copy
12 retained by the State, and one copy provided to the Court under seal. To allow Plaintiff and the
13 State (i.e., the Nevada Department of Taxation) to determine the most efficient way to allow the
14 State to make such copies, the State shall make their primary IT persons available for a
15 conference call with the ESI expert for Plaintiff and counsel for the Plaintiff, counsel for the
16 State (and counsel and IT manager for Manpower if desired by Manpower) to identify in
17 general the types of servers (including standalone computers and laptops) that will be subject to
18 the copying protocol and types and amount of data maintained on such servers (including
19 standalone computers and laptops). The conference call shall be held no later than 5 business
20 days after notice of entry of this order.

21 ORDERED that the State shall provide Plaintiffs a list of Department personnel
22 including Manpower personnel that primarily assisted in the evaluation and rating of all
23 applications for dispensary licenses and/or evaluated such license applications received in the
24 September 2018 application period and provide a list of any full or partial cell phone numbers
25 known to the Department sufficient to allow the identification of the cell phone (including but
26 not limited to personal cell phone numbers) for each such person within 5 business days of after
27 notice of entry of this order. At the same time, the State may use reasonable identifiers, e.g.
28 "Manpower Employee 1," instead of names if the State so desires. At the same time the State

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Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 may designate up to 6 persons on a list that the State believes were primarily involved on behalf
2 of Manpower and/or the State in the processing of all applications for dispensary licenses and/or
3 the evaluation of such license applications. If the State has a pre-existing organizational chart
4 of the Manpower employees, it shall provide the same to Plaintiff at such time but the State is
5 not obligated to create an organizational chart. Again, the State may use reasonable identifiers
6 instead of names. Within 10 business days after receiving the foregoing list from the State,
7 Plaintiffs shall be allowed to take the telephonic deposition of the PMK for the State to identify
8 the names (or reasonable identifiers) and job descriptions of all persons (including temporary
9 employees, if any) that were involved on behalf of State in assisting in the evaluation and rating
10 of applications for dispensary licenses and/or evaluating such licenses for the September 2018
11 application period. The purpose of the PMK deposition is to reasonably identify persons whose
12 cell phone data may contain relevant discoverable materials to ensure that all such data is
13 preserved. At its option, the State may provide a written response in lieu of the PMK
14 deposition.

15 ORDERED that the State shall make all cell phones (personal and/or business) of each
16 such person that assisted in the processing of applications for dispensary licenses and/or
17 evaluated such license applications, including but not limited to Steve F. Gilbert and a Northern
18 Nevada State employee, available for copying in the 10 business days after notice of entry of
19 this order at a location convenient to State and Manpower, and that the State, in the presence of
20 Plaintiff's computer expert, shall make 3 copies of the data from each cell phone with one copy
21 being preserved as a master copy, one copy provided to counsel for the State and one copy
22 provided to the Court under seal. In the event any such cell phones are not available, the State
23 shall file a sworn declaration regarding any cell phone that is not available explaining why such
24 cell phone is not available within 10 business days after notice of entry of this order.

25 ORDERED that neither Plaintiff's counsel nor Plaintiff or their agents or employees
26 shall access the cell phone data until the State and Plaintiff agrees to a procedure to protect non-
27 discoverable confidential data or the Court allows such access by subsequent order. The State is
28 authorized to inform any such persons whose cell phone data is copied that any and all personal

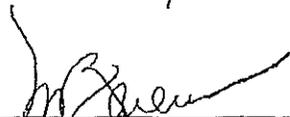
KEMP, JONES & COULTHARD, LLP
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Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 information will either be returned or destroyed at a later date. Plaintiff's counsel and Plaintiff
2 and their agents or employees are restricted from accessing ESI data except as authorized by a
3 confidentiality order or other order of the Court.

4 ORDERED that the State is directed to maintain any and all documents in its possession
5 regarding the processing of applications for dispensary licenses and/or evaluation of such
6 license applications, for the September 2018 application period including but not limited to the
7 following: (1) any and all communications between Manpower and the State; (2) any and all
8 directions provided by the State to Manpower regarding the processing of applications or the
9 evaluation of the applications and any requests for information from Manpower; (3) any and all
10 communications between Manpower or State employees and any applicant (or with the
11 attorneys or consultants for an applicant) regarding any subject matter; (4) the contract, if any,
12 between Manpower and the State and all invoices, if any, sent by Manpower to the State; (5)
13 any and all preliminary rankings of applicants by jurisdiction or otherwise by Manpower or the
14 State that pre-date the final ranking; (6) any and all work papers (including notes) used by
15 Manpower or the State in the processing of applications for dispensary licenses and/or
16 evaluation of such license applications; (7) any and all spread sheets created by Manpower or
17 the State regarding the applications for dispensary licenses; and (8) any and all notes of formal
18 or informal meetings among Manpower or the State personnel regarding the processing of
19 applications for dispensary licenses and/or evaluation of such license applications. The State
20 shall not be required to produce the documents set forth in categories 1 through 8 at an
21 expedited pace but shall be required to identify the same with specificity at the Rule 16.1
22 conference subject to all privileges and objections by the State to such production.

23 ORDERED that the State shall serve a copy of this Order upon Manpower within one
24 business day of notice of entry of this Order.

25 DATED this 3rd day of December, 2018

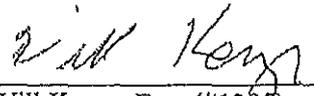

DISTRICT JUDGE

KEMP, JONES & COULTHARD, LLP
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(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

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Respectfully Submitted by:

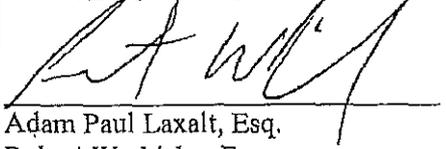
KEMP, JONES & COULTHARD, LLP



Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiff

Approved as to content and form

OFFICE OF THE ATTORNEY GENERAL



Adam Paul Laxalt, Esq.
Robert Werbicky, Esq.
David J. Pope, Esq.
555 East Washington Ave., Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendant
State of Nevada, Department of Taxation

TRANSMISSION VERIFICATION REPORT

TIME : 12/14/2018 16:20
NAME : ATTY GENERAL
FAX : 7024863416
TEL :
SER. # : BROF7J661612

DATE, TIME	12/14 16:18
FAX NO. /NAME	917753286030
DURATION	00:01:16
PAGE(S)	07
RESULT	OK
MODE	STANDARD ECM

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Ave., #3900
Las Vegas, NV 89101

J. BRIN GIBSON
First Assistant Attorney General
NICHOLAS A. TRUTANICH
Chief of Staff
KETAN D. BHIRUD
General Counsel

December 14, 2018

Manpower
Attn: Patrick Harrigan
63 Keystone Ave., #202
Reno, NV 89503
(775) 328-6030
pharrigan@mpreno.com

Re: MM Development Company v. State of Nevada, Department of Taxation
Case No. A-18-785818-W

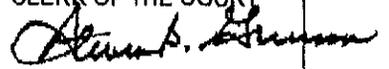
Dear Mr. Harrigan:

MM Development Company, Inc. ("MM Development") has filed a lawsuit in the Eighth Judicial District Court of the State of Nevada. MM Development is seeking monetary damages, injunctive relief, and declaratory relief arising out of the evaluation and rating of marijuana retail store license applications received by the State of Nevada Department of Taxation (the "Department") in September 2018.

Manpower contracted with the State of Nevada to provide temporary employment services on an as needed basis. As part of this contract, Manpower secured the services

APP000223

EXHIBIT B



1 **DECL**
ADAM PAUL LAXALT
2 Attorney General
David J. Pope (Bar No. 8617)
3 Acting Chief Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
5 Deputy Attorney General
Office of the Attorney General
6 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
7 (702) 486-3420 (phone)
(702) 486-3416 (fax)
8 DPope@ag.nv.gov
VRakowsky@ag.nv.gov
9 RWerbicky@ag.nv.gov

10 *Attorneys for Defendant,*
11 *State of Nevada,*
Department of Taxation

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
16 Nevada corporation

17 Plaintiff,

18 vs.

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

21 Defendants.

Case No. A-18-785818-W
Dept. No. XVIII

**DECLARATION REGARDING ANY CELL
PHONE THAT IS NOT AVAILABLE**

22 The STATE OF NEVADA, DEPARTMENT OF TAXATION by and through their counsel,
23 ADAM PAUL LAXALT, Attorney General and DAVID POPE, Acting Chief Deputy Attorney General,
24 ROBERT WERBICKY, Deputy Attorney General, and VIVIENNE RAKOWSKY, Deputy Attorney
25 General, and hereby submit this Declaration Regarding Any Cell Phone That Is Not Available pursuant
26 to this Court's order of December 13, 2018.

27 ///

28 ///

1 Attached as Exhibit A is the Declaration of Talova V. Davis, in her official capacity as
2 Cybercrime Investigator II, Investigations Division, Nevada Office of the Attorney General.

3
4 DATED this 3rd day of January, 2019.

5
6 ADAM PAUL LAXALT
Attorney General

7
8 By: /s/Vivienne Rakowsky
9 VIVIENNE RAKOWSKY (Bar No. 9160)
Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 3rd day of January, 2019, I filed the foregoing **DECLARATION REGARDING ANY CELL PHONE THAT IS NOT AVAILABLE** via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

/s/ Michele Caro

An Employee of the Office of the Attorney General

EXHIBIT "A"

EXHIBIT "A"

1 DECL
ADAM PAUL LAXALT
2 Attorney General
David J. Pope (Bar No. 8617)
3 Acting Chief Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
5 Deputy Attorney General
Office of the Attorney General
6 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
7 (702) 486-3420 (phone)
(702) 486-3416 (fax)
8 DPope@ag.nv.gov
RWerbicky@ag.nv.gov
9 VRakowsky@ag.nv.gov

10 *Attorneys for Defendant,*
11 *State of Nevada,*
Department of Taxation

12
13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
16 Nevada corporation

17 Plaintiff,

18 vs.

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

21 Defendants.

Case No. A-18-785818-W
Dept. No. XVIII

22 **DECLARATION OF TALOVA V. DAVIS**

23 1. I, Talova V. Davis, first being duly sworn, present this Declaration regarding the status of
24 imaging cellular phones pursuant to the Court's Order dated December 13, 2018 and entered December
25 14, 2018 ("Court Order").

26 2. I have personal knowledge of, and am competent to testify, regarding these matters.

27 3. I am employed as a Cybercrime Investigator II by the Investigations Division of the
28 Nevada Office of the Attorney General, having been so employed by the State of Nevada since 2007. I

1 hereby affirm that I am a certified digital forensic specialist with extensive training and experience in the
2 preservation and examination of digital evidence.

3 4. I have been assigned the task of obtaining and forensically imaging cellular phones and
4 hard drives pursuant to the Court Order. On December 24, 2018, Nevada Office of the Attorney General
5 Chief of Investigations Roland D. Swanson II provided me with a list of names and phone numbers to
6 contact Manpower employees, asking that I begin contacting said employees on December 26, 2018.

7 5. This Court Ordered that in the event that any such cellular phone is not available, that the
8 State is to provide a sworn declaration explaining why the cellular phone is not available.

9 6. This is my sworn declaration explaining why the cellular phones below are not available
10 in compliance with the Court's Order.

11 7. At approximately 2:14 p.m. on December 26, 2018, I spoke with Manpower 1 regarding
12 the imaging of Manpower 1's personal cellular phone. Manpower 1 was willing to meet with me at 8
13 a.m. on the morning of December 27, 2018 to have the cellular phone imaged. Manpower 1 called back
14 at 8:08 a.m. on December 27, 2018 and said that after speaking with a few people, Manpower 1 is going
15 to decline having the cellular phone imaged until a subpoena requires Manpower 1 to do so.

16 8. At approximately 1:55 p.m. on December 26, 2018, I spoke with Manpower 2 regarding
17 the imaging of Manpower 2's personal cellular phone. Manpower 2 declined to have the cellular device
18 imaged, citing concerns about having personal pictures and personal identifiable information available
19 to others, even with a court order in place. Manpower 2 mentioned that the cellular phone was not used
20 for any work-related activity.

21 9. At approximately 8:33 a.m. on December 27, 2018, I left a voice mail message for
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23 6:50 a.m., I received a voice mail message from Manpower 3 stating that Manpower 3 is not willing to
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25 10. At approximately 9:05 a.m. on December 27, 2018, I left a voice mail message for
26 Manpower 4 regarding the forensic imaging of Manpower 4's cellular phone. On December 28, 2018 at
27 8:11 a.m., I received a voice mail message from Manpower 4 stating that Manpower 4 is not prepared to
28 authorize the forensic imaging of the cellular phone at this time.

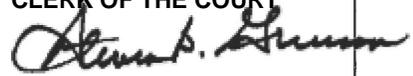
1 11. At approximately 9:08 a.m. on December 27, 2018, I left a voice mail message for
2 Manpower 5 regarding the forensic imaging of Manpower 5's cellular phone. As of 11:00 a.m. on
3 December 31, 2018, I have not received any communications from Manpower 5.

4 12. At approximately 9:39 a.m. on December 27, 2018, I left a voice mail message for
5 Manpower 6 regarding the forensic imaging of Manpower 6's cellular phone. As of 11:00 a.m. on
6 December 31, 2018, I have not received any communications from Manpower 6.

7 Dated this 3rd day of January, 2019.

8 ADAM PAUL LAXALT
9 Attorney General

10 By: 
11 Talova V. Davis
12 Cybercrime Investigator II



1 **ACOM**
THEODORE PARKER, III, ESQ.
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7 *Attorneys for Plaintiff,*
8 *Nevada Wellness Center, LLC*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 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

Arbitration Exemption Claimed:

- *Involves Declaratory Relief*
- *Presents Significant Issue of Public Policy*
- *Involves Equitable or Extraordinary Relief*

12
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15
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18
19
20 **AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW**
21 **OR WRIT OF MANDAMUS**

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

28 ///

APP000232

1 I.

2 PARTIES & JURISDICTION

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

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

9 3. Defendant JORGE PUPO, at all material times mentioned herein, was the Deputy
10 Executive Director, Department of Taxation, Marijuana Enforcement Division and it was his
11 responsibility to implement Nevada law in the award of recreational licenses as more fully described
12 below.

13 4. The following Defendants all applied for recreational marijuana licenses and are
14 being named in accordance with the Nevada Administration Procedure Act.

15 A. Defendants Who Received Conditional Recreational Retail Marijuana Establishment
16 Licenses

17 5. Upon information and belief, Defendant Cheyenne Medical, LLC is a Nevada limited
18 liability company doing business under the fictitious firm names Thrive Cannabis Marketplace,
19 Thrive, and/or Cheyenne Medical.

20 6. Upon information and belief, Defendant Circle S Farms, LLC is a Nevada limited
21 liability company doing business under the fictitious firm names Canna Straz, and/or Circle S.

22 7. Upon information and belief, Defendant Clear River, LLC is a Nevada limited
23 liability company doing business under the fictitious firm names United States Marijuana Company,
24 Unites States Medical Marijuana, Nevada Medical Marijuana, Clear River Wellness, Clear River
25 Infused, Nevada Made Marijuana, Greenwolf Nevada, Farm Direct Weed, Atomicrockz, and/or
26 Giddystick.

27 8. Upon information and belief, Defendant Commerce Park Medical L.L.C. is a Nevada
28 limited liability company doing business under the fictitious firm names Thrive Cannabis

1 Marketplace, LivFree Las Vegas, and/or Commerce Park Medical.

2 9. Upon information and belief, Defendant Deep Roots Medical LLC is a Nevada
3 limited liability company doing business under the fictitious firm name Deep Roots Harvest.

4 10. Upon information and belief, Defendant Essence Henderson, LLC is a Nevada limited
5 liability company doing business under the fictitious firm name Essence Cannabis Dispensary. Upon
6 information and belief, Defendant Essence Tropicana, LLC is a Nevada limited liability company
7 doing business under the fictitious firm name Essence.

8 11. Upon information and belief, Defendant Eureka NewGen Farms LLC is a Nevada
9 limited liability company doing business under the fictitious firm name Eureka NewGen Farms.

10 12. Upon information and belief, Defendant Green Therapeutics LLC is a
11 Nevada limited liability company doing business under the fictitious firm name Provisions.

12 13. Upon information and belief, Defendant Greenmart of Nevada NLV, LLC is a Nevada
13 limited liability company doing business under the fictitious firm name Health for Life.

14 14. Upon information and belief, Defendant Helping Hands Wellness Center, Inc. is a
15 Nevada corporation doing business under the fictitious firm names Cannacare, Green Heaven
16 Nursery, and/or Helping Hands Wellness Center.

17 15. Upon information and belief, Defendant Lone Mountain Partners, LLC is a Nevada
18 limited liability company doing business under the fictitious firm names Zenleaf, Siena, Encore
19 Cannabis, Bentleys Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

20 16. Upon information and belief, Defendant Nevada Organic Remedies LLC is a Nevada
21 limited liability company doing business under the fictitious firm names The Source and/or The
22 Source Dispensary.

23 17. Upon information and belief, Defendant Polaris Wellness Center L.L.C. is a Nevada
24 limited liability company doing business under the fictitious firm names Polaris MMJ.

25 18. Upon information and belief, Defendant Pure Tonic Concentrates LLC is a Nevada
26 limited liability company doing business under the fictitious firm names Green Heart and/or Pure
27 Tonic.

28 19. Upon information and belief, Defendant TRNVP098 LLC is a Nevada limited liability

1 company doing business under the fictitious firm names Grassroots and/or Taproot Labs.

2 20. Upon information and belief, Defendant Wellness Connection of Nevada, LLC is a
3 Nevada limited liability company doing business under the fictitious firm name Cultivate
4 Dispensary.

5 21. On information and belief, DOES 1-100 are each Nevada individuals and residents
6 or Nevada entities whose identities are unknown.

7 22. Upon information and belief, the Defendants/Respondents identified in Paragraphs
8 4-20 were granted conditional recreational dispensary licenses by the Department on or after
9 December 5, 2018 (the "Successful Applicants").

10 **B. Defendants Who Were Denied Conditional Recreational Dispensary Licenses**

11 23. Upon information and belief, Defendant D.H. Flamingo, Inc., d/b/a The Apothecary
12 Shoppe is a Nevada corporation.

13 24. Upon information and belief, Defendant Clark Natural Medicinal Solutions LLC,
14 d/b/a NuVeda; Nye Natural Medicinal Solutions LLC d/b/a NuVeda; and Clark NMSD LLC, d/b/a
15 NuVeda are each a Nevada limited liability company.

16 25. Upon information and belief, Defendant Inyo Fine Cannabis Dispensary L.L.C., d/b/a
17 Inyo Fine Cannabis Dispensary ("Inyo") is a Nevada limited liability company.

18 26. Upon information and belief, Defendant 3AP Inc. is a Nevada corporation doing
19 business under the fictitious firm names Nature's Chemistry, Sierra Well, and/or Nevada Cannabis.

20 27. Upon information and belief, Defendant 5Seat Investments LLC is a Nevada limited
21 liability company doing business under the fictitious firm name Kanna.

22 28. Upon information and belief, Defendant Acres Dispensary LLC is a Nevada limited
23 liability company doing business under the fictitious firm name Acres Dispensary.

24 29. Upon information and belief, Defendant Acres Medical LLC is a Nevada limited
25 liability company doing business under the fictitious firm name Acres Cannabis.

26 30. Upon information and belief, Defendant Agua Street LLC is a Nevada limited liability
27 company doing business under the fictitious firm names Curaleaf and/or Agua Research & Wellness
28 Center.

1 31. Upon information and belief, Defendant Alternative Medicine Association, LC is a
2 Nevada limited liability company doing business under the fictitious firm name AMA MFG, AMA
3 Production, and/or AMA Cultivation.

4 32. Upon information and belief, Defendant Bioneva Innovations of Carson City LLC
5 is a Nevada limited liability company doing business under the fictitious firm name BioNeva.

6 33. Upon information and belief, Defendant/Respondent Blossum Group LLC is a
7 Nevada limited liability company doing business under the fictitious firm name Healing Herb.

8 34. Upon information and belief, Defendant/Respondent Blue Coyote Ranch LLC is a
9 Nevada limited liability company doing business under the fictitious firm name Blue Coyote Ranch.

10 35. Upon information and belief, Defendant/Respondent Carson City Agency Solutions
11 L.L.C. is a Nevada limited liability company doing business under the fictitious firm name CC
12 Agency Solutions.

13 36. Upon information and belief, Defendant CN Licenseco I, Inc. is a Nevada corporation
14 doing business under the fictitious firm names CanaNevada and/or Flower One.

15 37. Upon information and belief, Defendant Compassionate Team Of Las Vegas LLC is
16 a Nevada limited liability company;

17 38. Upon information and belief, Defendant CWNevada, LLC is a Nevada limited
18 liability company doing business under the fictitious firm name Canopi.

19 39. Upon information and belief, Defendant D Lux LLC is a Nevada limited liability
20 company doing business under the fictitious firm name D Lux.

21 40. Upon information and belief, Defendant Diversified Modalities Marketing Ltd. is a
22 Nevada limited liability company doing business under the fictitious firm names Galaxy Growers
23 and/or Diversified Modalities Marketing.

24 41. Upon information and belief, Defendant DP Holdings, Inc. is a Nevada corporation
25 doing business under the fictitious firm name Compassionate Team of Las Vegas.

26 42. Upon information and belief, Defendant EcoNevada, LLC is a Nevada limited
27 liability company doing business under the fictitious firm name Marapharm.

28 43. Upon information and belief, Defendant ETW Management Group LLC is a Nevada

1 limited liability company doing business under the fictitious firm name Gassers.

2 44. Upon information and belief, Defendant Euphoria Wellness LLC is a Nevada limited
3 liability company doing business under the fictitious firm names Euphoria Wellness, Even Cannabis,
4 Euphoria Marijuana, and/or Summa Cannabis.

5 45. Upon information and belief, Defendant Fidelis Holdings, LLC. is a Nevada limited
6 liability company doing business under the fictitious firm name Pisos.

7 46. Upon information and belief, Defendant Forever Green, LLC is a Nevada limited
8 liability company doing business under the fictitious firm name Forever Green.

9 47. Upon information and belief, Defendant Franklin Bioscience NV LLC is a Nevada
10 limited liability company doing business under the fictitious firm names Lucky Edibles, Altus, and/or
11 Beyond Hello.

12 48. Upon information and belief, Defendant FSWFL, LLC is a Nevada limited liability
13 company doing business under the fictitious firm name Green Harvest.

14 49. Upon information and belief, Defendant GB Sciences Nevada LLC is a Nevada
15 limited liability company doing business under the fictitious firm name GB Science.

16 50. Upon information and belief, Defendant GBS Nevada Partners LLC is a Nevada
17 limited liability company doing business under the fictitious firm name ShowGrow.

18 51. Upon information and belief, Defendant GFive Cultivation LLC is a Nevada limited
19 liability company doing business under the fictitious firm names G5 and/or GFiveCultivation.

20 52. Upon information and belief, Defendant Global Harmony LLC is a Nevada limited
21 liability company doing business under the fictitious firm names as Top Notch Health Center, Top
22 Notch, The Health Center, Tetra Research, The Health Center, and/or Top Notch.

23 53. Upon information and belief, Defendant Good Chemistry Nevada, LLC is a Nevada
24 limited liability company doing business under the fictitious firm name Good Chemistry.

25 54. Upon information and belief, Defendant Gravitas Henderson L.L.C. is a Nevada
26 limited liability company doing business under the fictitious firm name Better Buds.

27 55. Upon information and belief, Defendant Gravitas Nevada Ltd. is a Nevada limited
28 liability company doing business under the fictitious firm names The Apothecarium Las Vegas, The

1 Apothecarium Nevada, and/or the Apothecarium Henderson.

2 56. Upon information and belief, Defendant Green Leaf Farms Holdings LLC is a Nevada
3 limited liability company doing business under the fictitious firm name Players Network.

4 57. Upon information and belief, Defendant Green Life Productions LLC is a Nevada
5 limited liability company doing business under the fictitious firm name Green Life Productions.

6 58. Upon information and belief, Defendant Greenleaf Wellness, Inc. is a Nevada
7 corporation doing business under the fictitious firm name Greenleaf Wellness.

8 59. Upon information and belief, Defendant Greenpoint Nevada Inc. is a Nevada
9 corporation doing business under the fictitious firm name Chalice Farms.

10 60. Upon information and belief, Defendant Greenscape Productions LLC is a Nevada
11 limited liability company doing business under the fictitious firm name Herbal Wellness Center.

12 61. Upon information and belief, Defendant Greenway Health Community L.L.C. is a
13 Nevada limited liability company doing business under the fictitious firm name Greenway Health
14 Community LLC.

15 62. Upon information and belief, Defendant Greenway Medical LLC is a Nevada limited
16 liability company doing business under the fictitious firm names GWM and/or Greenway Las Vegas.

17 63. Upon information and belief, Defendant GTI Nevada, LLC is a Nevada limited
18 liability company doing business under the fictitious firm name Rise.

19 64. Upon information and belief, Defendant H&K Growers Corp. is a Nevada corporation
20 doing business under the fictitious firm name H&K Growers.

21 65. Upon information and belief, Defendant Harvest of Nevada LLC is a Nevada limited
22 liability company doing business under the fictitious firm name Harvest.

23 66. Upon information and belief, Defendant Healthcare Options for Patients Enterprises,
24 LLC is a Nevada limited liability company doing business under the fictitious firm names Shango
25 and/or Hope.

26 67. Upon information and belief, Defendant Helios NV LLC is a Nevada limited liability
27 company doing business under the fictitious firm names Hydrovize, Helios NV and/or Helios
28 Nevada.

1 68. Upon information and belief, Defendant Herbal Choice Inc. is a Nevada corporation
2 doing business under the fictitious firm name Herbal Choice.

3 69. Upon information and belief, Defendant is a High Sierra Cultivation LLC is a Nevada
4 limited liability company doing business under the fictitious firm name High Sierra.

5 70. Upon information and belief, Defendant High Sierra Holistics, LLC is a Nevada
6 limited liability company doing business under the fictitious firm names HSH, and/or High Sierra
7 Holistics.

8 71. Upon information and belief, Defendant International Service and Rebuilding, Inc.
9 is a Nevada corporation doing business under the fictitious firm name VooDoo.

10 72. Upon information and belief, Defendant Just Quality, LLC is a Nevada limited
11 liability company doing business under the fictitious firm name Panacea Cannabis.

12 73. Upon information and belief, Defendant Kindibles LLC is a Nevada limited liability
13 company doing business under the fictitious firm name Area 51.

14 74. Upon information and belief, Defendant Las Vegas Wellness and Compassion LLC
15 is a Nevada limited liability company doing business under the fictitious firm name Pegasus Nevada.

16 75. Upon information and belief, Defendant Libra Wellness Center, LLC is a Nevada
17 limited liability company doing business under the fictitious firm name Libra Wellness.

18 76. Upon information and belief, Defendant Livfree Wellness LLC is a Nevada limited
19 liability company doing business under the fictitious firm name The Dispensary.

20 77. Upon information and belief, Defendant LNP, LLC is a Nevada limited liability
21 company doing business under the fictitious firm names LPN and/or Lynch Natural Products, LLC.

22 78. Upon information and belief, Defendant Luff Enterprises NV, Inc. is a Nevada
23 corporation doing business under the fictitious firm name Sweet Cannabis.

24 79. Upon information and belief, Defendant LVMC C&P, LLC is a Nevada limited
25 liability company doing business under the fictitious firm name CannaCopia.

26 80. Upon information and belief, Defendant Malana LV L.L.C. is a Nevada limited
27 liability company doing business under the fictitious firm name Malana LV.

28 81. Upon information and belief, Defendant Matrix NV, LLC is a Nevada limited liability

- 1 company doing business under the fictitious firm name Matrix NV.
- 2 82. Upon information and belief, Defendant Medifarm IV, LLC is a Nevada limited
3 liability company doing business under the fictitious firm name Blum Reno.
- 4 83. Upon information and belief, Defendant Miller Farms LLC is a Nevada limited
5 liability company doing business under the fictitious firm name Lucid.
- 6 84. Upon information and belief, Defendant MM Development Company, Inc. is a
7 Nevada corporation doing business under the fictitious firm names Planet 13 and/or Medizin.
- 8 85. Upon information and belief, Defendant MMR&D LLC is a Nevada limited liability
9 company doing business under the fictitious firm names Sunshine Cannabis and/or the Green Cross
10 Farmacy.
- 11 86. Upon information and belief, Defendant MMNV2 Holdings I, LLC is a Nevada
12 limited liability company doing business under the fictitious firm name Medmen.
- 13 87. Upon information and belief, Defendant MMOF Las Vegas Retail, Inc. is a Nevada
14 corporation doing business under the fictitious firm names Panacea, MedMen, MedMen Las Vegas,
15 Medmen the Airport, and/or MedMen Paradise.
- 16 88. Upon information and belief, Defendant Natural Medicine L.L.C. is a Nevada limited
17 liability company doing business under the fictitious firm name Natural Medicine No. 1.
- 18 89. Upon information and belief, Defendant NCMM, LLC is a Nevada limited liability
19 company doing business under the fictitious firm name NCMM.
- 20 90. Upon information and belief, Defendant Nevada Botanical Science, Inc. is a Nevada
21 corporation doing business under the fictitious firm name Vigor Dispensaries.
- 22 91. Upon information and belief, Defendant Nevada Group Wellness LLC is a Nevada
23 limited liability company doing business under the fictitious firm names Prime and/or NGW.
- 24 92. Upon information and belief, Defendant Nevada Holistic Medicine LLC is a Nevada
25 limited liability company doing business under the fictitious firm names MMJ America and/or
26 Nevada Holistic Medicine.
- 27 93. Upon information and belief, Defendant Nevada Medical Group LLC is a Nevada
28 limited liability company doing business under the fictitious firm names The Clubhouse Dispensary,

1 Bam-Body, and/or Mind and King Cannabis.

2 94. Upon information and belief, Defendant NevadaPure, LLC is a Nevada limited
3 liability company doing business under the fictitious firm names Shango Las Vegas and/or Shango.

4 95. Defendant Nevcan, LLC is a Nevada limited liability company doing business under
5 the fictitious firm name Nev Cann.

6 96. Defendant NLV Wellness LLC is a Nevada limited liability company doing business
7 under the fictitious firm name ETHCX.

8 97. Defendant NLVG, LLC is a Nevada limited liability company doing business under
9 the fictitious firm name Desert Bloom Wellness Center.

10 98. Defendant Nuleaf Incline Dispensary LLC is a Nevada limited liability company
11 doing business under the fictitious firm name Nuleaf.

12 99. Defendant NV 3480 Partners LLC is a Nevada limited liability company doing
13 business under the fictitious firm name Evergreen Organix.

14 100. Defendant NV Green Inc. is a Nevada corporation doing business under the fictitious
15 firm name NV Green.

16 101. Defendant Nye Farm Tech Ltd. is a Nevada limited liability company doing business
17 under the fictitious firm name URBN Leaf.

18 102. Defendant Paradise Wellness Center LLC is a Nevada limited liability company doing
19 business under the fictitious firm name Las Vegas Releaf.

20 103. Defendant Phenofarm NV LLC is a Nevada limited liability company doing business
21 under the fictitious firm name Marapharm Las Vegas.

22 104. Defendant Physis One LLC is a Nevada limited liability company doing business
23 under the fictitious firm names Physis One and/or LV Fortress.

24 105. Defendant Qualcan, L.L.C. is a Nevada limited liability company doing business
25 under the fictitious firm name Qualcan.

26 106. Defendant Red Earth, LLC is a Nevada limited liability company doing business
27 under the fictitious firm name Red Earth

28 107. Defendant Releaf Cultivation, LLC is a Nevada limited liability company doing

1 business under the fictitious firm name Releaf Cultivation.

2 108. Defendant RG Highland Enterprises Inc. is a Nevada corporation doing business
3 under the fictitious firm name Tweedleaf.

4 109. Defendant Rombough Real Estate Inc. is a Nevada corporation doing business under
5 the fictitious firm name Mother Herb.

6 110. Defendant Rural Remedies LLC is a Nevada limited liability company doing business
7 under the fictitious firm name Doc's Apothecary.

8 111. Defendant Serenity Wellness Center LLC is a Nevada limited liability company doing
9 business under the fictitious firm names Oasis Cannabis and/or Oasis Cannabis Dispensary.

10 112. Defendant Silver Sage Wellness LLC is a Nevada limited liability company.

11 113. Defendant Solace Enterprises, LLP is a Nevada limited liability limited partnership
12 doing business under the fictitious firm names Thallo, Aether Gardens, @Hith LP and/or Aether
13 Extracts.

14 114. Defendant Southern Nevada Growers, LLC is a Nevada limited liability company
15 doing business under the fictitious firm name Bowtie Cannabis.

16 115. Defendant Strive Wellness of Nevada, LLC is a Nevada limited liability company
17 doing business under the fictitious firm name Strive.

18 116. Defendant Sweet Goldy LLC is a Nevada limited liability company.

19 117. Defendant TGIG, LLC is a Nevada limited liability company doing business under
20 the fictitious firm names The Grove, The Grove Wellness Center, Vert Infusibles and/or Vert
21 Edibles.

22 118. Defendant THC Nevada LLC is a Nevada limited liability company doing business
23 under the fictitious firm names Canna Vibe, FloraVega, and/or Welleaf.

24 119. Defendant The Harvest Foundation LLC is a Nevada limited liability company doing
25 business under the fictitious firm name Harvest Foundation.

26 120. Defendant Thompson Farm One L.L.C. is a Nevada limited liability company doing
27 business under the fictitious firm names Green Zon, Gold Leaf, and/or Thompson Farm.

28 121. Defendant Tryke Companies Reno, LLC is a Nevada limited liability company doing

1 business under the fictitious firm name Reef.

2 122. Defendant Tryke Companies SO NV, LLC is a Nevada limited liability company
3 doing business under the fictitious firm name Reef Dispensaries.

4 123. Defendant Twelve Twelve LLC is a Nevada limited liability company doing business
5 under the fictitious firm names 12/12 Dispensary and/or Twelve Twelve.

6 124. Defendant Vegas Valley Growers LLC is a Nevada limited liability company doing
7 business under the fictitious firm name Kiff Premium Cannabis.

8 125. Defendant Waveseer of Nevada, LLC is a Nevada limited liability company doing
9 business under the fictitious firm name Jenny's Dispensary.

10 126. Defendant Wellness & Caregivers of Nevada NLV, LLC is a Nevada limited liability
11 company doing business under the fictitious firm names MMD Las Vegas and/or Las Vegas
12 Cannabis.

13 127. Defendant Wendovera LLC is a Nevada limited liability company doing business
14 under the fictitious firm name Wendovera.

15 128. Defendant West Coast Development Nevada, LLC is a Nevada limited liability
16 company doing business under the fictitious firm name Sweet Goldy.

17 129. Defendant WSCC, Inc. is a Nevada corporation doing business under the fictitious
18 firm name Sierra Well.

19 130. Defendant YMY Ventures, LLC is a Nevada limited liability company doing business
20 under the fictitious firm names Stem and/or Cannavore.

21 131. Defendant Zion Gardens LLC is a Nevada limited liability company doing business
22 under the fictitious firm name Zion Garden.

23 132. On information and belief, ROES 1-100 are each Nevada individuals and residents
24 or Nevada entities whose identities are unknown.

25 133. On information and belief, the Defendants/Respondents identified in Paragraphs 22-
26 132 are natural persons or entities who are qualified holders of Medical Marijuana Establishment
27 ("MME") Certificates, who submitted an application to operate a recreational retail marijuana
28 establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on

1 September 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the
2 "Denied Applicants").

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

13 **II.**

14 **JURISDICTION AND VENUE**

15 135. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,
16 Section 6, NEA 4.370(2), NRS 30, and because the acts and omissions complained of herein
17 occurred and caused harm throughout the State of Nevada, specifically in Clark County, Nevada.
18 Further, the amount in controversy exceeds \$15,000.00.

19 136. Venue is proper pursuant to NRS 13.020.

20 **III.**

21 **GENERAL ALLEGATIONS**

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

27 138. According to an August 16, 2018 letter from the Department, pursuant to Section
28 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17 ("R092-17"),

1 the Department was responsible for allocating the licenses of recreational marijuana retail stores "to
2 jurisdictions within each county and to the unincorporated area of the county proportionally based
3 on the population of each jurisdiction and of the unincorporated area of the county."

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

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

9 141. If the Department received more than one application for a license for a recreational
10 marijuana retail store and the Department determined that more than one of the applications was
11 complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department was required
12 to rank the applications within each applicable locality for any applicants in a jurisdiction that limits
13 the number of retail marijuana stores in order from first to last. Ranking is based on compliance with
14 the provisions of R092-17 Sec. 80, NRS 453D and on the content of the applications relating to:

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

28 142. No later than December 5, 2018, the Department was responsible for issuing

1 conditional licenses to those applicants who score and rank high enough in each jurisdiction to be
2 awarded one of the allocated licenses.

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

7 144. Prior to the application process with the Department, Plaintiff was previously scored
8 and ranked in the 2015 licensing procedure, pursuant to NRS 453A, in conjunction with a medical
9 marijuana establishment permit application.

10 145. At that time, Plaintiff received a score of 198.62 and was ranked as the highest
11 applicant for a medical marijuana dispensary in Las Vegas, Nevada and received a score of 193.62
12 and was ranked seventh highest applicant for a medical marijuana dispensary in the City of
13 Henderson, Nevada.

14 146. The factors used for the 2015 rankings were substantially similar to the factors to be
15 used by the Department for the 2018 rankings for the allocated licenses.

16 147. The only major difference between the factors assessed for the 2015 rankings and the
17 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners,
18 officers, board members) to the existing merit criteria.

19 148. Plaintiff submitted applications for recreational marijuana retail store licenses to own
20 and operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark
21 County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno, Nevada.

22 149. On or about December 5, 2018, despite its prior exceptional rankings, Plaintiff was
23 informed by the Department that all of its applications to operate recreational marijuana retail stores
24 were denied.

25 150. Plaintiff is informed and believes that the Department improperly granted
26 "conditional" licenses to applicants that were ranked substantially lower than Plaintiff on the 2015
27 rankings.

28 151. Plaintiff is informed and believes that the Department improperly granted more than

1 one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership
2 groups.

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

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

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

9 155. Plaintiff not being satisfied with the results of its Appeal and Petition for
10 Reconsideration, has exhausted its administrative remedies.

11 156. Plaintiff therefore files the present Complaint in order to pursue its legal rights and
12 remedies.

13 **A. The Marijuana Legislation and Regulations**

14 157. NRS Chapter 453D and NAC 453D are the statutory guidelines for legalized
15 recreational marijuana in the State of Nevada. These statutes are incorporated herein by reference.

16 158. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to amend
17 Nevada's Constitution or enact legislation through the initiative process and precludes amendment
18 or modification of a voter-initiated law for three years.

19 159. In 2016, the initiative for the legalization of recreational marijuana was presented to
20 Nevada voters by way of Ballot Question 2 ("BQ2"), known as the "Regulation and Taxation of
21 Marijuana Act", which proposed an amendment of the Nevada Revised Statutes as follows:

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

27 160. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.

28 161. NRS 453D.020 (findings and declarations) provides:

1 1. In the interest of public health and public safety, and in order to
2 better focus state and local law enforcement resources on crimes
3 involving violence and personal property, the People of the State of
4 Nevada find and declare that the use of marijuana should be legal for
5 persons 21 years of age or older, and its cultivation and sale should
6 be regulated similar to other legal businesses.

7 2. The People of the State of Nevada find and declare that the
8 cultivation and sale of marijuana should be taken from the domain of
9 criminals and be regulated under a controlled system, where
10 businesses will be taxed and the revenue will be dedicated to public
11 education and the enforcement of the regulations of this chapter.

12 3. The People of the State of Nevada proclaim that marijuana should
13 be regulated in a manner similar to alcohol so that:

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

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

19 (c) Cultivating, manufacturing, testing, transporting and
20 selling marijuana will be strictly controlled through state
21 licensing and regulation;

22 (d) Selling or giving marijuana to persons under 21 years of
23 age shall remain illegal;

24 (e) Individuals will have to be 21 years of age or older to
25 purchase marijuana;

26 (f) Driving under the influence of marijuana will remain
27 illegal; and

28 (g) Marijuana sold in the State will be tested and labeled.

162. NRS 453D.200 (Duties of Department relating to regulation and licensing of
marijuana establishments; information about consumers) provides:

1. Not later than January 1, 2018, the Department ***shall adopt all regulations*** necessary or convenient to carry out the provisions of this chapter. 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:

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

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

(c) Requirements for the security of marijuana establishments;

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

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

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

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

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

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

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

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

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

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

17 2. The Department *shall approve or deny* applications for licenses
18 pursuant to NRS 453D.210. (emphasis added).

19 163. NRS 453D.200(6) *mandates* the DOT to "conduct a background check of each
20 prospective owner, officer, and board member of a marijuana establishment license applicant."

21 164. NRS 453D.205 provides as follows:

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

26 2. When determining the criminal history of a person pursuant to
27 paragraph (c) of subsection 1 of NRS 453D.300, a marijuana
28 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

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Bureau of Investigation for its report.

165. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing; conditions for approval of application; limitations on issuance of licenses to retail marijuana stores; competing applications), provides in pertinent part:

4. Upon receipt of a *complete marijuana establishment license application*, the *Department shall, within 90 days*:

(a) Issue the appropriate license if the license application is approved.

5. The Department *shall approve* a license application if:

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to NRS 453D.230;

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

(c) The property is not located within:

(1) One thousand feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;

(2) Three hundred feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or

(3) If the proposed marijuana establishment will be located in a county whose population is 100,000 or more, 1,500 feet of an establishment that holds a nonrestricted gaming license described in subsection 1 or 2 of NRS 463.0177 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:

(1) Eighty licenses already issued in a county with a population greater than 700,000;

(2) Twenty licenses already issued in a county with a population that is less than 700,000 but more than 100,000;

(3) Four licenses already issued in a county with a population that is less than 100,000 but more than 55,000;

(4) Two licenses already issued in a county with a population that is less than 55,000;

(5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise