

**IN THE SUPREME COURT OF NEVADA**

NICOLA SPIRTOS,

Appellant / Defendant,

v.

ARMEN YEMENIDJIAN,

Respondent / Plaintiff.

Nevada Supreme Court Case Number:

80992

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Nov 19 2020 06:27 p.m.  
Eighth Judicial District Court Case  
Elizabeth A. Brown  
Number: A-19-804785-C  
Clerk of Supreme Court

**APPENDIX TO APPELLANT'S OPENING  
BRIEF – VOLUME 1**

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MCNUTT LAW FIRM  
Daniel R. McNutt, Bar No. 7815  
Matthew C. Wolf, Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
Tel.: (702) 384-1170  
Fax.: (702) 384-5529  
[drm@mcnuttlawfirm.com](mailto:drm@mcnuttlawfirm.com)  
[mcw@mcnuttlawfirm.com](mailto:mcw@mcnuttlawfirm.com)  
*Counsel for Appellant Nick Spirtos*

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DATED November 19, 2020.

McNUTT LAW FIRM, P.C.

/s/ Dan McNutt

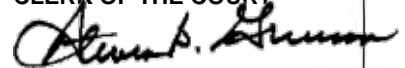
Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
Attorneys for Appellant Nick Spirtos

## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of McNUTT LAW FIRM and on November 19, 2020, I caused a copy of the **Appendix to APPELLANT'S OPENING BRIEF** to be served electronically to the following recipients:

James Pisanelli, Esq.  
Todd Bice, Esq.  
Jordan Smith, Esq.  
Dustin Holmes, Esq.  
PISANELLI BICE PLLC  
400 South 7<sup>th</sup> Street, Actione 300  
Las Vegas, NV 89101  
[jip@pisanellibice.com](mailto:jip@pisanellibice.com)  
[tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)  
[jts@pisanellibice.com](mailto:jts@pisanellibice.com)  
[dhh@pisanellibice.com](mailto:dhh@pisanellibice.com)  
*Counsel for Respondent / Plaintiff*

/s/ Lisa Heller  
An Employee of McNutt Law Firm, P.C.



CASE NO: A-19-804785-C  
Department 22

1 James J. Pisanelli, Esq., Bar No. 4027  
JJP@pisanellibice.com  
2 Todd L. Bice, Esq., Bar No. 4534  
TLB@pisanellibice.com  
3 Jordan T. Smith, Esq., Bar No. 12097  
JTS@pisanellibice.com  
4 Dustun H. Holmes, Esq., Bar No. 12776  
DHH@pisanellibice.com  
5 PISANELLI BICE PLLC  
400 South 7th Street, Suite 300  
6 Las Vegas, Nevada 89101  
Telephone: 702.214.2100  
7 Facsimile: 702.214.2101

8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 ARMEN YEMENIDJIAN, an individual,  
12 Plaintiff,

13 v.

14 NICOLA SPIRTOS, an individual;  
DOES 1-20; and ROES 1-20,  
15 Defendants.  
16

Case No.:

Dept. No.:

**COMPLAINT FOR CONSPIRACY,  
SLANDER AND DAMAGES**

17  
18 For his Complaint, Plaintiff alleges as follows:

19 **INTRODUCTION**

20 1. Defendant Nicola Spirtos ("Spirtos") is an admitted liar. He has confessed under  
21 oath: "I lie." One of the individuals about whom Spirtos has been spreading lies – false  
22 accusations of crimes – is Plaintiff Armen Yemenidjian ("Yemenidjian"). Yet, it is Spirtos who  
23 has now been forced to admit that he is the one who has engaged in criminal activity. Spirtos, in  
24 concert with others, undertook a scheme to slander Mr. Yemenidjian, because he has proven to be  
25 one of the most successful businessmen in the legal cannabis business, not only in Nevada but  
26 elsewhere. The same cannot be said for Spirtos. Indeed, in every instance in which Spirtos'  
27 applications have been judged against others, in particular Mr. Yemenidjian, he has failed. Rather  
28 than own his failures, Spirtos has resorted to smearing and spreading lies against others to harm

1 their existing and future business opportunities. Spirtos and those acting with him undertook this  
2 false campaign with the hope that they could cause damages in excess of one hundred million  
3 dollars. Spirtos' scheme is deplorable and entitles Mr. Yemenidjian to punitive damages as well.

#### 4 PARTIES

5 2. Plaintiff Armen Yemenidjian is, and at all relevant times was, an individual  
6 residing in Clark County Nevada and one of the most successful executives in the growing  
7 cannabis business in the United States.

8 3. Defendant Nicola Spirtos is, and at all relevant times was upon information and  
9 belief, an individual residing in Clark County Nevada and a former owner of  
10 D.H. Flamingo, LLC, an unsuccessful applicant for a recreational cannabis license in the State of  
11 Nevada.

12 4. Defendants DOES 1-20 are believed to be individuals who have acted in concert  
13 with Spirtos for the purpose of carrying out the unlawful scheme at issue in this action. Upon  
14 discovering their true identities, Plaintiff will seek leave of this Court to add these parties.

15 5. Defendant ROES 1-20 are believed to be legal entities that acted in concert with  
16 Spirtos for the purpose of carrying out the unlawful scheme at issue in this action. Upon  
17 discovering their true identities, Plaintiff will seek leave of this Court to add these parties.

#### 18 COMMON ALLEGATIONS

##### 19 **A. Spirtos' Scheme to Sabotage Others.**

20 6. Mr. Yemenidjian is one of the leading executives in the legal cannabis business in  
21 the United States. He was the co-founder and CEO of Integral Associates d/b/a Essence  
22 ("Essence"). Since starting in this business in 2014, Mr. Yemenidjian has successfully  
23 spearheaded licensing applications in Nevada and California. Being immersed in what it takes to  
24 be successful in this business, companies under Mr. Yemenidjian's control and/or direction have  
25 successfully applied for and received 22 cannabis licenses in California and Nevada.

26 7. Under Mr. Yemenidjian's direction, the Essence entities have made fifteen  
27 different applications in the State of Nevada, first for medical marijuana and then later for  
28 recreational marijuana when authorized by the State, and were awarded all fifteen licenses. In

1 each of those application processes, the Essence entities were graded as top tier applicants, if not  
2 being ranked first.

3 8. The same is true in California, where the Essence entities submitted seven different  
4 applications and were awarded all seven licenses, again being ranked in the top tier if not being  
5 ranked first.

6 9. Simply put, in multiple jurisdictions involving different applications and different  
7 graders, the entities under Mr. Yemenidjian's direction were consistently ranked by these diverse  
8 government graders as being top tier in the industry. And that is why, when entities under Mr.  
9 Yemenidjian's control and direction have applied for licenses in various jurisdictions, they have  
10 been successful. Each jurisdiction has found the Essence applicants to be superior.

11 10. That track record stands in stark contrast to that of Defendant Spirtos and the one  
12 cannabis company he founded, D.H. Flamingo. Even when Nevada first legalized medical  
13 cannabis, Spirtos spearheaded an effort to obtain one such license and was rejected by the State as  
14 an operator. He thus waged a legal campaign and reached out to those with whom he believed he  
15 had political clout in an attempt to reverse those results. Ultimately, Spirtos was only able to  
16 enter the fledgling medical marijuana industry when the Nevada legislature increased the number  
17 of licenses so that Spirtos could get into the business by default, as opposed to based on  
18 qualifications or merits.

19 11. Despite his lack of success in actually qualifying based on merit, Spirtos proceeded  
20 down the same deficient path when he and D.H. Flamingo sought a Nevada recreational cannabis  
21 license in 2018. Despite having shown his lack of qualifications previously, Spirtos repeated this  
22 tactic again, admitting that he personally prepared as much as 90% of the application on his own.

23 12. Proving again Einstein's definition of insanity – repeating the same flawed course  
24 of conduct but expecting a different result – Spirtos' unprofessional approach resulted in the same  
25 outcome: rejection by the State licensing officials because he and his entity were less qualified  
26 than others. Indeed, once again, Spirtos' application was ranked well below that of others.

27 13. Upon learning of his latest rejection, Spirtos sprang into action to try and undo his  
28 latest failure. Spirtos somehow knew to almost immediately contact his friend George Kelesis



1 ("Kelesis"), who served on the Nevada Tax Commission, the very body that oversees the  
2 department responsible for selecting the successful recreational licensees. Indeed, Spirtos admits  
3 that he may have had as many as a dozen private cell phone conversations with Kelesis about  
4 undoing the result of his unsuccessful application.

5 14. Despite the closeness of their relationship, Kelesis has never disclosed his contacts  
6 with Spirtos, and then proceeded to participate in tax commission meetings where he spearheaded  
7 criticism of the Department's selection process in a manner designed to benefit Spirtos. Indeed,  
8 according to Spirtos, he and Kelesis attend the same Greek church and under their religion, their  
9 children are the equivalent of cousins and also are the godparents to each other's respective  
10 children.

11 15. Once again, Spirtos has sought to use an illegitimate means to achieve an  
12 illegitimate end: Obtaining a recreational marijuana license for which he was not qualified and  
13 was not selected.

14 **B. Spirtos Employs Slander as Part of the Scheme.**

15 16. Spirtos did not stop at just trying to elicit help through his friends. Spirtos also  
16 undertook a campaign to slander Mr. Yemenidjian and others.

17 17. For instance, on January 18, 2018, Spirtos attended the Governor's Ball at Aria  
18 Hotel & Casino. While there, he approached John Ocegura, an individual that Spirtos knew  
19 worked in the cannabis industry with Mr. Yemenidjian.

20 18. Spirtos proceeded to slander Mr. Yemenidjian, claiming to Ocegura that Mr.  
21 Yemenidjian had engaged in outright corruption in order to secure licenses. This statement  
22 falsely accused Mr. Yemenidjian of criminal activity, just as Spirtos had intended it.

23 19. Ocegura was shocked and appalled by Spirtos' slander, and was alarmed by  
24 Spirtos' tactics attempting to undermine Mr. Yemenidjian and harm his reputation and business.

25 20. Mr. Yemenidjian believes and alleges that Spirtos has made the same or similar  
26 slanderous statements to others as well.

1           **C.     Sirtos Admits His Slander is False.**

2           21.     Sirtos has now admitted, including under oath, that he has no factual basis for  
3 accusing Mr. Yemenidjian of such impropriety. In reality, Sirtos simply fabricated the story  
4 because he hoped that it would generate adverse publicity and interfere with Mr. Yemenidjian's  
5 ability to get licensed in the future. Sirtos also hoped and planned that his slander would  
6 interfere with the State of Nevada's licensing process for recreational marijuana, since he did not  
7 obtain a license.

8           22.     Sirtos and those acting in concert with him have simply decided that maintaining  
9 their own market share and delaying competition in the marketplace is preferable. Thus, Sirtos  
10 and others have undertaken a campaign to lie about and slander Mr. Yemenidjian.

11          23.     The irony that Sirtos would falsely accuse Mr. Yemenidjian of criminal activity is  
12 apparent in light of Sirtos' own actions which he has now admitted under oath. Indeed, in early  
13 January, 2019, Sirtos arranged a meeting at the offices of the Nevada Department of Taxation in  
14 Las Vegas, ostensibly for purposes of reviewing the scoring of his applications. In truth, the  
15 purpose of this meeting was actually an attempt by Sirtos to dupe State agents with a series of  
16 questions that had been prepared by Sirtos' legal counsel, despite the fact that Sirtos knew that  
17 there was ongoing litigation and that these State agents were represented by legal counsel.

18          24.     As he admitted in deposition, as part of his plan of deception, Sirtos entered the  
19 State offices intentionally armed with a phone application to surreptitiously record the meeting  
20 and then proceeded to record his conversation with Department of Taxation agents without their  
21 knowledge or consent. Thus, the party engaged in unlawful conduct here is Sirtos and those  
22 acting in concert with him. *See* NRS 331.220 (it is "unlawful" for a person to engage in any kind  
23 of surreptitious electronic surveillance on the grounds of any facility owned or leased by the State  
24 of Nevada).

25     ...

26     ...

27     ...

**FIRST CAUSE OF ACTION**

**(Civil Conspiracy)**

25. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 24 above as though fully set forth herein.

26. As outlined above, Spirtos undertook a campaign with others, intending to accomplish an unlawful objective for the purpose of harming Mr. Yemenidjian.

27. Mr. Yemenidjian has sustained damage as a result of Spirtos' unlawful conduct, in an amount that will be proven at trial, but in excess of \$15,000 for purposes of this Court's jurisdiction.

28. Spirtos' conduct was undertaken with oppression and in conscious disregard of Mr. Yemenidjian's rights and entitles Mr. Yemenidjian to an award of punitive damages to punish Spirtos, discourage him from repeating his misconduct in the future, and discourage others from engaging in similar deplorable conduct.

29. Plaintiff has been forced to hire an attorney to prosecute this action and therefore seeks recovery of his attorneys' fees and court costs to the extent allowed under Nevada law.

**SECOND CAUSE OF ACTION**

**(Slander Per Se)**

30. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 29 above as though fully set forth herein.

31. As outlined above, Spirtos made at least one false and slanderous statement concerning Mr. Yemenidjian.

32. That statement was defamatory per se because it falsely accused Mr. Yemenidjian of criminal activity and is unprivileged.

33. Unable to deny that his accusations are slander, Spirtos has now resorted to falsely denying that he made the statement, confirming that Spirtos knows how outrageous his conduct to be.

1           34.     Because Spirtos' statement is slander per se, the law presumes damages. Those  
2 damages are in an amount to be proven at trial, but are in excess of \$15,000 for the purpose of this  
3 Court's jurisdiction.

4           35.     Spirtos' conduct was undertaken with oppression and in conscious disregard of  
5 Mr. Yemenidjian's rights and entitles Mr. Yemenidjian to an award of punitive damages to punish  
6 Spirtos, discourage him from repeating his misconduct in the future, and discourage others from  
7 engaging in similar deplorable conduct.

8           36.     Plaintiff has been forced to hire an attorney to prosecute this action and therefore  
9 seeks recovery of his attorneys' fees and court costs to the extent permitted under Nevada law.

10           WHEREFORE, Plaintiff prays for judgment as follows:

- 11           1.     An award of damages against Spirtos;  
12           2.     An award of punitive damages against Spirtos;  
13           4.     An award of reasonable costs and attorneys' fees; and  
14           5.     Any additional relief this Court deems to be just and proper on the evidence  
15 presented at trial.

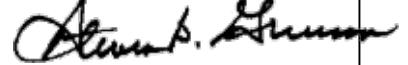
16           DATED this 4th day of November, 2019.

17           PISANELLI BICE

18           By: 

19           James J. Pisanelli, Esq., #4027  
20           Todd L. Bice, Esq., #4534  
21           Jordan T. Smith, Esq., #12097  
22           Dustun H. Holmes, Esq., #12776  
23           400 South 7th Street, Suite 300  
24           Las Vegas, Nevada 89101

25           Attorneys for Plaintiff  
26  
27  
28



MTD  
MCNUTT LAW FIRM, P.C.  
Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
Tel.: (702) 384-1170 / Fax.: (702) 384-5529  
[drm@mcnuttlawfirm.com](mailto:drm@mcnuttlawfirm.com)  
[mcw@mcnuttlawfirm.com](mailto:mcw@mcnuttlawfirm.com)  
*Counsel for Defendant*

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMEN YEMENIDJIAN, an individual,

Plaintiff,

v.

NICOLA SPIRTOS, an individual; DOES 1-20;  
and ROES 1-20,

Defendant.

Case No.: A-19-804785-C

Dept. No.: 22

**HEARING REQUESTED**

**SPECIAL MOTION TO DISMISS PURSUANT  
TO NRS 41.660, OR IN THE ALTERNATIVE,  
MOTION TO DISMISS PURSUANT TO NRCP  
12(B)(5)**

**I. INTRODUCTION.**

Plaintiff Armen Yemenidjian's Complaint must be dismissed for two independent reasons. First, it must be dismissed pursuant to the protections expressed in Nevada's Anti-SLAPP (Strategic Lawsuit Against Public Participation) laws, as codified in NRS 41.635 *et seq.* Second, the causes of action as stated in the Complaint fail as a matter of law.

In 2016, Nevada voters were asked to decide whether the law should be amended to allow persons to purchase, cultivate, possess, or consume a certain amount of marijuana with no criminal penalties. The Nevada Secretary of State, Barbara K. Cegavske, wrote to all Nevadans to advise them of the arguments for and against passage of State Question No. 2, as well as the other ballot initiatives which were being presented to Nevadans for decision through the election and voting process.<sup>1</sup> The rights to vote, speak freely, and petition the government for redress are fundamental elements of Nevada law. It is indisputable that State Question No. 2 and the passage of the necessary Nevada statutes and regulations invoke each of these fundamental aspects of Nevada constitutional

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<sup>1</sup> Ex. A.

1 law. Thus, all Nevadans were encouraged to participate in the public discourse regarding such  
2 matters of important public policy. It is axiomatic that Nevadans should not have to fear that their  
3 participation in such public constitutional matters will be met with threats or heavy-handed civil  
4 litigation tactics.

5 In Nevada, as with most other states, private citizens who exercise their constitutional rights  
6 are shielded from those who would use their great personal wealth to oppress free speech through  
7 litigation. In this state, a “good faith communication in furtherance of the right to petition or the  
8 right to free speech in direct connection with an issue of public concern” is a protected form of  
9 speech. NRS 41.637. After State Question No. 2 was passed by Nevada voters, much work  
10 remained to be done in order for the government to establish a process by which applications for  
11 marijuana licenses would be received, reviewed by the state, and ultimately awarded. These  
12 processes required the continued public participation by Nevada citizens. Dr. Nicola M. Spirtos is  
13 one such individual who has openly participated in this process since at least 2015. As is evident  
14 by this lawsuit, not everyone appreciates Dr. Spirtos’s participation in the public discourse  
15 regarding marijuana regulations and the application process. One such individual is the Plaintiff  
16 Armen Yemenidjian who seeks, through litigation, to intimidate and restrict Dr. Spirtos’s ability to  
17 participate in this process.

18 Dr. Spirtos is a highly accomplished gynecologic oncologist in Las Vegas. Until around  
19 February 2019, he had an ownership interest in D.H. Flamingo, Inc., which operates a local medical  
20 marijuana establishment (MME). In September 2018, D.H. Flamingo applied to the Nevada  
21 Department of Taxation (the Department) for three retail marijuana licenses, and Dr. Spirtos  
22 spearheaded those applications. Numerous events surrounding those applications led Dr. Spirtos to  
23 believe that the application process within the Department had been corrupted.

24 Following the election of Governor Sisolak, Dr. Spirtos attended an inaugural gala at the  
25 Aria Resort Casino in January 2019. At the event, he openly expressed his opinion to John Ocegüera  
26 (former Nevada assemblyman and now a paid lobbyist for Plaintiff) and others that the  
27 Department’s application process had been corrupted. Dr. Spirtos never mentioned Mr.  
28 Yemenidjian or suggested he was involved in corruption or criminal activity. Over 10 months later,

1 in October 2019, Dr. Spirtos was deposed in a lawsuit related to the Department's application  
2 process and revealed that he has been cooperating with the Federal Bureau of Investigation (FBI)  
3 at its request in its investigation of the Department. Shortly thereafter, Mr. Yemenidjian sued Dr.  
4 Spirtos for allegedly slandering him at the inaugural gala. The true motive for Mr. Yemenidjian's  
5 lawsuit is demonstrated by its timing. It is telling that Mr. Yemenidjian waited almost a year after  
6 the gala to file this lawsuit and did so only after Dr. Spirtos revealed his cooperation with the FBI  
7 at a recent deposition. Mr. Yemenidjian is clearly attempting to intimidate and silence Dr. Spirtos  
8 from participating in the public discourse regarding the flawed process by which marijuana  
9 applications were processed and from cooperating with agencies investigating public corruption.

10 This Court should dismiss Mr. Yemenidjian's lawsuit with prejudice under Nevada anti-  
11 SLAPP law. That law protects Dr. Spirtos's conversation with Mr. Oceguela because (1) the topics  
12 of the conversation (State Question No. 2 passed by Nevada voters and the marijuana application  
13 process) were (and still are) at issue in at least two pending cases in Nevada courts, and (2) the  
14 conversation involved matters of public interest in a place open to the public. Under Nevada's anti-  
15 SLAPP law, it is Mr. Yemenidjian's burden to demonstrate a likelihood of success on his claims,  
16 which he cannot do because (1) Dr. Spirtos never mentioned him at the gala, and (2) Mr.  
17 Yemenidjian's claims fails as a matter of law under NRCP 12(b)(5).

18 If it were to deny Dr. Spirtos's special motion to dismiss, then this Court alternatively should  
19 dismiss the Complaint under Rule 12(b)(5) for several reasons. The entire Complaint is barred by  
20 the litigation privilege, which protects all statements pertinent to the subject of pending litigation.  
21 Dr. Spirtos's comments at the inaugural gala were pertinent to a pending case filed by D.H.  
22 Flamingo. The conspiracy claim fails because (1) it was brought against only one defendant; (2) it  
23 does not identify Dr. Spirtos's alleged co-conspirators; (3) it is devoid of any facts concerning any  
24 concerted acts between Dr. Spirtos and his unnamed co-conspirators; and (4) it is redundant of the  
25 slander claim. The slander per se claim fails because Mr. Yemenidjian is a limited purpose public  
26 figure in the marijuana industry,<sup>2</sup> and the Complaint is devoid of any facts that could support an  
27

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28 <sup>2</sup> Among other industry accolades, Mr. Yemenidjian was selected by the state of Nevada to  
participate in the Governor's task force on marijuana. Ex. B, Wolf Decl. ¶ 5.

1 inference that Dr. Spirtos acted with actual malice. The Complaint alleges Dr. Spirtos acted due to  
2 financial motivations; however, economic motives alone cannot establish actual malice as a matter  
3 of law. The prayer for punitive damages fails because the Complaint does not allege any facts that  
4 could support an inference that Mr. Yemenidjian has suffered cruel and unjust hardships or that Dr.  
5 Spirtos knew he would suffer such hardships.

6 For these reasons, this Court should dismiss the Complaint with prejudice under Nevada  
7 anti-SLAPP law or Rule 12(b)(5).

## 8 II. FACTUAL BACKGROUND.

9 Dr. Spirtos is a prominent and highly accomplished gynecologic oncologist who serves as  
10 the medical director of the Women’s Cancer Center of Nevada. *See* Ex. C, Spirtos Decl. ¶ 2. From  
11 2014 until around February 2019, he had an ownership interest in D.H. Flamingo. *Id.* ¶ 3. D.H.  
12 Flamingo obtained a medical marijuana license and opened an MME named The Apothecary  
13 Shoppe. *Id.* ¶ 3. In July 2018, the Department announced that it would accept applications from  
14 existing MMEs for retail marijuana licenses. *Id.* ¶ 4. It required all applications to be submitted in  
15 September 2018. *Id.* ¶ 4. D.H. Flamingo submitted three applications, and Dr. Spirtos prepared the  
16 majority of the applications. *Id.* ¶¶ 4, 6.

17 On July 6, 2018, the Department released an updated application form. *See* Ex. C, Spirtos  
18 Decl. ¶ 5. It identified the total possible points for various criteria. *Id.* ¶ 5. The most valuable  
19 criterion was based on the applicant’s description of its “proposed organizational structure” and  
20 “information concerning each owner, officer and board member including *key personnel*” of the  
21 proposed marijuana establishment. *Id.* ¶ 5. That language complied with NAC 453D.272(1)(h),  
22 which requires the Department to consider “[t]he experience of key personnel” that the applicant  
23 intends to employ. The application form also required the applicant to list the proposed physical  
24 address for the prospective marijuana establishment, which complied with NAC 453D.268(2)(e).  
25 *Id.* ¶ 7. It also required the applicant to provide proof of ownership of the address or written  
26 permission from the property owner to operate the establishment there, which complied with NAC  
27 453D.268(2)(e) and NRS 453D.210(5)(b). *Id.* ¶ 7.

28 Approximately two weeks later, the Department released another version of the application



1 form. *See* Ex. C, Spirtos Decl. ¶ 8. The new form deleted the reference to “key personnel” in its  
2 description of the most valuable criterion. *Id.* ¶ 8; *see also* Ex. D, Application Form. It also  
3 eliminated (1) the requirement that the application include the proposed physical address for the  
4 prospective marijuana establishment, and (2) the requirement that applicants provide proof of  
5 ownership of the address or written permission from the property owner to operate the  
6 establishment there. *See* Ex. C, Spirtos Decl. ¶ 9. Dr. Spirtos believed that the new form was not  
7 compliant with Nevada law. *Id.* ¶ 9.

8         After D.H. Flamingo submitted its applications but before the Department announced its  
9 decision on them, Dr. Spirtos had breakfast at The Las Vegas Country Club with Mr. Pupo. *See* Ex.  
10 C, Spirtos Decl. ¶ 11. On multiple occasions, Mr. Pupo said he needed to make more money. *Id.* ¶  
11 11. Mr. Pupo’s statements suggested to Dr. Spirtos that he was seeking employment with or some  
12 form of compensation from D.H. Flamingo. *Id.* ¶ 11. Dr. Spirtos was uncomfortable with Mr.  
13 Pupo’s statements and felt they were improper. *Id.* ¶ 11.

14         In December 2018, the Department denied D.H. Flamingo’s applications. *See* Ex. C, Spirtos  
15 Decl. ¶ 12. NAC 453D.312(7) states that if the Department denies an application or revokes a  
16 license, then it must explain the specific reasons. In violation of that regulation, the Department  
17 merely informed D.H. Flamingo that it did not achieve a score high enough to receive an available  
18 license without providing any further explanation. *Id.* ¶ 12. On January 9, 2019, Dr. Spirtos attended  
19 a meeting at the Department to review and discuss the scoring of D.H. Flamingo’s applications. *Id.*  
20 ¶ 13. The Department refused to disclose the average scores for each criterion in the applications it  
21 received, and instead, it disclosed only the combined scores for multiple criteria. *Id.* ¶ 13. It also  
22 refused to answer Dr. Spirtos’s questions about how the applications were scored. *Id.* ¶ 13.

23         Dr. Spirtos has extensive experience with reviewing data in relation to medical studies and  
24 publications. *See* Ex. C, Spirtos Decl. ¶ 15. In his opinion, the validity of the scores that the  
25 Department disclosed to him is dubious due to a lack of variability. *Id.* ¶ 15. In the context of  
26 medical studies and publications, such lack of variability is virtually impossible and indicates  
27 potential data manipulation. *Id.* ¶ 15. Dr. Spirtos also has been informed that the Department or  
28 persons working on its behalf reviewed each application in around 1.5 to 2.0 hours. *Id.* ¶ 16. Each

1 application received by the Department likely exceeded 1,000 pages. *Id.* ¶ 16. D.H. Flamingo’s  
2 applications were around 1,700 pages. *Id.* ¶ 16. Dr. Spirtos does not believe it is possible for each  
3 application to be reviewed adequately in 1.5 to 2.0 hours. *Id.* ¶ 16.

4 As Dr. Spirtos was leaving the meeting at the Department, two men approached him in the  
5 parking lot. *See* Ex. C, Spirtos Decl. ¶ 14. Dr. Spirtos does not know their names. *Id.* ¶ 14. The men  
6 said “shenanigans” were occurring inside the Department in relation to the application process. *Id.*  
7 ¶ 14. They said an attorney for some of the applicants had met every day for a week with Mr. Pupo  
8 before the Department announced its decision on the applications it received. *Id.* ¶ 14. Later that  
9 same day, Dr. Spirtos received a series of text messages from an anonymous individual from a  
10 phone number he did not recognize. *Id.* ¶ 14. One of the messages said Mr. Pupo had been accepting  
11 kickbacks. *Id.* ¶ 14.

12 The Department’s application review process and possible corruption within the  
13 Department are at issue in two cases pending in the Eighth Judicial District Court. On December  
14 10, 2018, MM Development Company, Inc. (MM Development) and Livfree Wellness, LLC  
15 (Livfree) sued the Department in case no. A785818 (the MM Development Lawsuit). *See* Ex. E,  
16 Compl. They allege that they had applications denied by the Department. *Id.* ¶ 18. They also allege  
17 the Department “improperly granted more than one recreational marijuana store license per  
18 jurisdiction to certain applicants, owners, or ownership groups.” *Id.* ¶ 20. Several weeks later on  
19 January 4, 2019, D.H. Flamingo, Clark Natural Medicinal Solutions, LLC, Nye Natural Medicinal  
20 Solutions, LLC, Clark NMSD, LLC, and Inyo Fine Cannabis Dispensary, LLC sued the Department  
21 and other defendants in case no. A787035 (the D.H. Flamingo Lawsuit) (the MM Development and  
22 D.H. Flamingo Lawsuits are collectively the Licensing Lawsuits). *See* Ex. F, Compl. They allege  
23 the Department’s “ranking and scoring process was corrupted” and that the Department  
24 “improperly allocated licenses and improperly favored certain applicants.” *Id.* ¶¶ 81-82; *see also*  
25 *id.* ¶ 91 (alleging the process “was corrupted and certain application were favored over others”).

26 Based on such considerations as (1) Mr. Pupo’s statements to him at breakfast, (2) the  
27 statements made to him by the unidentified men in the Department’s parking lot, (3) the text  
28 messages he received from an anonymous person, (4) the Department’s changes to the application

1 form that did not comply with Nevada law, (5) a lack of variability in the Department's scores, (6)  
2 his belief it would be impossible to review each application adequately in 1.5 to 2.0 hours, (7) the  
3 Department's refusal to explain to him the specific reasons why D.H. Flamingo received certain  
4 scores for certain criteria, despite its legal obligation to do so, (8) the Department's refusal to  
5 disclose to him the average score for each criterion and answer his questions, and (9) the Licensing  
6 Lawsuits, it is Dr. Spirtos's considered opinion that the application process at the Department was  
7 corrupted. *See* Ex. C, Spirtos Decl. ¶ 19.

8 In January 2019, D.H. Flamingo purchased a table at Governor Sisolak's inaugural gala at  
9 the Aria Resort Casino. *See* Ex. C, Spirtos Decl. ¶ 20. As CEO of the company, he attended this  
10 event. *Id.* ¶ 20. During conversation at the table, Dr. Spirtos expressed his opinion that the  
11 application process at the Department had been corrupted. *Id.* ¶ 20. He never mentioned Mr.  
12 Yemenidjian or suggested he was involved in corruption or criminal conduct *Id.* ¶ 20. While at the  
13 gala, Dr. Spirtos also spoke with the former speaker of the Nevada assembly and current lobbyist  
14 for Plaintiff, Mr. Ocegüera. *Id.* ¶ 21. During the conversation, Dr. Spirtos again expressed his  
15 opinion that the application process at the Department had been corrupted. *Id.* ¶ 21. Once more, he  
16 never mentioned Mr. Yemenidjian or suggested he was involved in corruption. *Id.* ¶ 21.

17 During the first quarter of 2019, Dr. Spirtos was interviewed twice by the FBI concerning  
18 some of these events. *See* Ex. C, Spirtos Decl. ¶ 23. He also was deposed in the MM Development  
19 lawsuit on October 9, 2019. *Id.* ¶ 23. At his deposition, he revealed his cooperation with the FBI.  
20 *Id.* ¶ 23. Three weeks later, Mr. Yemenidjian sued Dr. Spirtos for supposedly slandering him at  
21 Governor Sisolak's inaugural gala in January 2019. *See* Pl.'s Compl., Nov. 4, 2019, ¶ 18. The timing  
22 of Mr. Yemenidjian's Complaint reveals its true motive. If Dr. Spirtos truly slandered Mr.  
23 Yemenidjian in January 2019, then why did Mr. Yemenidjian wait 10 months to file his Complaint?  
24 And are Dr. Spirtos and this Court supposed to believe it is just a coincidence that Mr. Yemenidjian  
25 chose to sue Dr. Spirtos right after Dr. Spirtos revealed his cooperation with the FBI? Clearly, Mr.  
26 Yemenidjian filed this lawsuit to silence Dr. Spirtos. Fortunately, Nevada has enacted anti-SLAPP  
27 laws to prevent this very type of lawsuit.

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### III. LEGAL ARGUMENTS.

**A. This Court Should Dismiss the Complaint under Nevada Anti-SLAPP Law.**

Armed with \$291 million dollars from the sale of his marijuana companies, Mr. Yemenidjian filed this lawsuit to silence Dr. Spirtos from expressing his opinion that the marijuana license review process within the Department has been corrupted and also from cooperating with the FBI and civil litigants as they investigate possible corruption in the Department. Mr. Yemenidjian wants to stop Dr. Spirtos from expressing his opinions freely and testifying truthfully because he is afraid of the consequences. This Court must not allow Mr. Yemenidjian to muzzle Dr. Spirtos's free speech rights and his ability to participate in the public discourse through tawdry litigation tactics.

"A strategic lawsuit against public participation, SLAPP for short, is a meritless lawsuit that a plaintiff initiates to chill a defendant's freedom of speech and right to petition under the First Amendment." *Pope v. Fellhauer*, 437 P.3d 171, 2019 WL 1313365, at \*2 (Nev. March 21, 2019). Nevada anti-SLAPP law protects certain types of good faith communications that are truthful or made without knowledge of their falsehood. NRS 41.637. It protects communications made in direct connection with an issue (1) under consideration by a judicial body, or (2) "of public interest in a place open to the public or in a public forum." NRS 41.637(3)-(4). Such communications are "immune from any civil action." NRS 41.650; *see also Zilberstein v. Schwimer*, 2016 WL 7388555, at \*2 (Cal. Ct. App. Dec. 21, 2016) (anti-SLAPP laws bar all types of claims).<sup>3</sup>

NRS 41.660(3) sets forth a two-prong analysis for an anti-SLAPP motion. *See, e.g., Coker v. Sassone*, 135 Nev. Adv. Op. 2, 432 P.3d 746, 749 (2019). First, the district court must determine if the claim involves a protected type of communication. NRS 41.660(3)(a). If so, then it must determine if the plaintiff can present prima facie evidence demonstrating a probability of success on the merits. NRS 41.660(3)(b). This second prong entails a summary-judgment-like analysis. *See,*

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<sup>3</sup> California anti-SLAPP law is highly persuasive in Nevada on novel legal issues. *See, e.g.,* NRS 41.665(2) (the party filing a special motion to dismiss must meet the same burden of proof required under California anti-SLAPP law); *see also Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017) (examining California anti-SLAPP law for guidance on a novel issue); *Patin v. Ton Vinh Lee*, 134 Nev. 722, 724, 429 P.3d 1248, 1250 (2018) (same).

1 e.g., *Banerjee v. Cont'l Inc., Inc.*, No. 2:17-CV-00466-APG-GWF, 2018 WL 700822, at \*3 (D.  
2 Nev. Feb. 1, 2018); *see also Las Vegas Sands Corp. v. First Cagayan Leisure & Resort Corp.*, No.  
3 2:14-CV-424-JCM-NJK, 2016 WL 4134523, at \*3 (D. Nev. Aug. 2, 2016) (anti-SLAPP motions  
4 are treated like motions for summary judgment); *Coker v. Sassone*, 432 P.3d at 748 (anti-SLAPP  
5 motions procedurally function like summary judgment motions); *Integrated Healthcare Holdings,*  
6 *Inc. v. Fitzgibbons*, 140 Cal. App. 4th 515, 527, 44 Cal. Rptr. 3d 517, 526 (2006) (to avoid dismissal,  
7 the plaintiff “must produce evidence that would be admissible at trial.”).

8 This Court should dismiss Mr. Yemenidjian’s Complaint under Nevada anti-SLAPP law.  
9 As for the first prong of the anti-SLAPP analysis, the conversation between Dr. Spirtos and Mr.  
10 Ocegüera is protected by NRS 41.637(3) because its topics – i.e., irregularities with the  
11 Department’s application process and possible corruption inside the Department – were (and still  
12 are) under consideration by the Eighth Judicial District Court in the Licensing Lawsuits. The  
13 conversation also is protected by NRS 41.650(4) because the inaugural gala was “a place open to  
14 the public,” and the topics of the conversation were matters “of public interest.” The public’s  
15 interest in the topics is proven by extensive media coverage of the Licensing Lawsuits and  
16 allegations of corruption against the Department and Mr. Pupo. *See* Ex. B, Wolf Decl. ¶ 2  
17 (identifying news stories on these topics). As for the second prong of the anti-SLAPP analysis, Mr.  
18 Yemenidjian cannot succeed on the merits because Dr. Spirtos never mentioned him during his  
19 conversation with Mr. Ocegüera. *See* Ex. C, Spirtos Decl. ¶ 21. Mr. Yemenidjian therefore cannot  
20 establish that Dr. Spirtos slandered him to Mr. Ocegüera. Mr. Yemenidjian also cannot prevail on  
21 the merits of his claims because they fail as a matter of law under Rule 12(b)(5). *See infra* § III(B)  
22 herein. For these reasons, the Complaint is barred by Nevada anti-SLAPP law.

23 **B. Alternatively, this Court Should Dismiss the Complaint under Rule 12(b)(5).**

24 **1. The Complaint is Barred by the Litigation Privilege.**

25 Even if it were to decline to dismiss the Complaint under Nevada anti-SLAPP law, this  
26 Court still should dismiss it under NRCP 12(b)(5) because it fails as a matter of law. The entire  
27 Complaint is barred by the litigation privilege, which protects all statements – even ones made with  
28 malice or knowledge of a falsehood – that “are in some way pertinent to the subject” of pending

1 litigation. *Greenberg Traurig v. Frias Holding Co.*, 130 Nev. 627, 630–31, 331 P.3d 901, 903  
2 (2014) (quoting *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d 640, 644 (2002)) (internal quotes  
3 omitted). Prior to the inaugural gala, D.H. Flamingo sued the Department and alleged that the  
4 Department’s “ranking and scoring process was corrupted” and that the Department “improperly  
5 allocated licenses and improperly favored certain applicants.” *See* Ex. F, Compl. ¶¶ 81-82; *see also*  
6 *id.* ¶ 91 (alleging the process “was corrupted and certain application were favored over others”).  
7 Dr. Spirtos’s comments at the inaugural gala involved the same subjects as the D.H. Flamingo  
8 Lawsuit. Therefore, Dr. Spirtos’s comments are absolutely protected by the litigation privilege.

9           **2.       This Court Should Dismiss Mr. Yemenidjian’s Conspiracy Claim.**

10           Mr. Yemenidjian’s first cause of action is for civil conspiracy. *See* Compl. ¶¶ 25-29. This  
11 Court should dismiss it for at least four reasons. **First**, Dr. Spirtos is the sole non-fictitious defendant  
12 named in the claim. However, Nevada law states that a claim for conspiracy requires concerted  
13 action by “two or more persons.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 117–18, 345  
14 P.3d 1049, 1052 (2015). Here, the complaint fails to identify anyone with whom Dr. Spirtos is  
15 alleged to have conspired against Plaintiff. As currently pled, this cause of action is a conspiracy of  
16 one, which does not meet even the basic notice pleading requirements of NRCP 8. Many  
17 jurisdictions expressly do not permit a conspiracy claim against a single defendant. *See, e.g.,*  
18 *Adperio Network, LLC v. AppSlide, LLC*, 2017 WL 4407928, at \*8 (D. Colo. Mar. 28, 2017) (under  
19 Colorado law, a conspiracy claim cannot be asserted against a single defendant); *see also In re*  
20 *Hilbrant*, 2012 WL 5248615, at \*3 (Bankr. W.D.N.C. Oct. 24, 2012) (granting summary judgment  
21 on a conspiracy claim because only one defendant remained in the case, and “[c]ivil conspiracy, at  
22 a minimum, involves two people.”); *Voga v. U.S. Bank*, No. 3:11-CV-316-RCJ-VPC, 2011 WL  
23 5180978, at \*7 (D. Nev. Oct. 27, 2011) (stating in dictum that it would be difficult to support a  
24 conspiracy claim against a single defendant). Dr. Spirtos is unaware of any case in which the  
25 Nevada Supreme Court has recognized a viable conspiracy claim against a single defendant, and  
26 this Court should similarly refuse to recognize the sufficiency of the instant pleading.

27           **Second**, a complaint must give “fair notice of the nature and basis” of each claim. *Vacation*  
28 *Vill., Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994). The Complaint alleges

1 Dr. Spirtos “undertook a campaign with others,” but it fails to identify the “others.” *See* Compl. ¶  
2 26. By failing to name Dr. Spirtos’s co-conspirators, the Complaint does not give Dr. Spirtos fair  
3 notice of the supposed conspiracy. *See, e.g., Davis v. 1568 Broadway Hotel Mgmt. LLC DoubleTree*  
4 *Hotel Times Square*, 2018 WL 317849, at \*4 (S.D.N.Y. Jan. 5, 2018) (dismissing a conspiracy  
5 claim that failed to identify the single defendant’s co-conspirator); *see also Groves v. City of*  
6 *Darlington*, 2011 WL 826449, at \*7 (D.S.C. Jan. 14, 2011) (a conspiracy claim that “failed to  
7 identify with whom the [single defendant] participated in a conspiracy” was not viable).

8 **Third**, the Complaint also does not give Dr. Spirtos fair notice of the supposed conspiracy  
9 because it is devoid of any factual allegations concerning an agreement to conspire and concerted  
10 actions engaged in by the co-conspirators. The United States District Court for the District of  
11 Nevada and courts around the country routinely dismiss such legally defective claims. *See, e.g.,*  
12 *Chavez v. California Reconveyance Co.*, No. 2:10-CV-00325-RLH-LRL, 2010 WL 2545006, at \*5  
13 (D. Nev. June 18, 2010) (dismissing a conspiracy claim that failed “to identify the parties to any  
14 conspiracy” and did “not allege any specific set of facts regarding concerted action in furtherance  
15 of an unlawful objective.”); *see also NordAq Energy, Inc. v. Devine*, 2019 WL 334203, at \*6 (D.  
16 Alaska Jan. 25, 2019) (dismissing a conspiracy claim that was not “supported by well-pleaded  
17 material facts”); *Galicki v. New Jersey*, 2015 WL 3970297, at \*9 (D.N.J. June 29, 2015) (dismissing  
18 a conspiracy claim that lacked factual allegations concerning “the who, what, when, where, and  
19 how of the conspiracy.”); *Ashton v. City of Uniontown*, 459 F. App’x 185, 191 (3d Cir. 2012)  
20 (affirming the dismissal of a conspiracy claim that was “devoid of any factual allegation showing  
21 an agreement or concerted activity by [the conspirators], a necessary element of a conspiracy  
22 claim.”); *Marshall v. ITT Tech. Inst.*, 2012 WL 1205581, at \*4 (E.D. Tenn. Apr. 11, 2012)  
23 (dismissing a conspiracy claim that was “devoid of any factual allegation describing or supporting  
24 the element of a concerted action or common design”); *Baldonado v. Avrinmeritor, Inc.*, 2014 WL  
25 2116112, at \*10 (D. Del. May 20, 2014) (recommending dismissal of a conspiracy claim missing  
26 “facts plausibly suggesting an agreement and concerted action”); *Tanksley v. Bay View Law Grp.,*  
27 *P.C.*, 2014 WL 2216966, at \*7 (D. Kan. May 29, 2014) (dismissing a conspiracy claim that  
28 contained “no factual basis for an allegation that [the defendant] acted in concert with anyone.”);

1 *Feliz v. Kintock Grp.*, 2007 WL 9751961, at \*1, n.1 (E.D. Pa. Mar. 14, 2007) (dismissing a  
2 conspiracy claim because its “conclusory allegations of concerted action” were “devoid of facts  
3 actually reflecting joint action”); *Gunderson v. Uphoff*, 216 F.3d 1087, at \*6 (10th Cir. 2000)  
4 (affirming the dismissal of a conspiracy claim that did not contain “any specific facts evidencing  
5 an agreement among the various defendants” to conspire against the plaintiff); *Sooner Prod. Co. v.*  
6 *McBride*, 708 F.2d 510, 512 (10th Cir. 1983) (a conspiracy claim “must specifically present facts  
7 tending to show [an] agreement and concerted action.”).

8 ***Fourth***, to the extent Mr. Yemenidjian alleges Dr. Spirtos conspired to slander him, his  
9 conspiracy claim is redundant of his slander claim and should be dismissed for that reason as well.  
10 *See, e.g., Boisjoly v. Morton Thiokol, Inc.*, 706 F. Supp. 795, 803–04 (D. Utah 1988) (a conspiracy  
11 claim fails against “a single defendant where the same underlying torts are also asserted by separate  
12 counts against the same defendant.”); *see also NorthStar Aviation, LLC v. Alberto*, 332 F. Supp. 3d  
13 1007, 1017-18 (E.D. Va. 2018) (same); *Miller v. Gizmodo Media Grp., LLC*, 2019 WL 1790248,  
14 at \*12 (S.D. Fla. Apr. 24, 2019) (quoting *Bahiri v. Madison Realty Capital Advisors, LLC*, 924  
15 N.Y.S.2d 307, at \*3 (N.Y. Sup. Ct. 2010)) (“[W]here the substantive tort is already pled against the  
16 parties, like in the instant case, the conspiracy claim will be dismissed as duplicative”); *Shows v.*  
17 *Morgan*, 40 F. Supp. 2d 1345, 1363 (M.D. Ala. 1999) (dismissing a conspiracy claim that was  
18 redundant of libel and invasion of privacy claims). For these reasons, this Court should dismiss Mr.  
19 Yemenidjian’s conspiracy claim.

20 **3. *This Court Should Dismiss the Slander Per Se Claim Because Mr.***  
21 ***Yemenidjian is a Limited Purpose Public Figure, and the Complaint Fails***  
22 ***to Allege Any Facts Showing that Dr. Spirtos Acted with Actual Malice.***

23 Mr. Yemenidjian’s second claim is for slander per se. *See* Compl. ¶¶ 30-36. The prima facie  
24 elements for the claim are (1) a false and defamatory statement by Dr. Spirtos concerning Mr.  
25 Yemenidjian; (2) an *unprivileged* publication by Dr. Spirtos to a third person; (3) fault, amounting  
26 to at least negligence, by Dr. Spirtos; and (4) actual or presumed damages suffered by Mr.  
27 Yemenidjian. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). A  
28 statement is defamatory if it would tend to lower the subject in the estimation of the community,  
excite derogatory opinions about the subject, and hold the subject up to contempt. *Id.* at 715, 88.



1 To determine if a remark could be defamatory, the court must decide if a reasonable person likely  
2 would understand it to be an expression of opinion or a statement of existing fact. *Id.* During this  
3 inquiry, the remark must be considered in context. *Id.*

4 A plaintiff who is a limited-purpose public figure must prove the defamatory statement was  
5 made with actual malice as opposed to the lower standard of mere negligence. *Bongiovi v. Sullivan*,  
6 122 Nev. 556, 572, 138 P.3d 433, 445 (2006). Whether a plaintiff is a limited-purpose public figure  
7 is a question of law. *Id.* A limited-purpose public figure is a person who becomes a public figure  
8 for a limited range of issues by voluntarily injecting or thrusting herself into a particular public  
9 controversy or matter of public concern. *Pegasus*, 118 Nev. at 720, 57 P.3d at 91. For example, in  
10 *Pegasus*, a Mexican food restaurant was “a limited-purpose public figure because it has voluntarily  
11 entered the public spectrum by providing public accommodation and seeking public patrons.” *Id.*  
12 at 721, 92.

13 Actual malice requires that the speaker made the statement with knowledge it was false or  
14 reckless disregard to its truth, and reckless disregard requires that the speaker acted with a high  
15 degree of awareness of the statement’s probable falsity or with serious doubts about its truth.  
16 *Pegasus*, 118 Nev. at 719, 57 P.3d at 90–91. Whether the defendant entertained serious doubts  
17 about the truth is a subjective test that relies on what the defendant believed and intended to convey,  
18 not what a reasonable person would have understood. *Id.* at 722, 92. Actual malice must be alleged  
19 and proven by clear and convincing evidence. *Id.* at 719, 90. “The question of actual malice goes  
20 to the jury *only* if there is sufficient evidence for the jury, by clear and convincing evidence, to  
21 reasonably infer that the publication was made with actual malice.” *Id.* at 721–22, 92 (emphasis  
22 added).

23 Mr. Yemenidjian is a limited purpose public figure because he has purposefully injected  
24 himself into the public spotlight with respect to the marijuana industry. *See* Ex. B, Wolf Decl. ¶ 3  
25 (identifying news articles, interviews, videos, and other online content establishing this fact).<sup>4</sup>

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27 <sup>4</sup> This Court can consider these articles because their existence can be judicially noticed, and  
28 “matters of which the court has taken judicial notice” may be considered on a motion to dismiss.  
*DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 762 (9th Cir. 2018).

1 Among other industry leadership roles, Mr. Yemenidjian was selected to participate in the  
2 Governor’s task for on marijuana cultivation. *Id.* ¶ 5. He also repeatedly has allowed local and  
3 national news sources – including but not limited to Forbes – to profile his career in the industry,  
4 quote his opinions about the industry, and photograph him in the industry. *Id.* ¶ 3. It is clear Mr.  
5 Yemenidjian has used the media to obtain advertising, self-promotion, and other professional  
6 advantages related to the industry. *See, e.g., Sipple v. Found. For Nat. Progress*, 71 Cal. App. 4th  
7 226, 247–48, 83 Cal. Rptr. 2d 677, 690 (1999) (a plaintiff who “used the media for his professional  
8 advantage many times” was a public figure). By holding himself out as a leader in the marijuana  
9 industry, Mr. Yemenidjian has established himself as a limited purpose public figure, and as such,  
10 he must prove Dr. Spirtos acted with actual malice – i.e., with knowledge of a falsehood or reckless  
11 disregard of the truth. This aspect of Mr. Yemenidjian’s slander claim fails as a matter of law.

12 This Court should dismiss Mr. Yemenidjian’s slander claim because it fails to allege any  
13 facts that, even if considered true, could establish the higher burden of actual malice. The Complaint  
14 alleges Dr. Spirtos must have knowingly made false statements because he now denies having  
15 slandered Mr. Yemenidjian. *See* Compl. ¶ 33. Rather than proving Dr. Spirtos knowingly made  
16 false statements, there is a simpler and less speculative explanation for why Dr. Spirtos denies Mr.  
17 Yemenidjian’s allegations: Dr. Spirtos never slandered Mr. Yemenidjian. Mr. Yemenidjian’s  
18 allegation that actual knowledge may be inferred from Dr. Spirtos’s denial of his accusations is  
19 speculative, conclusory, and insufficient as a matter of law to support an inference of actual malice.  
20 *See, e.g., Deripaska v. Associated Press*, 282 F. Supp. 3d 133, 143 (D.D.C. 2017) (although the  
21 complaint does not need to use the magic phrase “actual malice,” it must adequately allege facts  
22 supporting an inference of actual malice); *see also Biro v. Conde Nast*, 963 F. Supp. 2d 255, 281  
23 (S.D.N.Y. 2013) (conclusory allegations that the defendant “acted with actual malice” and “knew  
24 or should have known” a statement was false could not support a viable claim); *Parisi v. Sinclair*,  
25 774 F. Supp. 2d 310, 319 (D.D.C. 2011) (disposing of a defamation claim devoid of any “facts that  
26 would hint, let alone support the reasonable inference, that [the defendant] knew or seriously  
27 doubted the truth of the allegedly defamatory statements contained in the book.”); *Green Grp.*  
28 *Holdings, LLC v. Schaeffer*, 2016 WL 6023841, at \*18 (S.D. Ala. Oct. 13, 2016) (granting a motion

1 to dismiss because the complaint did not allege any facts that plausibly indicated actual malice).

2 Mr. Yemenidjian also alleges Dr. Spirtos made false statements to gain an economic  
3 advantage over him and his companies. *See, e.g.*, Compl. ¶ 21. However, that allegation on its own  
4 is insufficient as a matter of law to support an inference of actual malice. As the United States  
5 Supreme Court said in *Harte-Hanks Commc'ns, Inc. v. Connaughton*, economic motivations can  
6 be considered with other factors to prove actual malice, but a profit motive alone cannot “suffice to  
7 prove actual malice.” 491 U.S. 657, 667 (1989); *see also id.* at 665 (a newspaper’s motivation to  
8 promote an opponent’s candidacy and increase its circulation “cannot provide a sufficient basis for  
9 finding actual malice.”); *Bass v. United Dev. Funding, L.P.*, 2019 WL 3940976, at \*21 (Tex. Ct.  
10 App. Aug. 21, 2019) (profit motive may be considered with other factors but is insufficient alone  
11 to establish actual malice); *Suzuki Motor Corp. v. Consumers Union of U.S., Inc.*, 330 F.3d 1110,  
12 1136 (9th Cir. 2003) (same); *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093, 1109 (N.D. Cal. 1999) (the  
13 “[e]conomic interests of the defendant and animus toward the plaintiff cannot serve as a basis for  
14 actual malice.”); *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 66 F. Supp. 2d 1117, 1126  
15 (C.D. Cal. 1999); *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 716 (4th Cir. 1991).

16 Consistent with *Harte-Hanks*, the Nevada Supreme Court has said that “negligence, motive,  
17 and intent may *cumulatively* establish necessary recklessness to prove actual malice in a defamation  
18 action.” *Posadas v. City of Reno*, 109 Nev. 448, 454, 851 P.2d 438, 443 (1993) (emphasis added);  
19 *see also Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 415, 664 P.2d 337, 344–45 (1983) (“It  
20 is clear that in most instances one factor alone will not establish actual malice by convincing  
21 clarity.”). While Mr. Yemenidjian alleges Dr. Spirtos had an economic motive to slander him, he  
22 is required to allege (and fails to do so) other factors that *cumulatively* could support an inference  
23 of actual malice. Because an alleged economic motive, by itself, cannot constitute actual malice,  
24 this Court must dismiss the slander claim for alleging to allege facts establishing actual malice.

25 **4. This Court Should Dismiss Mr. Yemenidjian’s Prayer for Punitive Damages.**

26 In his conspiracy and slander claims, Mr. Yemenidjian requests punitive damages and  
27 alleges that Dr. Spirtos’s “conduct was undertaken with oppression and in conscious disregard of  
28 Mr. Yemenidjian’s rights.” *See* Compl. ¶¶ 28, 35. This Court should dismiss this request for

1 punitive damages because the Complaint is devoid of the required supporting factual allegations.  
2 For punitive damages to be recoverable, the complaint cannot merely recite the words from NRS  
3 42.001 and instead must allege facts supporting the elements for punitive damages. *See, e.g.,*  
4 *Bonavito v. Nevada Prop. I LLC*, No. 2:13-CV-417-JAD-CWH, 2014 WL 1347051, at \*1 (D. Nev.  
5 Apr. 2, 2014) (a plaintiff must “plead the facts to support an award of punitive damages to maintain  
6 a prayer for them in his complaint and to pursue them at trial.”); *see also Amini v. CSAA Gen. Ins.*  
7 *Co.*, No. 2:15-CV-0402-JAD-GWF, 2015 WL 3466517, at \*1 (D. Nev. May 29, 2015) (dismissing  
8 a prayer for punitive damages that contained “mere labels and conclusions” without any supporting  
9 facts); *Martin v. Collier*, No. 2:11-CV-0320-LRH-GWF, 2011 WL 1628028, at \*3 (D. Nev. Apr.  
10 28, 2011) (dismissing a prayer for punitive damages because “there are no allegations in the  
11 complaint establishing that defendants acted with malice.”).

12 A plaintiff may recover punitive damages if it proves “by clear and convincing evidence  
13 that the defendant has been guilty of oppression, fraud or malice, express or implied.” NRS  
14 42.005(1). Oppression means “despicable conduct that subjects a person to cruel and unjust  
15 hardship with conscious disregard of the rights of the person,” and conscious disregard means  
16 “knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate  
17 failure to act to avoid those consequences.” NRS 42.001(1), (4). The Complaint fails to allege any  
18 facts that could support a clear and convincing inference that Mr. Yemenidjian has suffered cruel  
19 and unjust hardships or that Dr. Spirtos knew it was probable Mr. Yemenidjian would suffer such  
20 hardships. This Court therefore should dismiss the prayer for punitive damages.

#### 21 IV. CONCLUSION.

22 For the foregoing reasons, this Court should dismiss the Complaint with prejudice under  
23 Nevada anti-SLAPP law or Rule 12(b)(5).

24 DATED December 10, 2019.

25 MCNUTT LAW FIRM, P.C.

26 /s/ Dan McNutt  
27 Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
28 625 South Eighth Street  
Las Vegas, Nevada 89101  
Counsel for Defendant

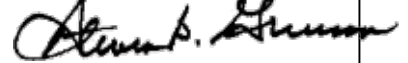
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on December 10, 2019, I served a true and correct copy of the foregoing **SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)** via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at their last known address or e-mail:

James Pisanelli, Esq. (SBN 4027)  
Todd Bice, Esq. (SBN 4534)  
Jordan Smith, Esq. (SBN 12097)  
Dustin Holmes, Esq. (SBN 12776)  
PISANELLI BICE PLLC  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101  
[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)  
[tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)  
[jts@pisanellibice.com](mailto:jts@pisanellibice.com)  
[dhb@pisanellibice.com](mailto:dhb@pisanellibice.com)  
*Counsel for Plaintiff*

/s/ Lisa Heller  
An Employee of McNUTT LAW FIRM, P.C.



APPEN  
MCNUTT LAW FIRM, P.C.  
Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
Tel.: (702) 384-1170 / Fax.: (702) 384-5529  
[drm@mcnuttlawfirm.com](mailto:drm@mcnuttlawfirm.com)  
[mew@mcnuttlawfirm.com](mailto:mew@mcnuttlawfirm.com)  
*Counsel for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ARMEN YEMENIDJIAN, an individual,

Plaintiff,

v.

NICOLA SPIRTOS, an individual; DOES 1-20;  
and ROES 1-20,

Defendant.

Case No.: A-19-804785-C

Dept. No.: 22

**APPENDIX OF EXHIBITS IN SUPPORT OF  
SPECIAL MOTION TO DISMISS PURSUANT  
TO NRS 41.660, OR IN THE ALTERNATIVE,  
MOTION TO DISMISS PURSUANT TO NRCP  
12(B)(5)**

Exhibit	Description	Page No. Range
A.	Barbara K. Cegavske Letter	App. 1 - 2
B.	Wolf Decl.	App. 3 - 86
C.	Spiertos Decl.	App. 87 - 94
D.	Application Form	App. 95 - 129
E.	MM Development Company, Inc. Complaint	App. 130 - 142
F.	D.H. Flamingo Complaint	App. 143 - 168

DATED December 10, 2019.

MCNUTT LAW FIRM, P.C.

/s/ Dan McNutt

Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
*Counsel for Defendant*

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on December 10, 2019, I served a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)** via electronic mail through the Eighth Judicial District Court’s E-Filing system to the following at their last known address or e-mail:

James Pisanelli, Esq. (SBN 4027)  
Todd Bice, Esq. (SBN 4534)  
Jordan Smith, Esq. (SBN 12097)  
Dustin Holmes, Esq. (SBN 12776)  
PISANELLI BICE PLLC  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101  
[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)  
[tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)  
[jts@pisanellibice.com](mailto:jts@pisanellibice.com)  
[dhh@pisanellibice.com](mailto:dhh@pisanellibice.com)  
*Counsel for Plaintiff*

/s/ Lisa Heller  
An Employee of McNUTT LAW FIRM, P.C.

# Exhibit A



STATE OF NEVADA

**BARBARA K. CEGAVSKE**

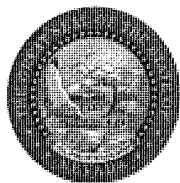
*Secretary of State*

**WAYNE THORLEY**

*Deputy for Elections*

**GAIL J. ANDERSON**

*Deputy Secretary  
for Southern Nevada*



**OFFICE OF THE  
SECRETARY OF STATE**

**SCOTT ANDERSON**

*Chief Deputy Secretary of State*

**CADENCE MATIJEVICH**

*Deputy Secretary  
for Operations*

Dear Fellow Nevadan:

As the November 8, 2016, general election approaches, it is my responsibility as the state's Chief Elections Officer to ensure voters have all the information necessary to make informed decisions on the four statewide ballot questions that will be presented to them this year. Accordingly, my office has prepared this informational booklet that provides the exact wording and a brief summary of each question, as well as fiscal notes detailing the potential financial impacts to the State of Nevada. Arguments for and against passage of each ballot question are also provided.

For your reference, Ballot Question Numbers 1 and 2 propose new statute or amend existing statute and qualified for the ballot through initiative petitions filed in 2014. Both petitions were presented to the Nevada Legislature in 2015 but were not acted upon and therefore will be presented to the voters.

Ballot Question Numbers 3 and 4 propose amendments to the *Nevada Constitution* and qualified for the ballot through initiative petitions filed in 2016. If successful at this election, these questions will appear again on the 2018 general election ballot.

I encourage you to carefully review and consider each of the ballot questions prior to Election Day on November 8, 2016. As a voter, your decisions on these ballot questions are very important, as they may create new laws, amend existing laws, or amend the *Nevada Constitution*.

Thank you for your attention on this important matter. If you require additional information, please do not hesitate to contact my office at (775) 684-5705, or visit my website: [www.nvsos.gov](http://www.nvsos.gov).

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

BARBARA K. CEGAVSKE  
Secretary of State

NEVADA STATE CAPITOL  
101 N. Carson Street, Suite 3  
Carson City, Nevada 89701-3714

MEYERS ANNEX  
COMMERCIAL RECORDINGS  
202 N. Carson Street  
Carson City, Nevada 89701-4201

LAS VEGAS OFFICE  
555 E. Washington Avenue, Suite 5200  
Las Vegas, Nevada 89101-1090

[nvsos.gov](http://nvsos.gov)

App. 002

App. 028

# Exhibit B

**DECLARATION OF MATTHEW C. WOLF, ESQ.**

I, Matt Wolf, hereby declare the following:

1. I am an adult and am making this declaration based on my personal knowledge. I am a duly licensed attorney at law and am admitted to practice in all courts in Nevada. I am an attorney with the McNutt Law Firm, P.C., counsel for Dr. Nicola M. Spirtos. I am making this declaration in support of Dr. Spirtos's motion to dismiss the complaint filed against him by Armen Yemenidjian on November 4, 2019, in case no. A-19-804785-C in the Eighth Judicial District Court. All exhibits to the motion are true and correct copies of the matters presented.

2. While preparing Dr. Spirtos's motion, I did a Google search for news stories related to the lawsuits filed by MM Development and D.H. Flamingo. I found the following articles:

Date	Publication / Source	Author	Title	Exhibit to Declaration
12/14/18	Nevada Independent	Michelle Rindels	<i>Marijuana Company Denied Nevada Dispensary Licenses Sues State, Alleges "Flawed Interpretation" of Law</i>	01
05/08/19	AP News	Ken Ritter	<i>Pot Businesses Press for Nevada to Redo Licensing Process</i>	02
05/25/19	Las Vegas Sun (Originally Printed by the Associated Press)	Ken Ritter	<i>Marijuana Businesses Urge Judge to Review Nevada Licenses</i>	03
06/21/19	AP News (Originally Printed by the Las Vegas Sun)	Las Vegas Sun	<i>Official Denies Lawyer Outings Skewed Nevada Pot Licensing</i>	04
08/16/19	Reno Gazette (Originally Printed by the Associated Press)	Ken Ritter	<i>Broken Laws Alleged as Nevada Marijuana Licenses Hearing Nears End</i>	05
08/23/19	US News (Originally Printed by the Associated Press)	Associated Press	<i>Nevada Judge Freezes Licensing Process for New Pot Shops</i>	06

<b>Date</b>	<b>Publication / Source</b>	<b>Author</b>	<b>Title</b>	<b>Exhibit to Declaration</b>
09/09/19	Las Vegas Review Journal	Colton Lockhead	<i>Nevada Marijuana Official Placed on Leave</i>	07
09/10/19	Elko Daily (Originally Printed by the Associated Press)	Associated Press	<i>Nevada Pot Licensing Chief on Leave Amid Favoritism Claims</i>	08

3. I also did a Google search for news stories referencing Mr. Yemenidjian and found the following articles:

<b>Date</b>	<b>Publication / Source</b>	<b>Author</b>	<b>Title</b>	<b>Exhibit to Declaration</b>	<b>Relevance</b>
12/26/17	Forbes	Mona Zhang	<i>Nevada's Recreational Marijuana Market Hits \$38M, Soars Past Colorado</i>	09	The article features a picture of Mr. Yemenidjian at a dispensary.
12/19/18	PR News Wire	Essence	<i>Essence Cannabis Dispensary Awarded New Licenses to Expand to California</i>	10	The article quotes Mr. Yemenidjian about the growth of Essence.
03/14/19	New Cannabis Ventures	Carrie Pallardy	<i>Why GTI's \$290 Million Bet on Essence Cannabis Dispensary is No Gamble</i>	11	The article features a picture of Mr. Yemenidjian standing in front of marijuana plants, and it discusses his involvement in the marijuana industry.
04/29/19	Forbes	Nick Kovacevich	<i>Vegas' Secret Sauce For</i>	12	The article quotes Mr. Yemenidjian about Nevada's

Date	Publication / Source	Author	Title	Exhibit to Declaration	Relevance
			<i>Cannabis Success: Regulations</i>		regulation of the marijuana industry.
05/13/19	Las Vegas Sun	Bryan Horwath	<i>Las Vegas Marijuana Dispensaries Planning for Consumption Lounges</i>	13	The article quotes Mr. Yemenidjian about marijuana lounges.
05/31/19	Reno Gazette Journal	Ed Komenda	<i>Nevada Advances Bill to Freeze Pot Lounges for Two Years</i>	14	The article quotes Mr. Yemenidjian about AB 533, which included a two-year moratorium on consumption lounge licensing.
06/05/19	Las Vegas Sun	Ray Brewer	<i>Green Thumb Industries Grows West, Closes Essence Cannabis Deal</i>	15	The quotes Mr. Yemenidjian and states he will join Green Thumb as its president.
09/05/19	Culver City News	Christian May-Suzuki	<i>Potential Culver City Cannabis Store Brings Lofty Aspirations</i>	16	The article profiles Mr. Yemenidjian and his career in the marijuana industry.
09/06/19	Nevada Independent	Michelle Rindels	<i>Updated Lawsuit from Marijuana Companies that Did Not Win Licenses Accuses State of "Rampant Illegality and Corruption"</i>	17	The article says D.H. Flamingo has alleged in court that Jorge Pupo was offered a job by Mr. Yemenidjian.
11/12/19	Nevada Independent	Michelle Rindels	<i>Vegas Marijuana Magnate Sues, Alleging Competitor is Waging a Jealous</i>	18	This article discusses Mr. Yemenidjian's lawsuit against Dr. Spirtos.


Date	Publication / Source	Author	Title	Exhibit to Declaration	Relevance
			<i>Campaign of Slander</i>		
11/14/19	Casino News	Philip Conneller	<i>Drug Wars: Las Vegas Casino Exec Turned Legal Marijuana Dealer Sues Competitor for Slander</i>	19	This article features a picture of Mr. Yemenidjian in front of marijuana plants and discusses his lawsuit against Dr. Spirtos.
11/29/19	Pot Stock News	Connor Doyle	<i>Cannabis Stocks Can Get a Major Revenue Boost with Cafes and Lounges</i>	20	This article states Mr. Yemenidjian hopes to expand cannabis lounges to more markets.

4. Copies of the articles referenced herein are attached to this declaration.

5. I also found that Mr. Yemenidjian's biography on Green Thumb Industries' website states he "was selected by the state of Nevada to participate in the Governor's Task Force on Cultivation." See <https://www.gtigrows.com/team/yemenidjian-armen> (last accessed Dec. 9, 2019).

6. I also found a videotaped interview of Mr. Yemenidjian in which he described the process for cultivating marijuana. See [https://video.vice.com/en\\_us/video/how-to-grow-the-same-high-every-time/587e6aa29d39d5c115397e73](https://video.vice.com/en_us/video/how-to-grow-the-same-high-every-time/587e6aa29d39d5c115397e73) (last accessed Dec. 9, 2019).

Executing this declaration in the United States on Monday, December 09, 2019, I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct.



MATT WOLF

# EXHIBIT 1 TO WOLF DECLARATION

## MARIJUANA COMPANY DENIED NEVADA DISPENSARY LICENSES SUES STATE, ALLEGES 'FLAWED INTERPRETATION' OF LAW



**MICHELLE RINDELS**

**DECEMBER 14TH, 2018 - 4:45PM**

A marijuana company that was denied potentially lucrative dispensary licenses from the state has filed a lawsuit that asks the court to void the decision.

The lawsuit filed earlier this week in Clark County District Court appears to be the first legal pushback against the Nevada Department of Taxation since the agency awarded more than 60 new conditional dispensary licenses last week. MM Development Company Inc., which goes by the names Planet 13 and Medizin and is headed by a former Henderson mayor Bob Groesbeck and city councilman Larry Scheffler, filed the lawsuit after being denied on all six of its applications for a license for six different jurisdictions.

“The Department’s flawed interpretation of the provisions of [state laws and regulations], and refusal to issue ‘conditional’ licenses in accordance with the law constitute and cause continuing and irreparable harm to Plaintiff with no adequate remedy at law,” the suit says. “The purpose of this refusal was and is to unreasonably interfere with Plaintiff’s business and causing Plaintiff to suffer irreparable harm.”

Planet 13 is a vertically integrated marijuana company with plans to expand its [newly opened Las Vegas-area dispensary](#) to a massive 112,000 square feet; owners hoped to someday include a coffee shop, a tasting room for marijuana-infused alcohol and a consumption lounge. An employee answering the phone at the dispensary on Friday declined comment on the lawsuit.

The company says that it ranked fourth highest in Clark County in 2015 during an application period for a medical marijuana license, and has only added more diversity



to its leadership team since then — something that should add more points to the application. MM Development Company said some companies that did win licenses this time scored ranked below them in 2015, and added that they believe it is improper for the department to issue more than one license for a recreational marijuana store to individual applicants within a single jurisdiction.

Nevada officials [did not release the names](#) or scores of those who won any of the conditional licenses, citing confidentiality provisions in state marijuana regulations. Transparency advocates have said the secrecy provisions are a misapplication of old rules meant to protect medical marijuana patients and serve no valid purpose now.

Taxation department spokeswoman Stephanie Klapstein said the agency has scheduled several score reviews in January for applicants who want an explanation on why they did or did not win a license, but she said she could not speak publicly about the specifics of any applicant's score.

“Our process was to score and rank applications by jurisdiction, and if there were (for example) five licenses available in a jurisdiction, the five applicants who scored the highest (and thus ranked as the top five) were awarded the licenses,” she said.

Although the state is not releasing names, press releases and public statements from license winners show several companies captured large numbers of conditional licenses while many others received none. For example, Essence Cannabis Dispensary (affiliated with Armen Yemenidjian, son of Tropicana casino CEO Alex Yemenidjian, and *Las Vegas Sun* publisher Brian Greenspun) [received](#) eight licenses. Green Growth Brands (affiliated with Nevada Dispensary Association President Andrew Jolley) said it [received](#) seven. And Taproot Holdings (headed by former Nevada Dispensary Association President Shane Terry) told KSNV it [received](#) seven.

Critics say they worry that the concentration of licenses will create an oligopoly situation in which the market is controlled by only a few large companies and that small cultivation and production companies that again missed out on storefront licenses will wither under the arrangement.

The Las Vegas Medical Marijuana Association said it wanted to see a larger number of applicants winning the licenses.

"As a state, we need to increase the diversity of ownership," the association said in a statement. "It's good for the industry and the state."

[Marijuana Dispensary Licensing Lawsuit - Dec. 10, 2018](#) by [Michelle Rindels](#) on Scribd

<p><b>KEMP, JONES &amp; COULTHARD, LLP</b>          3800 Howard Hughes Parkway, 17<sup>th</sup> Floor          Las Vegas, Nevada 89169          Tel. (702) 385-6000 • Fax (702) 385-6001  <a href="mailto:kjc@kempjones.com">kjc@kempjones.com</a></p>	<p>1 Will Kemp, Esq. (#1205)          Nathanael R. Rulis, Esq. (#11259)          2 n.rulis@kempjones.com          KEMP, JONES &amp; COULTHARD, LLP          3 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor          Las Vegas, Nevada 89169          4 Telephone: (702) 385-6000          5 Attorneys for Plaintiff</p>	<p>6 <b>DISTRICT COURT</b>          7 <b>CLARK COUNTY, NEVADA</b></p>	<p>8 MM DEVELOPMENT COMPANY, INC., a Nevada corporation,          9          10 Plaintiff,          11          12 vs.          13 STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and          14 ROE CORPORATIONS 1 through 10.          15          16 Defendants.</p>	<p>Electronically Filed          12/10/2019          Steven          CLERK</p> <p>Case No.: A-18-785818-          Dept. No.: Department 11</p> <p><b>COMPLAINT AND PETITION FOR JUDICIAL REVIEW OR WRIT OF MANDAMUS</b></p> <p>Arbitration Exemption Claimed:          - Involves Declaratory Judgment          - Presents Significant Public Policy          - Involves Equitable and Extraordinary Relief</p>
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COMES NOW Plaintiff, MM DEVELOPMENT COMPANY, INC., by an  
counsel of record, Kemp, Jones & Coulthard, LLP, and hereby complains against  
OF NEVADA, DEPARTMENT OF TAXATION, and Does I through X, and petition  
Writ of Mandamus as follows:

**PARTIES & JURISDICTION**

1. Plaintiff, MM DEVELOPMENT COMPANY, LLC., is a Nevada corporation.

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7455 Arroyo Crossing Pkwy Suite 220  
Las Vegas, NV 89113

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# EXHIBIT 2 TO WOLF DECLARATION

[Click to copy](#)[Click to copy](#)**RELATED TOPICS**[Lawsuits](#)[Marijuana](#)[Business](#)[Las Vegas](#)[Nevada](#)

# Pot businesses press for Nevada to redo licensing process

By KEN RITTER   May 8, 2019



LAS VEGAS (AP) — Two marijuana businesses that were turned down when Nevada awarded recreational dispensary licenses say the state improperly used a temporarily employment service to screen hundreds of applicants.

The claim is contained in a court filing Monday in a lawsuit involving Las Vegas pot retailers Planet 13 and The Dispensary. They say state tax officials used the firm Manpower to screen the 462 applications for the licenses that could be worth millions of dollars.

Attorney Will Kemp, representing the two dispensaries, said awarding 32 of 61 provisional licenses to four entities last December was a “gross disparity” that resulted from “documented bias in favor of certain winning applicants.”

Kemp said he expects the documentation will become evident as the lawsuit moves forward. “We’re asking the judge to stop everything and send it to the (Nevada) Tax Commission,” he said.

A court hearing is set for May 24 in Las Vegas.

The case is one of several asking Nevada judges to freeze the awarding of new licenses at least until applicants’ names are made public and the selection procedure is reviewed.

That could happen soon. The Legislature has passed a measure calling for the release of taxpayer information the state now considers confidential.

Democratic Gov. Steve Sisolak is expected to sign the new law. He also wants to create a Cannabis Compliance Board similar to the state commission that oversees casino licensing.

The Nevada Department of Taxation, which currently regulates marijuana, disputed some allegations in the court filing, including a claim that three top department officials met with an attorney for Nevada Organic Remedies, one of the four winning bidders, at a cannabis conference in Boston.

Department spokesman Ky Plaskon said the three officials didn’t go to the conference. A lawyer for the company did not respond to messages.

Plaskon also defended use of a temporary employment service and said contract employees were hired to evaluate more than 500 dispensary license applications in 2014, ahead of the start of medical marijuana sales in 2015.

Kemp said 11 new licenses went to Verano Holdings LLC, which the filing called “a multi-billion-dollar Illinois conglomerate,” instead of being awarded to a “worthy Nevada business.”

A Verano Holdings spokeswoman declined comment.

Eight licenses went to the corporate owner of Essence dispensaries in Las Vegas and Henderson, the court filing said, and seven went to Green Growth Brands, corporate owner of Nevada Organic Remedies. It said six went to TapRoot Holdings.

Representatives and attorneys for those companies did not respond Tuesday to telephone calls and emails.

“These licenses are likely worth tens of millions of dollars each,” Kemp wrote in the filing in the lawsuit by MM Development Co., which owns Planet 13, and LivFree Wellness against the state Department of Taxation.

Nevada currently has 65 marijuana dispensaries, mostly in Las Vegas and surrounding Clark County, as well as the Reno-Sparks area.

The MM Development-LivFree Wellness lawsuit noted that each license applicant paid a \$5,000 filing fee, meaning the state collected \$2.3 million.

# EXHIBIT 3 TO WOLF DECLARATION

# Marijuana businesses urge judge to review Nevada licenses

By Ken Ritter, Associated Press

Saturday, May 25, 2019 | 2 a.m.

A judge shouldn't tip the scales as dozens of businesses that lost bids to open marijuana dispensaries push to freeze new licenses in Nevada's booming cannabis market, an attorney for the state argued Friday.

Companies that didn't win the licenses are improperly asking Clark County District Judge Elizabeth Gonzalez to "substitute your judgment for the people who scored and weighed the evidence. To have a reweighing of the evidence," Steve Shevorski, Nevada's attorney, said at the start of a multiday fact-finding hearing.

With millions of dollars in sales, taxes and profits at stake, attorneys for the marijuana businesses that lost bids last December want Gonzalez to at least temporarily stop distribution of new dispensary licenses.

They are challenging the criteria and personnel used to score 462 applications and award 61 potentially lucrative licenses to 16 companies.

Plaintiffs in at least seven lawsuits complain that the selection process wasn't transparent, that the state improperly used temporary workers to screen applicants and that bias led to the selection of winners and losers.

Some say the process was unconstitutional. Some seek a do-over.

Shevorsky said testimony from state Department of Taxation officials in charge of licensing and the temporary workers hired to do the job will show that applications were fairly and honestly assessed and scored.

The state is backed by several companies that won conditional licenses.

"Everybody's got their own theory of what went wrong," said David Koch, representing the corporate owner of The Source dispensary, which was approved for five coveted licenses.

Some plaintiffs want "to just blow the whole process up" and start again, Koch said, while others complain that they were scored improperly. Still others seek financial damages.

Koch called the challenges "completely inappropriate."

Dozens of witnesses are scheduled, and Gonzalez plans hearings to continue at least through next week.

She is being asked to issue an injunction to stop Nevada from nearly doubling the number of dispensaries open statewide. There are currently 65, mostly in Las Vegas and surrounding Clark County, as well as the Reno-Sparks area.

Medical and recreational pot sales totaled \$884 million in just the last six months of 2018, showing rapid growth from a combined \$530 million in the full year after marijuana retail sales began in July 2017.

A new state law that released names of applicants immediately after Nevada Gov. Steve Sisolak signed it two weeks ago did not derail the lawsuits that claim the licensing process was opaque, unfair and unconstitutional.

Sisolak, a Democrat, also wants to create a Cannabis Compliance Board similar to the state commission that oversees casino licensing.

Dominic Gentile, representing corporate owners of the Oasis Cannabis dispensary, told Gonzalez on Friday that testimony will show that tax officials unconstitutionally exceeded, expanded and usurped administrative authority outlined in the 2016 voter initiative that legalized recreational marijuana.

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# EXHIBIT 4 TO WOLF DECLARATION



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# Official denies lawyer outings skewed Nevada pot licensing

June 21, 2019



LAS VEGAS (AP) — A top Nevada marijuana regulator denied in court that the state dispensary licensing process was tainted by meetings and meals he had with representatives of businesses that won coveted bids to open potentially lucrative retail pot stores.

Jorge Pupo, Department of Taxation deputy executive director, acknowledged Thursday that just weeks before license applications were evaluated he had lunches and dinners with dispensary owners and attorney Amanda Connor, representing at least three cannabis companies.

Connor declined on Friday to comment about Pupo's testimony.

District Court Judge Elizabeth Gonzalez ne understood Connor represented the corporate owners of the existing Essence, The Source and Thrive stores, the Las Vegas Sun reported.

The three companies scored well among 462 applicants, and they were among 16 companies granted 61 new retail licenses last December.

Pupo testified that Connor never asked him about changing anything to do with the selection process.

“We were conducting business,” Pupo said. “Aside from the application process, the rest of the business doesn’t stop. You can’t stop talking to everyone.”

Lawyers for the state said Pupo couldn’t be influenced because applicant evaluations were done by contracted temporary workers. Pupo testified this week that he didn’t check score results.

Attorney Theodore Parker pressed Pupo about how it looked to have meetings with applicants who had a financial interest in licensing. Parker represents Nevada Wellness Center, a dispensary that was turned down for additional outlets.

Pupo said it was something he would think about. “I’ll do some self-analysis,” he said.

After a tenth day of hearings, Gonzalez said she’ll schedule several more days of testimony on a bid by dozens of losing bidders to freeze the state dispensary licensing process.

The plaintiffs contend applicant evaluations weren’t transparent and the state picked winners and losers. Some say the process was unconstitutional. Some seek a do-over. Some seek financial damages.

All sides expect Gonzalez’s ruling to be appealed to the state Supreme Court.

Statewide, 65 medical and recreational marijuana dispensaries reported more than \$608 million in sales in 12 months ending in March.

The taxation department handled the process to nearly double the number of dispensaries in Nevada. Winning bidders have not yet opened new outlets.

Nevada Gov. Steve Sisolak recently signed a law creating a regulatory Cannabis Compliance Board and an appointed oversight Cannabis Advisory Commission.

The board-and-commission structure is similar to the regulatory method the state uses for the casino industry. Sisolak’s appointees have not yet been named.

Information from: Las Vegas Sun, <http://www.lasvegassun.com>

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# EXHIBIT 5 TO WOLF DECLARATION

## Broken laws alleged as Nevada marijuana licenses hearing nears end

Ken Ritter, Associated Press Published 10:28 a.m. PT Aug. 16, 2019 | Updated 10:28 a.m. PT Aug. 16, 2019

LAS VEGAS – Attorneys for dozens of bidders that weren't approved for retail marijuana dispensary licenses last year raised the specter of broken laws and told a Nevada judge on Thursday the process was so unfair she should order a do-over.

Plaintiffs' lawyers said testimony showed that required background checks weren't conducted on all applicants; scoring was riddled with mistakes; state officials tipped the scales toward some prospective licensees over others; and at least some laws were broken.

Dominic Gentile, attorney for Serenity Wellness Center, was among those seeking an injunction to block the opening of 61 businesses that got permits.

He cited an email in which he said Jorge Pupo, the state Department of Taxation marijuana licensing chief, told tax official Kara Cronkhite to ignore allegations that one winning bidder sold marijuana to someone below legal age.

"Mr. Pupo directed Ms. Cronkhite to withdraw the investigation, to stop it, into ... three sales to someone under 21 years old," Gentile said.

"We don't know how young. We don't know the circumstances. We do know it was never brought to the attention of any law enforcement agency," the attorney said. "They admitted to the crime and they admitted suppressing it."

Clark County District Court Judge Elizabeth Gonzalez planned to hear Friday from attorneys for the state defending how officials evaluated 462 applications to award 61 new retail licenses to 16 applicants last December.

Pupo and Cronkhite testified the process wasn't perfect but was impartial.

Plaintiffs want Gonzalez to declare the process invalid and issue an injunction to stop new recreational pot dispensaries from opening statewide. All sides expect her decision – following 18 days of testimony and evidence since May 24 – will be appealed to the Nevada Supreme Court.

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The judge also planned to hear Friday from attorneys for some winning licensees, whose executives complain they're losing money with plans to open new retail pot stores in the booming Nevada market on hold.

Alfred Terteryan, an executive for Helping Hands Wellness Center, testified Wednesday that the delay may cost him a profit of tens of millions of dollars, the

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# EXHIBIT 6 TO WOLF DECLARATION

## Nevada Judge Freezes Licensing Process for New Pot Shops

A Nevada judge has frozen the permit process for some new state retail cannabis stores siding with companies that lost bids to open recreational pot shops.

By Associated Press, Wire Service Content Aug. 23, 2019



FILE - In this July 1, 2017, file photo, a cashier rings up a marijuana sale at a cannabis dispensary in Las Vegas. Attorneys for Nevada and some companies that won retail marijuana dispensary licenses last year say mistakes might have been made, but tax officials are fairly enforcing a voter-approved initiative that legalized recreational marijuana. Steve Shevorsi, a top deputy state attorney general, told a judge in Las Vegas on Friday, Aug. 16, 2019, there would be no basis for her to issue an order blocking licensees from opening new stores statewide until a trial is held. (AP Photo/John Locher, File)  THE ASSOCIATED PRESS

BY KEN RITTER, Associated Press

LAS VEGAS (AP) — A judge on Friday froze the permit process for some new [Nevada](#) retail cannabis stores, issuing a ruling that sided with companies that lost bids to open recreational pot shops.





Clark County District Court Judge Elizabeth Gonzalez issued an injunction halting several dozen new licenses where questions were raised about the owners' compliance with the licensing requirements.

Losing bidders argued the process was so riddled with mistakes and bias that Gonzalez should void 61 licenses that were approved last December from among 462 applications.

Attorneys for the state and some companies that won retail dispensary licenses say the process wasn't perfect, but tax officials are fairly enforcing a voter-approved initiative that legalized recreational pot sales to adults.

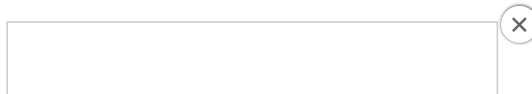
All sides expect the ruling will be appealed to the state Supreme Court, with millions of dollars of sales, taxes and profits at stake in a booming retail pot market.

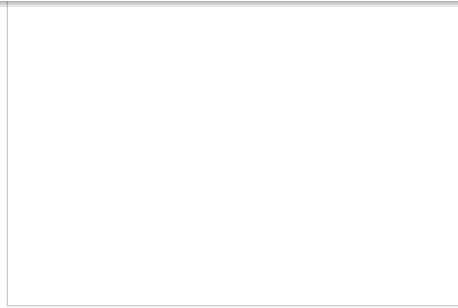
Gonzalez's decision came after she heard 18 days of evidence and testimony.

Steve Shevorski, a lawyer representing the state Department of Taxation, maintained there would be no basis for an injunction. He characterized the application evaluation process as "faithful to the spirit" of the 2016 voter initiative allowing broad retail sales to people 21 and older.

Lawyers for companies that scored too low to win new permits argued the process for evaluating 462 applications wasn't transparent and the state improperly used temporary workers to screen applicants.

Several attorneys for winning bidders argued their clients are losing money because they can't open, would-be customers are being hurt because they aren't being served and the state is losing tax revenue.





Tax figures project that the 65 recreational and medicinal pot dispensaries currently open would report about \$630 million in total sales for the fiscal year ending June 30.

That would be up almost 19% from a combined \$530 million in the 12 months after marijuana retail sales began in July 2017.

All the companies involved in the litigation already have some dispensaries because applications for new licenses were only accepted from operators of existing medical marijuana dispensaries. But Gonzalez' ruling does not affect the operations of existing dispensaries.

Attorney Todd Bice, representing Essence stores, winner of five new permits, characterized lawsuits by losing bidders as an effort to wrest "market share" from his client.

Bice said the losing bidders wanted the judge to "punish" their competitors by holding the process "hostage" while they find out if they have a claim against the state.

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Associated Press writer Michelle L. Price contributed to this report.

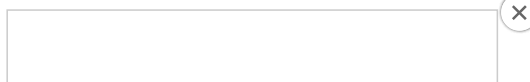
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# EXHIBIT 7 TO WOLF DECLARATION

## Nevada marijuana official placed on leave



A cashier rings up a marijuana sale at the Essence cannabis dispensary in Las Vegas. (John Locher/AP)

By **Colton Lochhead** Las Vegas Review-Journal



September 9, 2019 - 1:56 pm

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CARSON CITY — A top Nevada marijuana official who has faced criticism in recent months over his conduct during the state's cannabis licensing process was placed on administrative leave last week, state officials said Monday.

The Nevada Department of Taxation said that Jorge Pupo, the department's deputy executive director who heads up the marijuana licensing program, had been placed on leave, but could not add any other details because it was a personnel matter.

Dozens of companies sued the state last December after losing out on bids to open new retail marijuana dispensaries. In an amended complaint in the case filed Friday, lawyers for three of those companies who were not awarded licenses argued that there was “widespread corruption” within the Tax Department.

The complaint points to comments made by Pupo while testifying in the case in June, in which he acknowledged that just weeks before applications were evaluated, he had lunches and dinners with dispensary owners and attorney Amanda Connor, who represents several cannabis companies who were awarded licenses.

The lawsuit argued that applicants who met with Pupo “received favorable treatment in exchange. Mr. Pupo allowed favored licensees to call him on his personal cell phone number and provided them with additional instruction regarding the application process.”

Pupo also said while testifying in June several marijuana companies told him to call them if he ever stopped working for the state, though he denied he ever took those as formal job offers.

“They’re just like, Hey, if you leave, you know come see me, we could use you, type thing,” Pupo testified in June.

“In addition to being an ethics violation, offering any ‘compensation, gratuity or reward to any executive or administrative officer ... with the intent to influence the officer with respect to any act, decision, vote, opinion or other proceeding, as such officer’ is a felony in the state of Nevada,” the amended complaint said.

A District Court judge ruled in a civil lawsuit last month [that the state should have conducted more thorough background checks on applicants for marijuana licenses](#), a ruling that could affect some companies that were

awarded licenses. The lawsuit was filed by losing bidders for marijuana licenses who alleged the state failed to disclose how it had evaluated applications.

Contact Capital Bureau Chief Colton Lochhead at [clochhead@reviewjournal.com](mailto:clochhead@reviewjournal.com) or 775-461-3820. Follow [@ColtonLochhead](https://twitter.com/ColtonLochhead) on Twitter.

# EXHIBIT 8 TO WOLF DECLARATION

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[https://elkodaily.com/news/nevada-pot-licensing-chief-on-leave-amid-favoritism-claims/article\\_e0937716-1e74-5cf2-a7c3-28285288ec7b.html](https://elkodaily.com/news/nevada-pot-licensing-chief-on-leave-amid-favoritism-claims/article_e0937716-1e74-5cf2-a7c3-28285288ec7b.html)

## Nevada pot licensing chief on leave amid favoritism claims

Sep 10, 2019

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In this July 1, 2017, file photo, a cashier rings up a marijuana sale at a cannabis dispensary in Las Vegas.

AP photo/John Locher, File

**C**ARSON CITY, Nev. (AP) — Nevada's marijuana licensing chief is on leave from his job after allegations of favoritism and improper conduct arose during court hearings about the state's retail pot dispensary application process.

Taxation Department spokesman Ky Plaskon on Tuesday characterized deputy executive Jorge Pupo's administrative leave as a personnel matter. Plaskon declined additional comment.

The Las Vegas Review-Journal reports the move came last week.

Dozens of bidders that didn't get retail marijuana dispensary licenses are suing the state, claiming the application process was riddled with mistakes and bias.



Pupo testified the process wasn't perfect but was impartial.

A judge last month froze store openings for some companies that didn't undergo full background checks before winning licenses.

The lawsuits claim Pupo and other state officials tipped the scales toward some prospective licensees over others.

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# EXHIBIT 9 TO WOLF DECLARATION

14,101 views | Dec 26, 2017, 01:29pm

# Nevada's Recreational Marijuana Market Hits \$38M, Soars Past Colorado

**Mona Zhang** Contributor ⓘ

Vices



LAS VEGAS, NV - JUNE 30: Essence Vegas CEO Armen Yemenidjian (L) high-fives employees at Essence... [+]

Nevada's recreational marijuana industry hit a new high, selling more than **\$37.9 million** in October. The state has earned nearly \$20 million in marijuana tax revenue since the adult-use market launched in July.

“We are pretty on target with projections, maybe a little over,” Department of Taxation spokeswoman Stephanie Klapstein [told the Las Vegas Review-Journal](#).

Nevada voters approved a recreational legalization measure last November, along with California, Maine, and Massachusetts. But unlike the other states, Nevada launched its adult-use market in July. Regulators in California and Massachusetts are still working out details for their respective markets, while regulated sales in Maine will probably be [delayed](#) thanks to political wrangling.

Launching early is not the only way Nevada has been outperforming other states when it comes to cannabis.

Today In: [Business](#)



Four months into Colorado's recreational market, dispensaries in the state [saw](#) \$22.56 million in sales — a fraction of Nevada's sales four months into its recreational marijuana program.

Meanwhile, dispensary owners in Nevada [don't seem to be worried](#) about California's imminent adult-use market. California regulators have issued temporary licenses to [some cannabis businesses](#) that will be allowed to sell to adults over 21 on January 1. But two of the state's largest markets — Los Angeles and San Francisco — won't have adult-use sales when recreational marijuana launches.

Dispensary owners in Nevada are hoping that regulated sales in California will help tamp down on black market marijuana that flows over the border to compete with the regulated market.

Nevada's adult-use marijuana market is driven by the tourist-friendly Las Vegas. Cannabis analytics firm New Frontier [projects](#) the state's cannabis market to be worth \$622 million by 2020.



The next hurdle for the Silver State is setting up designated consumption areas. No cannabis-legal state allows for social-use (though Denver has a restrictive pilot program). Consuming cannabis in public is not permitted, even though many businesses in Las Vegas allow tobacco smoking indoors. The ban is a pain point for the city's many tourists, who have nowhere to legally light up.

"We have 40 million tourists in Las Vegas; we're around the world right now saying, 'Come to Las Vegas, because you can buy recreational marijuana, or cannabis,'" state Senator Tick Segerblom [said](#) at a cannabis law conference in July. "But you have to also say, 'There is literally no place that you can use this as a tourist.' You can't use it in your hotel room. You can't use it on the Strip. You can't use it at a restaurant. You can't use it at a concert. But they do."

Clark County commissioners have not been so keen to introduce marijuana lounges. "I don't see any reason why we have to be first," one county commissioner [said](#) during a discussion on the issue. Other commissioners agreed with the sentiment, worried that such a move would invite scrutiny from the Department of Justice.

Even without allowing social-use, it looks like the state's recreational marijuana market will keep up its impressive growth.



**Mona Zhang**

I'm a freelance journalist and the founder of Word on the Tree, a highly respected marijuana newsletter and website. You'll find my cannabis coverage in Forbes, High Tim... **Read More**

# EXHIBIT 10 TO WOLF DECLARATION

# Essence Cannabis Dispensary Awarded New Licenses to Expand to California



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NEWS PROVIDED BY

**Essence →**

Dec 19, 2018, 08:30 ET

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WEST HOLLYWOOD, Calif., Dec. 19, 2018 /PRNewswire/ -- Essence, Nevada's largest marijuana dispensary and cultivation operation, has been awarded three business licenses to establish retail, delivery, and on-site consumption locations in California.

The new licenses will allow Essence to expand operations to California for the first time and offer its services to a wide consumer audience in one of the country's largest cannabis markets.

Essence plans to add one new boutique dispensary retail location in the eclectic West Hollywood enclave by the end of 2019. The new location will serve as Essence's California flagship and is expected to feature a retail location, cannabis delivery services, and a full-service consumption lounge where patrons will be able to smoke, vape, and consume carefully crafted cannabis cocktails and edibles in a social and stylish atmosphere. Only a handful of consumption lounges currently operate within the United States.



Today's award announcement marks a significant period of rapid growth for Essence, which received eight new retail cannabis licenses from the state of Nevada earlier this month, bringing its total number of nationwide retail dispensary licenses to 12.

"Our growth is the direct result of our unwavering commitment to exceptional customer service and respect for the local communities that have chosen to welcome responsible cannabis businesses," said Essence co-founder Armen Yemnidjian. "The selection criteria in California were very rigorous and the number of licenses limited. I'm very proud that we've been selected and excited to bring the Essence experience to consumers in Southern California."

The Essence retail brand is renowned for superb service along with the widest selection of quality cannabis products in Las Vegas. It currently operates three high-traffic locations across the Las Vegas Valley, including the first and only dispensary on the Las Vegas Strip, and two state-of-the-art cultivation and processing facilities, Desert Grown Farms and Cannabiotix NV. The Essence Las Vegas Strip location was named Business Insider's number one dispensary in Nevada and top-25 dispensary in the United States; a 17-time Leafly List Winner; top-10 dispensary in Nevada by High Times Magazine, and the Las Vegas Review-Journal's "Best of Las Vegas."

Essence, Desert Farms and Cannabiotix NV are owned by Integral Associates, LLC, which recently entered into a definitive agreement to be acquired by Green Thumb Industries Inc., pending regulatory approvals. For more information, please visit: <https://essencevegas.com>.

### **About Integral Associates, LLC:**

Integral Associates, LLC, is one of the largest retail and wholesale cannabis operators in the State of Nevada. Founded in 2016, Integral Associates operates Essence Cannabis Dispensary, Desert Grown Farms and Cannabiotix NV. Essence Cannabis Dispensary is the first and only cannabis dispensary on the famed Las Vegas Strip and offers the widest selection of quality cannabis products in Las Vegas. With three open locations across Las Vegas and Henderson, Essence offers legal, safe, and confidential services to a wide

consumer base throughout Nevada. Desert Grown Farms and Cannabiotix NV are world-class cultivation and processing facilities totaling 95,000 square feet. Desert Grown Farms has an award-winning genetics library of over 100 strains and Cannabiotix NV has been a recognized High Times Cannabis Cup award winner several times over.

Essence, Desert Farms and Cannabiotix NV are owned by Integral Associates, LLC, which recently entered into a definitive agreement to be acquired by Green Thumb Industries Inc., pending regulatory approvals. For more information, please visit:  
<https://essencevegas.com>.

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Sunshine Sachs

[essencepr@sunshinesachs.com](mailto:essencepr@sunshinesachs.com)

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# Why GTI's \$290 Million Bet on Essence Cannabis Dispensary is No Gamble

March 14, 2019 at 3:37 pm

Exclusive article by Carrie Pallardy



## Exclusive Interview with Essence Cannabis Dispensary Founder and CEO Armen Yemenidjian

Armen Yemenidjian gave up his gaming license to start Integral Associates in Nevada. Today, that company is recognized as Essence Cannabis Dispensary. Yemenidjian spoke with New Cannabis Ventures about taking the company to a multi-state platform,

<https://www.newcannabisventures.com/why-gtis-290-million-bet-on-essence-cannabis-dispensary-is-no-gamble/>

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App. 071



launching an on-site consumption lounge in California and the pending Green Thumb Industries' \$290 million acquisition of Integral.

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Together, Yemenidjian and Integral's two other partners have a combined 40 to 50 years of experience working in regulated markets. Yemenidjian was working as the Vice President of Casino Marketing and Operations at the Tropicana Hotel and Casino in Las Vegas when he decided to transition to the cannabis space.

Yemenidjian flew to Colorado and other states with medical and recreational programs to better understand the space. Although it was a big decision to sacrifice his gaming license, he didn't consider it a difficult decision. He sees numerous parallels between the gaming and cannabis industries and leverages his past experience to find success in this new market.

### The Essence Brand

Essence has three dispensaries and approximately 100,000 square feet of cultivation space in Nevada, which produces roughly 20,000 pounds of cannabis on an annual basis. The company is set to grow its Nevada footprint with eight new dispensary licenses awarded in December 2018.



The Company's Nevada Cultivation Facility



The Essence brand is in the midst of an evolution. Initially, the company started with the sole focus on medical cannabis, but now it is shifting to include a recreational focus. Within the next six months, two of the company's three Nevada dispensaries will reflect a redesigned model. While the brand is changing, the company will remain focused on the core principles of creating a hospitable environment with a wide variety of high-quality products, according to Yemenidjian.

## RANKING

## UPCOMING Expansion into California

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More Nevada, Essence is actively expanding into the California market. Late last year, the company won licenses for adult-use retail, delivery, and on-site consumption in West Hollywood. The company is also in the process of obtaining licenses in Culver City and Pasadena. Other areas of interest include Los Angeles, San Diego, and Orange County.



A Rendering of the West Hollywood On-Site Consumption Lounge  
(Picture credit: Standard Architecture)

On-site consumption has yet to become a widely accepted model, but regulations are moving forward at a rapid rate. Just as the alcohol and restaurant industries offer consumers experiences, Yemenidjian sees the same happening in cannabis. The company's West Hollywood lounge gives it an early start in the on-site experience space, and he hopes to take that model to other markets. Already southern Nevada, including Clark County and Las Vegas, are discussing the legalization of consumption lounges, according to Yemenidjian.

## The Green Thumb Industries Acquisition

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While Essence is busily working on becoming a multi-state operator, another big change is just around the corner. Last year, Green Thumb Industries (GTI) announced the pending acquisition of Integral Associates, and the transaction is expected to close in the next 30 to 60 days, according to Yemenidjian.

Following the close of the deal, Yemenidjian will transition to President of the company. As he takes on this new role, he expects to see his responsibilities shift from that of an entrepreneur touching every single aspect of a startup business to a more strategic place.

Essence has had exposure to a number of big players in the cannabis industry's M&A space, but GTI offers a complementary asset base and leadership view, according to Yemenidjian. The majority of GTI's current assets are in the Midwest and on the East Coast, while the acquisition of Integral gives the company access to the major markets of California and Nevada. Plus, Yemenidjian finds he has a shared vision with GTI CEO Ben Kovler and GTI CFO Anthony Georgiadis.

Going forward, the combined companies and leadership teams will determine how the Essence brand and GTI's Rise brand will work together, either as two retail brands or one. While the brand strategy has yet to be solidified, GTI has aggressive plans to open 80-plus stores within the next 18 to 24 months, according to Yemenidjian.

In the remainder of the year, Essence will be focused on securing locations for its eight new dispensary licenses in Nevada and leveraging GTI's corporate infrastructure to become more streamlined and efficient.

To learn more, visit the Essence website. Listen to the entire interview:



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Exclusive article by Carrie Pallardy

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Carrie Pallardy, a Chicago-based writer and editor, began her career covering the healthcare industry and now writes, edits and interviews subject matter experts across multiple industries. As a published writer, Carrie continues to tell compelling, undiscovered stories to her network of readers. For more information contact us.



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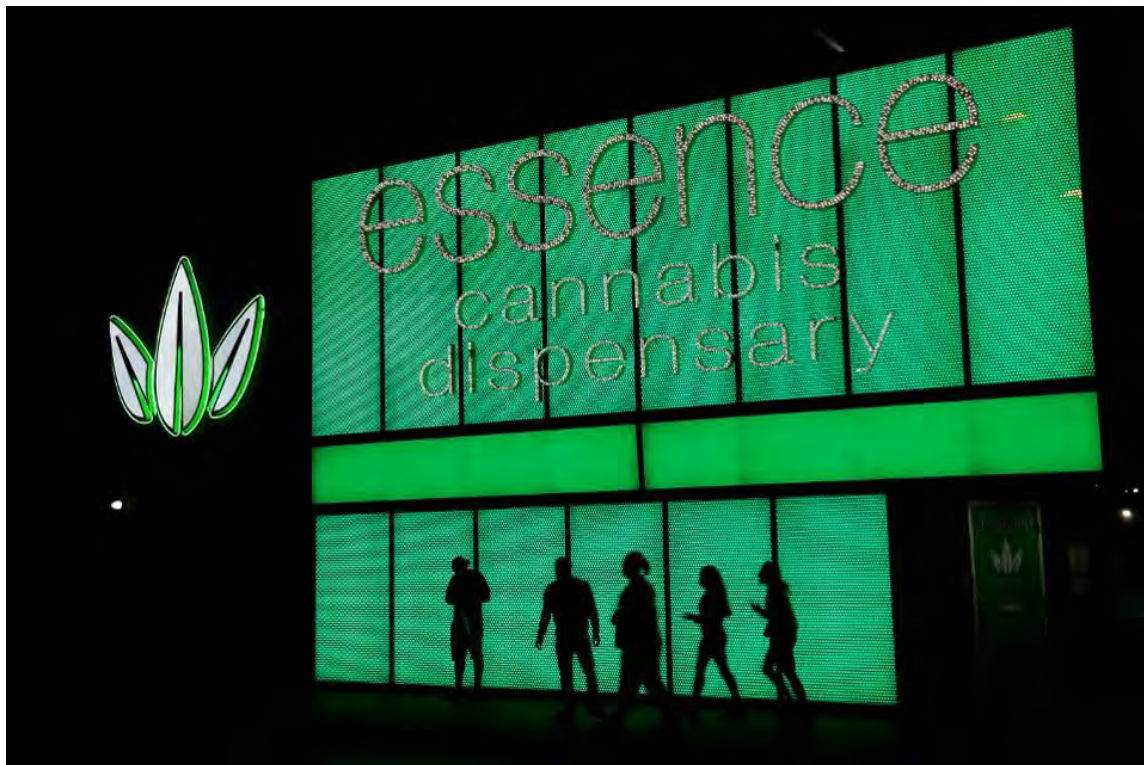
# EXHIBIT 12 TO WOLF DECLARATION

2,442 views | Apr 29, 2019, 07:15am

# Vegas' Secret Sauce For Cannabis Success: Regulations

**Nick Kovacevich** Contributor ⓘ

Markets

*I write about business and the legal cannabis industry.*

Nevada's marijuana regulators say they are trying to keep up with demands at recreational... [+]

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*Nevada's decades-long experience with gaming means the state was well-equipped to launch its cannabis industry.*

During the first year of legal adult-use cannabis sales in Nevada, the state exceeded its expected [sales tax](#) revenues by roughly 140%, filling state coffers with a whopping \$70 million. Meanwhile, states from Massachusetts to California have been [disappointed](#) by their take.

That doesn't surprise [Armen Yemenidjian](#), founder of [Essence Cannabis Dispensary](#), one of Las Vegas' largest marijuana dispensary and cultivation operations, which he [sold](#) last year to [Green Thumb Industries](#).

Yemenidjian joined Green Thumb's executive team, where he's still an active part of the cannabis industry. He believes that Nevada has seen so much success because of its long history with gambling — one of the most regulated industries in America.

"Vegas was a town that was built on regulation and compliance," he says. Other states have had to build a licensing and permitting process for cannabis from scratch. But that regulated entrepreneurship was already baked into Vegas' DNA.

"Nevada was able to take that model of understanding how to roll out programs, regulate and enforce them and translate it almost directly to cannabis," says Yemenidjian.

Today In: [Money](#)



The state was so good at it that the first adult-use stores opened six months earlier than projected, Yemenidjian says. Vegas now has more than 20 dispensaries.

Nevada's dexterity with regulations has put it ahead of the rest of the nation when it comes to expanding the industry. The Nevada Legislature recently introduced a bill that would allow for [consumption lounges](#) — places where people could gather to use cannabis in public. This has been a thorny issue in many states. Alcohol can be consumed in public, why not cannabis? Yet state legislatures have been skittish about allowing public consumption. Nevada may just end up being the state that changes the game on this.

Another benefit of Nevada's clean regulations is that business owners and entrepreneurs know what to expect. For instance, anyone looking to get into the cannabis industry in Nevada understands compliance and oversight, which makes the whole process easier. "You know there's a background check, there's permitting and licensing fees," explains Yemenidjian. "There aren't any surprises."

It hasn't been as clear cut elsewhere. Take Massachusetts, for example. The state almost giddily projected revenues of more than \$60 million by June 30 last year. Instead, they'd taken in [less than \\$6 million](#) by March 1 this year. The state had just nine stores open as of March, thanks to a glacially slow rollout of regulations.

California has fared better, but not by much. [Red tape](#) and high taxes, along with an active push by many cities to prohibit cannabis stores, have stunted growth. Only 161 of California's 482 municipalities [allow sales](#) of cannabis — that's 33%. While in Los Angeles County, only six of its 88 cities allow recreational marijuana sales.

While much of the U.S. market suffers from legal and financial barriers and regulatory speed bumps, Las Vegas has managed to roll out its industry quickly and efficiently — and been hugely successful doing it. The rest of the country might want to take notes.

*[Forbes Special Offer: Click here to learn about a stock that's poised to profit from the rapid-growing cannabis industry.](#)*

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**Nick Kovacevich**

I am the CEO and cofounder of KushCo Holdings, Inc., the parent company to a diverse group of business units that that provide a suite of products and se...

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# EXHIBIT 13 TO WOLF DECLARATION

# Las Vegas marijuana dispensaries planning for consumption lounges

By [Bryan Horwath](#) ([contact](#))

Monday, May 13, 2019 | 2 a.m.

Now that Las Vegas has [approved marijuana consumption lounges](#), dispensary operators are expected to move quickly to take advantage.

The city is anticipating a flurry of applications, but as of Thursday, no dispensaries had applied for a permit for an on-site lounge where customers can smoke or imbibe in marijuana edibles.

The Las Vegas City Council last month approved an amendment to allow lounges to operated by existing dispensary owners. Those without a state license to sell weed would be allowed to seek permits for off-site lounges starting in 2020.

Nevada legalized recreational marijuana in 2016, but the law only allowed people to smoke at private residences. That left few options for some 42 million tourists who visit Las Vegas each year.

“The passing of the ordinance answers a huge question that everyone had, which is if all these people are coming to town, where do they consume?” said Armen Yemenidjian, CEO of Essence Cannabis Dispensaries. “This gives people more of a responsible way of using cannabis. It fills a void, and it’s what was needed.”

Yemenidjian said Essence, which has three Las Vegas Valley stores, is finalizing plans for a lounge at its dispensary on Las Vegas Boulevard, just north of Sahara Avenue. More details about the lounge will be announced this summer, he said.

“Our goal is to create a good experience for people, from the retail experience to consumption,” Yemenidjian said.

John Mueller, CEO of Acres Cannabis, said his company plans to apply for a lounge permit later this month. He said there are already plans in place for an 8,500-square-foot lounge at the Acres dispensary site on Western Avenue, near Sahara.

Mueller said the Acres lounge will have an intimate feel and feature an area that can be used for events.

“The ordinance is a great crawl-before-you-walk program,” Mueller said. “This was big news, and it was two years in the making. You know it’s big when you’re watching Fox News and you see it scroll past on the ticker.”

Acres and Essence are two of a dozen licensed dispensaries in Las Vegas — all but two are currently in operation — that are now allowed to applied for a lounge permit. Permits will require an application fee of \$5,000 and an annual renewal fee in the same amount.

Other valley dispensaries, such as Planet 13, the Source and Reef, fall under the jurisdiction of Clark County, which has not approved lounges.

City of Las Vegas spokesman Jace Radke said the process for obtaining a special-use permit takes about three to four months. That means that this fall is likely the earliest the first lounge could open.

“There are internal reviews that have to be done by Planning Department staff, and often there are questions that applicants must answer,” Radke said.

As part of the application process, dispensaries must submit an air quality control plan to prevent the smell of marijuana from wafting outside. You wouldn't be able to purchase marijuana at a lounge, meaning customers would have to bring product from the adjacent dispensary. That's why current license holders are the ones initially allowed to open the lounges.

Once a dispensary is vetted by city staff, the special-use permit will come before the City Council for final approval.

The National Cannabis Industry Association, a trade organization that supports pot businesses, applauded the city's move to allow lounges.

“It's vitally important for the city of Las Vegas to have places outside of residences where people can consume,” said Morgan Fox, an association spokesman. “The way the laws are in Nevada, conceivably, someone living in public housing could get a ticket, even though recreational marijuana is legal.”

The Nevada Dispensary Association has been neutral on the issue of consumption lounges, Executive Director Riana Durrett said.

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# EXHIBIT 14 TO WOLF DECLARATION

## Nevada advances bill to freeze pot lounges for two years

Ed Komenda, Reno Gazette Journal Published 11:22 a.m. PT May 31, 2019 | Updated 2:04 p.m. PT May 31, 2019

LAS VEGAS — The Nevada Assembly has passed a bill that would put [a two-year moratorium on cannabis lounges throughout the state](#) ([/story/news/2019/05/30/las-vegas-pot-lounges-delayed-state-law-study-testing/1266025001/](#)).

The Assembly on Thursday [voted 39-1 to advance AB 533](#) ([https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/7056/Overview](#)) to the state Senate, one step closer to the governor's desk.

The bill advanced with an [amendment](#) ([https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=43947&fileDownloadName=0524SW\\_AB%20533%20packet.pdf](#)), introduced by the general counsel of Nevada Gov. Steve Sisolak that includes a two-year moratorium on consumption lounge licensing throughout the Silver State to allow the Cannabis Compliance Board to study [how lounges would work](#) ([/story/news/marijuana/2019/05/13/las-vegas-marijuana-dispensaries-lounges-legal-cannabis-business/1147766001/](#)). The amendment challenges a Las Vegas City Council ordinance passed earlier this month allowing dispensaries to open [lounges where tourists can smoke marijuana in a cozy setting, perhaps with a meal and live entertainment](#) ([/story/news/marijuana/2019/05/13/las-vegas-marijuana-dispensaries-lounges-legal-cannabis-business/1147766001/](#)).

But if the amended cannabis bill survives the Senate and governor's desk, the state law would supersede the power of local ordinances. That means any plans to open consumption lounges in Las Vegas would stall out until July 1, 2021, when the study period ends.

The bill would create a Cannabis Advisory Commission and Cannabis Compliance Board, a new layer of bureaucracy tasked with licensing and regulating establishments engaged in certain cannabis activities — duties that are now with the Department of Taxation.

**More:** [Sisolak signs marijuana transparency bill, posts pot retailers' names and records online](#) ([/story/news/politics/2019/05/10/sisolak-posts-marijuana-industry-records-online/1168528001/](#)).

**More:** [Pot lore: The true story of 420, a marijuana tradition, told by the stoners who invented it](#) ([/story/news/marijuana/2018/04/16/true-story-420-told-stoners-who-invented/464003002/](#)).

Assemblyman Al Kramer, of Carson City, was the lone dissenting vote.

There is no need for new bureaucratic channels, Kramer said, and cannabis businesses should be allowed to proceed without the state interfering.

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"My feeling is the Department of Taxation can handle it without building this new bureaucracy, and if we find in a year or so that they can't do it, then we start this bureaucracy," Kramer said. "Right now we have a limited number of outlets and none of them want to be 'Mr. Bad guy;' they're all playing by the rules."



Entrepreneurs in Nevada's cannabis scene are concerned the bill would give the state enough power to derail business and stall industry expansion.


"The state is basically telling the local governments operationally what it can and can't do," said Armen Yemenidjian, co-owner of Integral Associates, which operates three Essence Cannabis Dispensary locations in Southern Nevada.

The bill, he said, would prolong a problem Las Vegas vacationers face when they land with plans to enjoy the legal marijuana offered in shops dotting the Las Vegas Valley.

"So you're basically saying it's legal for someone to come here and buy it, but they can't consume it," Yemenidjian said. "If they don't have a place to safely consume, they're going to find ways to consume. Just because you're turning a blind eye to it doesn't mean it's not happening."

*Ed Komenda writes about Las Vegas for the Reno Gazette Journal and USA Today Network. Do you care about democracy? **Then support local journalism by subscribing to the Reno Gazette Journal right here ([Read or Share this story: <https://www.rgj.com/story/news/2019/05/31/nevada-cannabis-bill-pot-lounges-las-vegas/1299669001/>](https://offers.rgj.com/specialoffer?gps-source=CPHPPRIMARY&utm_campaign=2019EVERG&utm_medium=ONSITE&utm_content=CPHPPRIMARY&onSuccessRedir=</a></u></b></i></p>
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# EXHIBIT 15 TO WOLF DECLARATION

# Green Thumb Industries grows west, closes Essence cannabis deal

By [Ray Brewer \(contact\)](#)

Wednesday, June 5, 2019 | 6 a.m.

The sale of one of Las Vegas' largest marijuana dispensary and cultivation operations has been finalized.

Chicago-based Green Thumb Industries announced this morning that it has closed on the purchase of Integral Associates, which owns and operates three area Essence Cannabis Dispensary locations, and the Desert Grown Farms and Cannabiotix Nevada cultivation and processing facilities.

The transaction is for \$290 million, with \$52 million in cash and 20.8 million shares of Green Thumb stock, officials said.

Green Thumb, which is publicly listed on the Canadian Securities Exchange, employs 450 people across eight U.S. states in which cannabis is legal. It owns two retail stores and a cultivation facility in Carson City. Essence and Cannabiotix will add an additional 350 employees.

"It is a major win for the shareholders as we scale distribution of our branded products and retail footprint in the Las Vegas market, one of the most popular tourist destinations in the world," said Ben Kovler, the Green Thumb founder and CEO.

The transaction also includes eight additional Nevada retail licenses (five in Las Vegas; three in Northern Nevada) and a license in West Hollywood, Calif., which is one of five California dispensaries with a lounge and delivery service.

Additionally, the sale brings Desert Grown Farms, a 54,000-square-foot cultivation facility with a library of 100 marijuana strains, and Cannabiotix, a 41,000-square-foot award-winning processing facility.

Armen Yemenidijan, the Essence founder, will join the Green Thumb leadership as its president.

"With GTI's expertise and impressive track record, we look forward to this new chapter and having the opportunity to serve more guests in new and existing markets," Yemenidijan said in a statement.

He told the Sun, "I look very much forward to working with Ben Kovler whose understanding of this industry makes this opportunity so exciting."

Brian Greenspun, the CEO, publisher and editor of the Las Vegas Sun, has an ownership interest in Essence Cannabis Dispensary.

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# EXHIBIT 16 TO WOLF DECLARATION

## Potential Culver City cannabis store brings lofty aspirations

By **Christian May-Suzuki** - 09/05/2019



### Green Thumb Industries president Armen Yemenidjian brings local grown knowledge to dispensary plans

As a local kid who went to Loyola High School and the University of Southern California, Green Thumb Industries president Armen Yemenidjian knows that Culver City is a prime location for not only cannabis retail but business as a whole.

"The question is for locals in LA is 'why wouldn't you pick Culver City?'," Yemenidjian says.

As a kid, Yemenidjian spent a great deal of time in Culver City with some of his good friends who lived there.

"I am very excited about what the city stands for and the opportunity that the city presented itself with."

While the application to use the 12450 Washington Blvd. location is under the name 'Essence,' the dispensary will be owned by a much larger entity called Green Thumb Industries (GTI).

"Originally, when we had applied, it was another entity called Integral Associates that had applied," Yemenidjian explained. Integral Associates was founded by Yemenidjian, his father Alex, and Brian Greenspun in 2014. "Subsequent to the application, we entered an agreement with GTI where GTI acquired Integral Associates.

GTI was also founded in 2014 and is a multi-state consumer product and retail operator focused on cannabis-related products. They are currently operating in 12 states with the main headquarters in Chicago. GTI currently has 27 stores nationwide, including **Essence Las Vegas**, the first dispensary to be opened on the Las Vegas Strip, and they hold 95 licenses for stores nationwide.

When it came to deciding where to establish their first storefront presence in California, Yemenidjian's local roots certainly played a part in the location they chose.

"There are a tremendous number of municipalities in California that we didn't apply in," Yemenidjian admits.

While GTI was sure to be very careful in terms of where in California they would like to be, they understand the importance and urgency of establishing itself in one of the world's largest economies.

"Being in California is paramount to any brand, retail or consumer products. Having retail in California in an amazing jurisdiction like Culver City really gives us an advantage."

In terms of overall reach in California, this isn't GTI's first venture. GTI purchased downtown-LA based Beboe, a luxury cannabis brand, in February of this year, and quickly announced a new CBD based product for the brand soon after.

All of these acquisitions by GTI only further help them in fulfilling their mission here in California, providing a wide range of products for a wide range of people and needs.

"We are in the market of creating a consumer experience, and of creating a high-end experience," Yemenidjian explains. "That doesn't mean all of our products have to be expensive, and it doesn't mean all of our products have to be inexpensive. I think the key is we offer great value in a great environment with great service and experience, and that is what I think we are going for."

Another issue that many Culver City citizens are worried about with the current influx in new development is the parking that is provided with it. Yemenidjian and GTI understand this and made sure that was considered.

"As you know, in Culver City, we have a huge issue as it relates to parking, and we don't believe in having valet at a dispensary," Yemenidjian says. "It's different when you go to a restaurant and valet your car for two hours, but at a cannabis dispensary, the transaction should take 5, 10, 15 minutes, and then you have to wait outside for your car again."

To make sure this isn't an issue at Essence Culver City, GTI has made sure it has 150% of the spaces that it would need under regulations.

"We have dedicated parking spots to ourselves, and in addition to having those spots, there are additional parking spots that aren't dedicated to us that can be used by our customers in the same lot," Yemendijian explains.

While establishing a base in California is pivotal for many cannabis companies. GTI isn't so much focused on that as it is simply making this Culver City location the best that it can be.

"Right now, our plan is to make Culver City extremely proud of picking us, and proving to Culver City that we were the right choice through our actions, and we are very excited to do that."

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**Christian May-Suzuki**

# EXHIBIT 17 TO WOLF DECLARATION

# UPDATED LAWSUIT FROM MARIJUANA COMPANIES THAT DID NOT WIN LICENSES ACCUSES STATE OF 'RAMPANT ILLEGALITY AND CORRUPTION'



MICHELLE RINDELS

SEPTEMBER 6TH, 2019 - 5:30PM

A group of cannabis companies that did not win marijuana dispensary permits in the latest round of state licensing have filed an amended lawsuit, alleging corruption in the state agency that regulates the industry.

[The complaint](#) — filed Friday in District Court in Clark County as an amendment to a lawsuit originally lodged in January — also names a long list of marijuana companies that did and didn't receive dispensary licenses. It reiterates many of the points made against the state [in a lengthy hearing this summer](#), and adds pointed accusations of leaders at the Nevada Department of Taxation, including top marijuana program executive Jorge Pupo.

The department and related entities “are now engaging in a cover-up of the rampant illegality and corruption that infected the license application process for the recreational Dispensaries,” the complaint says.

A department spokeswoman did not immediately respond to a request for comment on Friday afternoon on the allegations. Plaintiffs are representatives of The Apothecary Shoppe, NuVeda and Inyo Fine Cannabis Dispensary.

Among the allegations, the complaint said that Pupo testified he was offered jobs by marijuana industry executives, including applicants that won dispensary licenses. It says Pupo testified that he was approached by — among others — Armen Yemenidjian, who had a stake in Essence dispensaries, which won numerous licenses in the latest round.

During questioning in court in June, Pupo testified that several marijuana company affiliates told him they should call if he leaves the state job.

“To me they're not really offers,” Pupo said in testimony June 20, [according to a court transcript](#). “They're just, like, Hey, if you leave, you know come see me, we could use you, type thing.”

The complaint frames it differently.

"In addition to being an ethics violation, offering any 'compensation, gratuity or reward to any executive or administrative officer . . . with the intent to influence the officer with respect to any act, decision, vote, opinion or other proceeding, as such officer' is a felony in the State of Nevada," the complaint says.

The complaint also emphasizes points from a recent ruling in this summer's court case about the closeness of some applicants to state employees.

"Licensees who chose to socialize with Mr. Pupo received favorable treatment in exchange," the complaint says. "Mr. Pupo allowed favored licensees to call him on his personal cell phone number and provided them with additional instruction regarding the application process (by email, phone, or in person)."

Judge Elizabeth Gonzalez, [in a ruling granting a partial injunction](#) on the state's final approval of certain licenses, wrote that personal relationships played a role in the licensing process.

"The process was impacted by personal relationships in decisions related to the requirements of the application," she said, although "this in and of itself is insufficient to void the process."

The 106-page complaint also alleges that the department did not properly keep public records, did not thoroughly explain its scoring decisions and improperly denied a public records request for the agency's visitor logs.

Plaintiffs want the scoring to be done all over again, and are seeking a court order preventing the state from recognizing any of the conditional dispensary licenses it issued last December.

[NV tax department lawsuit](#) by [Riley Snyder](#) on Scribd

## Related Articles

### Judge blocks some marijuana license holders from moving forward with dispensaries after lengthy court fight

A Las Vegas judge has issued a partial preliminary injunction in a drawn-out, hard-fought dispute between marijuana companies and the state, prohibiting certain



businesses who won a conditional state license in December from moving forward to open dispensaries.

# EXHIBIT 18 TO WOLF DECLARATION

# VEGAS MARIJUANA MAGNATE SUES, ALLEGING COMPETITOR IS WAGING A JEALOUS CAMPAIGN OF SLANDER



MICHELLE RINDELS

NOVEMBER 12TH, 2019 - 2:00AM

A dispute between two prominent Las Vegas marijuana business owners has reached the courts, with the proprietor of Essence dispensaries accusing a former owner with The Apothecary Shoppe of embarking on a jealous campaign of slander aimed to do him more than \$1 million in damage.

Armen Yemenidjian, a former casino executive who's affiliated with three dispensaries, won another eight dispensary licenses last year and is part of a company that was recently acquired for \$290 million, filed a lawsuit in Clark County Nov. 4 against Dr. Nick Spirtos. Yemenidjian alleges that Spirtos has accused him of criminal activity to other people, including lobbyist and former Assembly Speaker John Ocegüera during an encounter at Gov. Steve Sisolak's inaugural ball.

"Spirtos, in concert with others, undertook a scheme to slander Mr. Yemenidjian, because he has proven to be one of the most successful businessmen in the legal cannabis business," the complaint says. "Rather than own his failures, Spirtos has resorted to smearing and spreading lies against others to harm their existing and future business opportunities."

Spirtos, a gynecologic oncologist, was formerly affiliated with The Apothecary Shoppe, which has one dispensary in Southern Nevada but fell short in its attempt to win three other licenses in 2018. Reached by phone on Friday, Spirtos said he was travelling overseas and referred questions to his lawyer, who did not immediately respond to messages seeking comment on Friday and Monday.

The suit alleges that Spirtos made about a dozen private phone calls to George Kelesis, a member of the Nevada Tax Commission, to discuss undoing the result of the licensing round. Spirtos and Kelesis attend the same Greek church and are godparents to each others' children, the suit says, but Kelesis spearheaded criticism of the state's licensing process as a commissioner without disclosing the relationship.

Yemenidjian accuses Spirtos of talking to Ocegüera at Sisolak's inaugural ball this year and accusing Yemenidjian of "outright corruption" and criminal activity. He also said Spirtos surreptitiously recorded a meeting with Nevada Department of Taxation officials as part of an attempt to dupe the state employees in a meeting they had set up to review Spirtos' application scores with him.

"Spirtos also hoped and planned that his slander would interfere with the State of Nevada's licensing process for recreational marijuana, since he did not obtain a license," the complaint says. "Spirtos and those acting in concert with him have simply decided that maintaining their own market share and delaying competition in the marketplace is preferable."

Yemendijian's lawyer, Todd Bice, said that in a deposition for one of the lawsuits challenging the licensing process, and then when personally confronted by Yemenidjian, Spirtos denied making such comments and said he didn't have a factual basis for making such allegations.

Bice said that to "insinuate that they were only chosen because of some nefarious criminal activity is just outrageous" in light of Essence scoring highly in licensing proceedings in different years in Nevada, and also in jurisdictions in California with different scorers. Bice also said the allegations could get published and then would be brought up in licensing reviews going forward.

"He's just got to fight back against this. He can't allow that kind of stuff to stand. It will then be weaponized ... against him in the future," Bice said in an interview.

The suit is the latest stemming from a contentious round of marijuana business licensing, in which more than 400 applications were submitted and 61 licenses awarded to 17 different companies including Essence. Many dispensary owners who did not win have sued the state, including Spirtos' former company, [whose suit alleges](#) the state engaged in "rampant illegality and corruption."

Spirtos has been a vehement critic of the licensing process, testifying to the Tax Commission that he believes that levels of corruption similar to that in the Nixon White House took place. The suit brought by his former company also alleges that Yemenidjian offered a job to the state's former top marijuana regulator, Jorge Pupo.

Bice said there was no job offer, just a “passing reference,” and that Yemenidjian’s conversations with Pupo have been “wildly mischaracterized.”

[Yemenidjian - Complaint](#) by [Michelle Rindels](#) on Scribd

*For more on the marijuana industry, check out our series [“The Cannabis Files”](#) — an analysis of a recently released trove of state data that paints a picture of a cannabis industry at a crossroads.*

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- Steve Sisolak - \$2,200

# EXHIBIT 19 TO WOLF DECLARATION



Drug Wars: Las Vegas Casino Exec Turned Legal Marijuana Dealer Sues Competitor for Slander

Philip Conneller - November 14, 2019

## Drug Wars: Las Vegas Casino Exec Turned Legal Marijuana Dealer Sues Competitor for Slander

A successful player in Nevada's [legal marijuana market](#), who was once a Tropicana executive, alleges he has been slandered by a competitor in a lawsuit recently filed in the Clark County District Court.



Armen Yemenidjian claims he has been slandered by a competitor who accused him of corruption and criminality. (Image: Las Vegas Weekly)

Armen Yemenidjian, formerly VP of casino marketing & operations at the Tropicana Las Vegas, had to relinquish his gaming license, along with his career in the casino sector, when he opted to embrace the legal marijuana business in Nevada. The two career paths are mutually exclusive by law.



## Licensing Controversy

Last year, Yemenidjian won licensing for another eight dispensaries, while the Apothecary Shoppe was unsuccessful in its bid to gain licenses for three additional outlets. According to the complaint, this led to Spirtos accusing his rival of criminal behavior in an effort to discredit the licensing process.

“Spirtos, in concert with others, undertook a scheme to slander Mr. Yemenidjian, because he has proven to be one of the most successful businessmen in the legal cannabis business,” the complaint claims.

“Spirtos also hoped and planned that his slander would interfere with the State of Nevada’s licensing process for recreational marijuana, since he did not obtain a license,” it alleges.

*“Spirtos and those acting in concert with him have simply decided that maintaining their own market share and delaying competition in the marketplace is preferable,” the lawsuit continues.*

The complaint alleges Spirtos made private phone calls to his close friend, George Kelesis of the Nevada Tax Commission, who criticized the licensing process without disclosing his relationship to Spirtos.

Spirtos is also accused of complaining about the process to lobbyist and former Assembly Speaker John Ocegüera at Gov. Steve Sisolak’s inaugural ball. According to the lawsuit, Spirtos accused Yemenidjian of “outright corruption” and criminality during this encounter.

## Weaponized Words

Spirtos has himself filed a lawsuit against the state, accusing the licensing process of being corrupt, as have other rejected companies.

But Yemenidjian’s lawyer said his client “had to fight back” against the personal attack on his reputation.



# EXHIBIT 20 TO WOLF DECLARATION

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Cannabis Stocks Can Get a Major Revenue Boost with Cafes and Lounges

🕒 Nov 29, 2019 👤 Connor Doyle

# Cannabis Stocks Can Get a Major Revenue Boost with Cafes and Lounges



Despite nearly eight months of declining value, cannabis stocks have a lot to look forward to. For one thing, the long-awaited “[Cannabis 2.0](#)” is about to come into affect, which could start positively affecting revenues around Q2 2020.

Perhaps even more exciting, legislators in the US have begun taking tangible steps towards legalizing recreational cannabis nationwide. The [SAFE Banking Act](#)—which would allow banks to engage in financial transactions with cannabis companies—recently passed the House of Representatives. Next step: the Senate.

<https://potstocknews.com/cannabis-stocks-cafe-lounges-advantages/>

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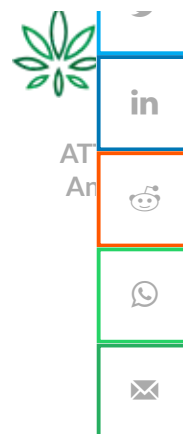
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legalization bill to ever pass a House committee.

While there's still a long road ahead, this is a serious milestone towards federal legislation. More than that, both MORE and SAFE speak to a normalization of cannabis enterprise. The industry has gone from an illegal market to a niche market and now is entering the mainstream. And that's great news for cannabis stocks.

Nowhere is this normalization of cannabis enterprise more visible than in the growing popularity of cannabis cafes and lounges.

## Cannabis Cafes: Where Everybody Knows Your Strain

Forbes contributor Nick Kovacevich [writes](#) that *"as cannabis becomes more widely used, consumers are going to want public places to consume it."*

Many consumers turn to cannabis—particularly THC-based products—for [social experiences](#). That's why, across the US and Canada, dozens of spots have opened up where people can buy and consume cannabis the way they would with coffee or alcohol.



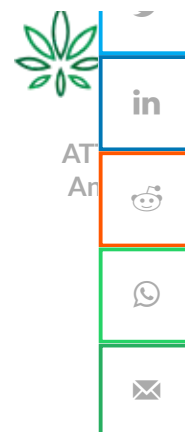
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cannabis consumption laws, while several Canadian cities already have them. A city councilor in Edmonton, Alberta, recently [told](#)

### [Global News:](#)

*"If it's a legitimate product, then we have to see it consumed responsibly. Cannabis lounges are going to come. This is an opportunity to talk about how we can grow some business in town."*

Mark Goliger, CEO of Canadian cannabis stock National Access Cannabis, now doing business as Meta Growth ([TSXV:META](#)), [called lounges](#) "the logical next step of how people will want to socialize around cannabis."

>> [Tilray Stock Drops as Workers Wait on Union Vote Result](#)

LA alone has granted [16 licenses](#) for cannabis cafes, half of which are solely for edibles. West Hollywood alone will soon have more than double the number of cafes and lounges of any other city, and chefs there will be allowed to infuse cannabis into menu items for onsite customers at new restaurants.

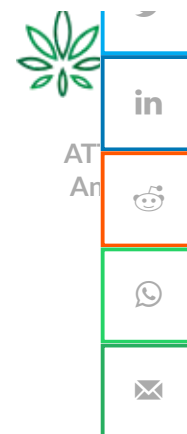
For investors who've been looking for the payoff of the cannabis revolution: this is it.

## Cannabis Stocks Investing in Cafes and Lounges

Right now, Planet 13 Holdings Inc. ([CSE:PLTH](#)) ([OTCQX:PLNHF](#)) is making the most exciting moves by creating a "[cannabis themed complex](#)" in Las Vegas. On top of this, last month, it [received all the necessary](#) licenses to open up Rickety Cricket Café (a cafe/pizzeria) and Purc Coffee Shop.

According to Larry Scheffler, Co-CEO of Planet 13:

*"Planet 13 gives Las Vegas visitors the ability to shop, eat, and recreate all in one luxurious cannabis-themed complex. The 3,000-plus visitors that walk into the Planet 13 Cannabis Entertainment*



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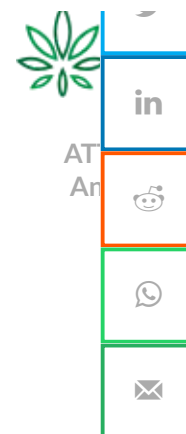
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Another cannabis stock making a serious play in cafes is Green Thumb Industries ([CSE:GTII](#)) ([OTCQX:GTBIF](#)). It was one of the companies to [receive a license](#) for a cannabis lounge in West Hollywood.

This lounge represents a partial fruition from its [\\$290 million acquisition](#) of Essence Cannabis Dispensary. Through Essance, Green Thumb now holds a property in each of the [13 billion-dollar-plus cannabis markets](#) in the US. What's more, Essence Founder and CEO Armen Yemenidjian [says](#) he hopes to expand cannabis lounges to more markets.

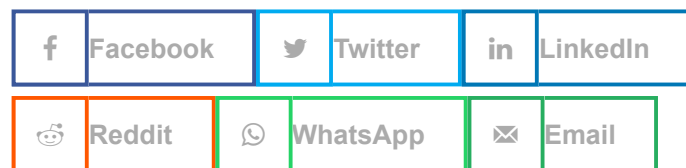
While there are some [detractors](#) for cannabis cafes, the need for public spaces where people can socially (and responsibly) consume cannabis is apparent. These cafes have the potential to seriously drive revenue for cannabis stocks.

Even better, they will contribute to pot becoming a mainstream, widely-enjoyed commodity.

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# Exhibit C

1                                   **DECLARATION OF DR. NICOLA M. SPIRTOS, M.D.**

2           I, Nicola M. Spirtos, M.D. hereby declare the following:

3           1.       I am an adult and am making this declaration based on my personal knowledge to  
4 support my motion to dismiss the complaint filed against me by Armen Yemenidjian on November  
5 4, 2019, in case no. A-19-804785-C in the Eighth Judicial District Court. All statements herein  
6 concerning dates, times, and time frames or periods are estimations.

7           2.       I graduated from Northwestern University Medical School and completed a  
8 fellowship in gynecologic oncology at Stanford University. I remained on the full-time and clinical  
9 faculty at Stanford University from 1987 until I moved to Las Vegas, Nevada, in 2005. I currently  
10 am the medical director of the Women's Cancer Center of Nevada, the largest group of gynecologic  
11 oncologists in the state of Nevada. I served as the director of the division of gynecologic oncology  
12 at the University of Nevada School of Medicine from 2005 until 2010 and now am an adjunct  
13 clinical professor there. I have authored over 60 peer-reviewed publications and have written  
14 numerous chapters in internationally renowned textbooks. I serve on many editorial boards and was  
15 recently named the first American editor of *Bonney's Textbook of Gynaecologic Surgery*, which  
16 has been in continuous publication since 1911.

17           3.       D.H. Flamingo, Inc. is a Nevada corporation. It was formed in 2014 by me and four  
18 other doctors: Dr. Nick Thanos, Dr. Geoffrey Hsieh, Dr. Sean Dempsey, and Dr. Rachakonda  
19 Prabhu. It obtained a medical marijuana license and opened a medical marijuana establishment  
20 (MME) named The Apothecary Shoppe at 4240 West Flamingo Road, Las Vegas, Nevada. It started  
21 selling recreational marijuana around July 2017. D.H. Flamingo's sister company D.H. Aldebaran  
22 owns a grow house in Clark County, Nevada. Around February 2019, D.H. Flamingo and D.H.  
23 Aldebaran were sold to an entity named Surterra.

24           4.       On or around July 6, 2018, the Nevada Department of Taxation (the Department)  
25 issued a notice of intent to accept applications from existing MME certificate holders for additional  
26 retail recreational marijuana licenses. The notice required all applications to be submitted in  
27 September 2018. D.H. Flamingo submitted three applications to sell retail recreational marijuana  
28 in unincorporated Clark County, the City of Las Vegas, and the City of North Las Vegas.

1           5.       On or around July 6, 2018, the Department released an updated application form. It  
2 identified the total possible points for various criteria. The most valuable criterion was worth up to  
3 60 points and was based on the description in the application “of the proposed organizational  
4 structure of the proposed marijuana establishment and information concerning each owner, officer  
5 and board member *including key personnel* of the proposed marijuana establishment including the  
6 information provided pursuant to R092-17.” (emphasis added).

7           6.       I prepared the majority of D.H. Flamingo’s applications.

8           7.       I have been informed Nevada law imposes certain regulations on the contents and  
9 review of marijuana licensing applications, including but not limited to the following:

10           a.       An application submitted on or before November 15, 2018, by an MME  
11 certificate holder for one or more licenses for a marijuana establishment  
12 of the same type or for one or more licenses for a marijuana  
13 establishment of a different type or an application submitted on or after  
14 November 16, 2018, in response to a request for applications must  
15 include, inter alia, (1) a list of all owners, officers and board members  
16 of the proposed marijuana establishment (*see* NAC 453D.268(4)(b));  
17 (2) the physical address where the proposed marijuana establishment  
18 will be located, as well as the physical address of any co-owned or  
19 otherwise affiliated marijuana establishments (*see* NAC  
20 453D.268(2)(e)); and (3) documentation concerning the size of the  
21 proposed marijuana establishment, including, without limitation,  
22 building and general floor plans with supporting details (*see* NAC  
23 453D.268(6)).

24           b.       The Department must conduct a background check on each prospective  
25 owner, officer, and board member. *See* NRS 453D.200(6).

26           c.       The Department must confirm that the physical address for the proposed  
27 marijuana establishment is owned by the applicant or the applicant has  
28



1 written permission from the owner to operate there. *See* NRS  
2 453D.210(5)(b).

3 d. When competing applications are submitted for a proposed retail  
4 marijuana store within a single county, the Department must use an  
5 impartial and numerically scored competitive bidding process. *See* NRS  
6 453D.210(6).

7 e. If the Department receives more than one application for a retail  
8 marijuana store license in response to a request for applications and  
9 determines that two or more applications are complete and compliant  
10 with the law, then the Department must rank the applications based on  
11 numerous criteria. *See* NAC 453D.272(1). The criteria include, inter  
12 alia, (1) business experience outside the marijuana industry applicable  
13 to a marijuana establishment, (2) diversity, (3) the educational  
14 achievements of the applicant's owners, officers or board members, (4)  
15 the applicant's financial plan and resources, (5) whether the applicant  
16 has an adequate integrated plan for the care, quality and safekeeping of  
17 marijuana, (6) the taxes paid by and the public financial contributions  
18 of the applicant's owners, officers, or board members, and (7) the  
19 experience of the applicant's "key personnel" in operating the type of  
20 marijuana establishment for which the applicant seeks a license. *See*  
21 NAC 453D.272(1)(a)-(i).

22 f. If the Department denies an application or revokes a license, then it must  
23 explain the specific reasons. *See* NAC 453D.312(7).

24 8. On or around July 30, 2018, the Department released a new version of the  
25 application form. It changed the description of the most valuable criterion by deleting its reference  
26 to "key personnel," even though NAC 453D.272(1)(h) expressly requires the Department to  
27 consider "[t]he experience of *key personnel* that the applicant intends to employ in operating the  
28

1 type of marijuana establishment for which the applicant seeks a license[.]” (emphasis added). That  
2 change is shown by the following comparison of the two application forms:

3 <b>The Description of the Criterion in the 4      Version of the Application Form Released 5      on or around July 6, 2018</b>	6 <b>The Description of the Criterion in the 7      Version of the Application Form Released 8      on or around July 30, 2018</b>
9      The description of the proposed organizational 10     structure of the proposed marijuana 11     establishment and information concerning 12     each owner, officer and board member 13 <b>including key personnel</b> of the proposed 14     marijuana establishment including the 15     information provided pursuant to R092-17.	16     The description of the proposed organizational 17     structure of the proposed marijuana 18     establishment and information concerning 19     each owner, officer and board member of the 20     proposed marijuana establishment including 21     the information provided pursuant to R092-17.

11            9.      The new application form also eliminated (1) the requirement that the application  
12     include the proposed physical address of the prospective marijuana establishment, and (2) the  
13     requirement that applicants prove ownership of the physical address of the prospective marijuana  
14     establishment or written permission from the owner to operate there. In my opinion, the new  
15     application form is not compliant with governing Nevada law.

16            10.     D.H. Flamingo submitted its applications to the Department in September 2018.

17            11.     Sometime in fall 2018 and after D.H. Flamingo submitted its applications but before  
18     the Department announced its decision on them, I had breakfast at The Las Vegas Country Club  
19     with Jorge Pupo, the Department’s deputy executive director in charge of the marijuana licensing  
20     program. On multiple occasions, Mr. Pupo said he needed to make more money. Mr. Pupo’s  
21     statements suggested to me that he was seeking employment with or some form of compensation  
22     from D.H. Flamingo. I was uncomfortable with his statements and felt they were improper.

23            12.     The Department denied D.H. Flamingo’s applications in December 2018. It merely  
24     informed D.H. Flamingo that it did not achieve a score high enough to receive an available license  
25     without providing any further explanation of the grounds for the denial.

26            13.     On or around January 9, 2019, I attended a meeting at the Department on behalf of  
27     D.H. Flamingo to review and discuss the scoring of D.H. Flamingo’s applications. At the meeting,  
28

1 the Department refused to disclose the average scores for each criterion in the applications it  
2 received, and instead, it disclosed only the combined scores for multiple criteria. The Department  
3 also refused to answer my questions about how the applications were scored.

4 14. As I was leaving the meeting, two men approached me in the Department's parking  
5 lot. I do not know their names. The men said shenanigans were occurring inside the Department in  
6 relation to the application process.<sup>1</sup> They said an attorney for some of the applicants had met every  
7 day for a week with Mr. Pupo before the Department announced its decision on the applications it  
8 received. Beginning later that same day, I received a series of text messages from an anonymous  
9 individual from a phone number I did not recognize. One of the messages said Mr. Pupo had been  
10 accepting kickbacks.

11 15. I have extensive experience with reviewing data in relation to medical studies and  
12 publications. In my opinion, the validity of the scores that the Department disclosed to me is  
13 dubious due to the lack of variability. In the context of medical studies and publications, such lack  
14 of variability is virtually impossible and indicates potential data manipulation.

15 16. I have been informed that the Department or persons working on its behalf reviewed  
16 each application in around 1.5 to 2.0 hours. Each application received by the Department likely  
17 exceeded 1,000 pages. D.H. Flamingo's applications were around 1,700 pages. I do not believe it  
18 is possible for each application to be reviewed adequately in 1.5 to 2.0 hours.

19 17. I have been informed that on December 10, 2018, MM Development Company, Inc.  
20 (MM Development) and Livfree Wellness, LLC (Livfree) filed a complaint against the Department  
21 in case no. A785818 in the Eighth Judicial District Court of Clark County, Nevada. In their  
22 complaint, MM Development and Livfree allege that like D.H. Flamingo, they had applications  
23 denied by the Department. *See* Compl., Dec. 18, 2018, ¶ 18. They also allege that the Department  
24 "improperly granted more than one recreational marijuana store license per jurisdiction to certain  
25 applicants, owners, or ownership groups." *Id.* ¶ 20.

---

26  
27  
28 <sup>1</sup> I do not recall if the men specifically used the word shenanigans.

1           18.     I have been informed that on January 4, 2019, D.H. Flamingo and other plaintiffs  
2 sued the Department and other defendants in case no. A787035 in the Eighth Judicial District Court  
3 of Clark County, Nevada. The complaint alleges the Department's "ranking and scoring process  
4 was corrupted" and that the Department "improperly allocated licenses and improperly favored  
5 certain applicants." *See* Compl., Jan. 4, 2019, ¶¶ 81-82; *see also id.* ¶ 91 (alleging the process "was  
6 corrupted and certain application were favored over others").

7           19.     Based on such considerations as (1) Mr. Pupo's statements to me, (2) the statements  
8 made to me in the Department's parking lot, (3) the text messages from an anonymous person, (4)  
9 the Department's changes to the application form, (5) the lack of variability in the Department's  
10 scores, (6) my belief it would be impossible to review each application adequately in 1.5 to 2.0  
11 hours, (7) the Department's failure to explain the specific reasons why D.H. Flamingo received  
12 certain scores for certain criteria, (8) the Department's refusal to disclose the average score for each  
13 criterion and answer my questions, and (9) the complaints filed by MM Development and D.H.  
14 Flamingo, it is my opinion that the application process at the Department is flawed to the point  
15 where the original process outlined in the ballot initiative concerning recreational marijuana known  
16 as Question 2 has been completely corrupted.

17           20.     On January 18, 2019, D.H. Flamingo purchased a table at Governor Sisolak's  
18 inaugural gala at the Aria Resort Casino. As CEO of the company, I attended the inauguration  
19 event. To the best of my recollection, I and my date Dr. Vicki Mazzorana sat at the table with Dr.  
20 Rachakonda Prabhu and his wife, Dina Titus and her husband, Dr. Geoffrey Hsieh and his date, and  
21 Mike Naft and his wife. During conversation at the table, I expressed my opinion that the  
22 application process at the Department had been corrupted. I never mentioned Mr. Yemenidjian or  
23 suggested Mr. Yemenidjian is involved in corruption.

24           21.     While at the gala, I also spoke with John Ocegüera, the former speaker of the Nevada  
25 assembly. During the conversation, I expressed my opinion that the application process at the  
26 Department has been corrupted. I never mentioned Mr. Yemenidjian or suggested Mr. Yemenidjian  
27 was involved in corruption or criminal conduct.

22. On or around February 1, 2019, an anonymous person called me on my cell phone and said there was a conspiracy within the Department in relation to the application process. I informed the person to call D.H. Flamingo's attorney or the Federal Bureau of Investigation (FBI).

23. During the first quarter of 2019, I was interviewed twice by the FBI concerning some of the events described herein. On October 9, 2019, I was deposed in the lawsuit filed by MM Development. During the deposition, I disclosed that I had been interviewed by the FBI.

24. If called to testify at trial, I would testify consistent with this declaration and my recent deposition in the lawsuit filed by MM Development.

Executing this declaration in the United States on Tuesday, December 10, 2019, I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct.

/s/ Nick Spirtos  
NICK SPIRTOS

# Exhibit D



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**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

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

## **Recreational Marijuana Establishment License Application Recreational Retail Marijuana Store Only**

**Release Date: July 6, 2018**

**Application Period: September 7, 2018 through September 20, 2018**

***(Business Days M-F, 8:00 A.M. - 5:00 P.M.)***

For additional information, please contact:

Marijuana Enforcement Division  
State of Nevada Department of Taxation  
1550 College Parkway, Suite 115  
Carson City, NV 89706

[marijuana@tax.state.nv.us](mailto:marijuana@tax.state.nv.us)



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WILLIAM D. ANDERSON  
Executive Director

# STATE OF NEVADA DEPARTMENT OF TAXATION

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

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Carson City, Nevada 89706-7937  
Phone: (775) 684-2000 Fax: (775) 684-2020

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

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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

## APPLICANT INFORMATION

Provide all requested information in the space next to each numbered question. The information in Sections V1 through V10 will be used for application questions and updates. Type or print responses. **Include this applicant information sheet in Tab III of the Identified Criteria Response (Page 10).**

V1	Company Name:	
V2	Street Address:	
V3	City, State, ZIP:	
V4	Telephone: ( ) - ext:	
V5	Email Address:	
V6	Toll Free Number: ( ) - ext:	
<b>Contact person who will provide information, sign, or ensure actions are taken pursuant to R092-17 &amp; NRS 453D</b>		
V7	Name:	
	Title:	
	Street Address:	
	City, State, ZIP:	
V8	Email Address:	
V9	Telephone number for contact person: ( ) - ext:	
V10	Signature:	Date:





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Carson City, Nevada 89706-7937  
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE  
Grant Sawyer Office Building, Suite 1300  
555 E. Washington Avenue  
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Henderson, Nevada 89074  
Phone: (702) 486-2300  
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## 1. TERMS AND DEFINITIONS

*For the purposes of this application, the following acronyms/definitions will be used.*

TERMS	DEFINITIONS
<b><i>Applicant</i></b>	Organization/individual submitting an application in response to this request for application.
<b><i>Awarded applicant</i></b>	The organization/individual that is awarded and has an approved conditional license with the State of Nevada for the establishment type identified in this application.
<b><i>Confidential information</i></b>	Any information relating to building or product security submitted in support of a recreational marijuana establishment license.
<b><i>Department</i></b>	The State of Nevada Department of Taxation.
<b><i>Edible marijuana products</i></b>	Products that contain marijuana or an extract thereof and are intended for human consumption by oral ingestion and are presented in the form of foodstuffs, extracts, oils, tinctures and other similar products.
<b><i>Enclosed, locked facility</i></b>	A closet, display case, room, greenhouse, or other enclosed area equipped with locks or other security devices which allow access only by a recreational marijuana establishment agent and the holder of a valid registry identification card.
<b><i>Establishment license approval to operate date</i></b>	The date the State Department of Taxation officially gives the approval to operate based on approval of the local jurisdiction and successful fulfillment of all approval-to-operate instructions between the Department and the successful applicant.
<b><i>Conditional establishment license award date</i></b>	The date when applicants are notified that a recreational marijuana establishment conditional license has been successfully awarded and is awaiting approval of the local jurisdiction and successful fulfillment of all approval-to-operate instructions.
<b><i>Evaluation committee</i></b>	An independent committee comprised of state officers or employees and contracted professionals established to evaluate and score applications submitted in response to this request for applications.
<b><i>Excluded felony offense</i></b>	A crime of violence or a violation of a state or federal law pertaining to controlled substances if the law was punishable as a felony in the jurisdiction where the person was convicted. The term does not include a criminal offense for which the sentence, including any term of probation, incarceration or supervised release, was completed more than 10 years before or an offense involving conduct that would be immune from arrest, prosecution or penalty, except that the conduct occurred before April 1, 2014 or was prosecuted by an authority other than the State of Nevada.



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

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

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

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

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

<b><i>Facility for the production of edible marijuana products or marijuana infused products</i></b>	A business that is registered/licensed with the Department and acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells edible marijuana products or marijuana-infused products to recreational marijuana retail stores.
<b><i>Identifiers or Identified Criteria Response</i></b>	A non-identified response, such as assignment of letters, numbers, job title or generic business type, to assure the identity of a person or business remains unidentifiable. Assignment of identifiers will be application-specific and will be communicated in the application in the identifier legend.
<b><i>Marijuana Testing Facility</i></b>	Means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.
<b><i>Inventory control system</i></b>	A process, device or other contrivance that may be used to monitor the chain of custody of marijuana used for recreational purposes from the point of cultivation to the end consumer.
<b><i>Marijuana</i></b>	All parts of any plant of the genus Cannabis, whether growing or not, and the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted there from), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" does not include industrial hemp as defined in NRS 557.040, and grown or cultivated pursuant to Chapter 557 of NRS.
<b><i>Marijuana-infused products</i></b>	Products that are infused with marijuana or an extract thereof and are intended for use or consumption by humans through means other than inhalation or oral ingestion. The term includes topical products, ointments, oils and tinctures.
<b><i>May</i></b>	Indicates something that is recommended but not mandatory. If the applicant fails to provide recommended information, the Department may, at its sole discretion, ask the applicant to provide the information or evaluate the application without the information.
<b><i>Medical use of marijuana</i></b>	The possession, delivery, production or use of marijuana; the possession, delivery or use of paraphernalia used to administer marijuana, as necessary, for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.



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<b><i>Must</i></b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<b><i>NAC</i></b>	Nevada Administrative Code. All applicable NAC documentation may be reviewed via the internet at: <a href="http://www.leg.state.nv.us/NAC/CHAPTERS.HTML">http://www.leg.state.nv.us/NAC/CHAPTERS.HTML</a>
<b><i>Non-Identified Criteria Response</i></b>	A response to the application in which no information is included pertaining to identifiable information for any and all owners, officers, board members or employees and business details (proposed business name(s), D/B/A, current or previous business names or employers). Identifiers that must be removed from the application include all names; specific geographic details including street address, city, county, precinct, ZIP code, and their equivalent geocodes; telephone numbers; fax numbers; email addresses; social security numbers; financial account numbers; certificate/license numbers; vehicle identifiers and serial numbers including license plate numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) addresses; biometric identifiers including finger and voice prints, full-face photographs and any comparable images; previous or proposed company logos, images or graphics; and, any other unique identifying information, images, logos, details, numbers, characteristics, or codes.
<b><i>NRS</i></b>	Nevada Revised Statutes. All applicable NRS documentation may be reviewed via the internet at: <a href="http://www.leg.state.nv.us/NRS/">http://www.leg.state.nv.us/NRS/</a> .
<b><i>Pacific Time (PT)</i></b>	Unless otherwise stated, all references to time in this request for applications and any subsequent award of license are understood to be Pacific Time.
<b><i>Recreational marijuana retail store</i></b>	Means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.
<b><i>Recreational marijuana establishment</i></b>	Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.
<b><i>Recreational marijuana establishment agent</i></b>	Means an owner, officer, board member, employee or volunteer of a marijuana establishment, an independent contractor who provides labor relating to the cultivation, processing or distribution of marijuana or the production of marijuana or marijuana products for a marijuana establishment or an employee of such an independent contractor. The term does not include a consultant who performs professional services for a recreational marijuana establishment.



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<b><i>Recreational marijuana establishment agent registration card</i></b>	A registration card that is issued by the Department pursuant to R092-17, Sec. 94 to authorize a person to volunteer or work at a recreational marijuana establishment.
<b><i>Recreational marijuana establishment license</i></b>	A license that is issued by the Department pursuant to NRS 453D and R092-17 to authorize the operation of a recreational marijuana establishment.
<b><i>Shall</i></b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<b><i>Should</i></b>	Indicates something that is recommended but not mandatory. If the applicant fails to provide recommended information the Department may, at its sole discretion, ask the applicant to provide the information or evaluate the application without the information.
<b><i>State</i></b>	The State of Nevada and any agency identified herein.
<b><i>Will</i></b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.



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## 2. APPLICATION OVERVIEW

*The Nevada State Legislature passed a number of bills during the 2017 session which affect the licensing, regulation and operation of recreational marijuana establishments in the state. In addition, the Department of Taxation has approved regulations effective February of 2018. Legislation changes relevant to this application include but are not limited to the following:*

### Assembly Bill 422 (AB422):

- Transfers responsibility for registration/licensing and regulation of marijuana establishments from the State of Nevada's Division of Public and Behavioral Health (DPBH) to the Department of Taxation.
- Adds diversity of race, ethnicity, or gender of applicants (owners, officers, board members) to the existing merit criteria for the evaluation of marijuana establishment registration certificates.

### LCB File No. Regulation R092-17:

- On or before November 15, 2018, a person who holds a medical marijuana establishment registration certificate may apply for one or more licenses, in addition to a license issued pursuant to section 77 of the regulation, for a marijuana establishment of the same type or for one or more licenses for a marijuana establishment of a different type.

**No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.**

The Department is seeking applications from qualified applicants in conjunction with this application process for recreational marijuana retail store license. If a marijuana establishment has not received a final inspection within 12 months after the date on which the Department issued a license, the establishment must surrender the license to the Department. The Department may extend the period specified in R092-17, Sec. 87 if the Department, in its discretion, determines that extenuating circumstances prevented the marijuana establishment from receiving a final inspection within the period.

## 3. APPLICATION TIMELINE

The following represents the timeline for this project. All times stated are in Pacific Time (PT).

Task	Date/Time
Request for application date	July 6, 2018
Opening of 10-day window for receipt of applications	September 7, 2018
Deadline for submission of applications	September 20, 2018 – 5:00 p.m.
Application evaluation period	September 7, 2018 – December 5, 2018
Conditional licenses award notification	Not later than December 5, 2018
Anticipated approximate fully operational deadline	12 months after notification date of conditional license



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### 4. APPLICATION INSTRUCTIONS

The State of Nevada Department of Taxation is seeking applications from qualified applicants to award recreational marijuana retail store licenses.

The Department anticipates awarding a recreational marijuana retail store license in conjunction with this application as determined by the applicant's establishment type, geographic location and the best interest of the State. Therefore, applicants are encouraged to be as specific as possible regarding services provided, geographic location, and information submitted for each application merit criteria category.

Pursuant to section 78 subsection 12 of R092-17, the application must include the signature of a natural person for the proposed marijuana establishment as described in subsection 1 of section 74 of R092-17.

### 5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

#### 5.1. General Submission Requirements

- 5.1.1. Applications must be packaged and submitted in counterparts; therefore, applicants must pay close attention to the submission requirements. Applications will have an Identified Criteria Response and a Non-Identified Criteria Response. Applicants must submit their application separated into the two (2) required sections, Identified Criteria Responses and Non-Identified Criteria Responses, recorded to separate electronic media (CD-Rs or USB thumb drives).
- 5.1.2. The required electronic media must contain information as specified in Section 5.4, and must be packaged and submitted in accordance with the requirements listed at Section 5.5.
- 5.1.3. Detailed instructions on application submission and packaging are provided below. Applicants must submit their applications as identified in the following sections.
- 5.1.4. All information is to be completed as requested.
- 5.1.5. Each section within the Identified Criteria Response and the Non-Identified Criteria Response must be saved as separate PDF files, one for each required "Tab". The filename will include the tab number and title (e.g., 5.2.1 Tab I – Title Page.pdf).
- 5.1.6. For ease of evaluation, the application must be presented in a format that corresponds to and references the sections outlined within the submission requirements section and must be presented in the same order. Written responses must be typed and placed immediately following the applicable criteria question, statement and/or section.
- 5.1.7. Applications are to be prepared in such a way as to provide a straightforward, concise delineation of information to satisfy the requirements of this application.
- 5.1.8. In a Non-Identified Criteria Response, when a specific person or company is referenced the identity must remain confidential. A person may be addressed through their position, discipline or job title, or assigned an identifier. Identifiers assigned to people or companies must be detailed in a legend (Attachment H) to be submitted in the Identified Criteria Response section.
- 5.1.9. Materials not requested in the application process will not be reviewed.



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## 5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password protect electronic media or individual files.
- The response must contain separate PDF files for each of the tabbed sections as described below.

### 5.2.1. Tab I – Title Page

The title page must include the following:

Part I – Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

### 5.2.2. Tab II – Table of Contents

An accurate table of contents must be provided in this tab.

### 5.2.3. Tab III – Applicant Information Sheet (Page 2)

The completed Applicant Information Sheet signed by the contact person who is responsible for providing information, signing documents, or ensuring actions are taken pursuant to R092-17, Sec. 94 must be included in this tab.

### 5.2.4. Tab IV – Recreational Marijuana Establishment License Application (Attachment A)

The completed and signed Recreational Marijuana Establishment License Application must be included in this tab.

### 5.2.5. Tab V – Multi-Establishment Limitations Form (Attachment F)

If applicable, a copy of the Multi-Establishment Limitations Form must be included in this tab. If not applicable, please insert a plain page with the words “**Not applicable.**”

### 5.2.6. Tab VI – Identifier Legend (Attachment H)

If applicable, a copy of the Identifier Legend must be included in this tab. If not applicable, please insert a page with the words “**Not Applicable.**”





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5.2.7. **Tab VII – Confirmation that the applicant has registered with the Secretary of State**  
Documentation that the applicant has registered as the appropriate type of business and the Articles of Incorporation, Articles of Organization, Operating Agreements, or partnership or joint venture documents of the applicant must be included in this tab.

5.2.8. **Tab VIII– Documentation of liquid assets**  
Documentation demonstrating the liquid assets and the source of those liquid assets from a financial institution in this state or in any other state or the District of Columbia must be included in this tab and demonstrate the following criteria :  
5.2.8.1. That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and  
5.2.8.2. The source of those liquid assets.  
*Note: If applying for more than one recreational marijuana establishment license, available funds must be shown for each establishment application.*

5.2.9. **Tab IX – Evidence of taxes paid; other beneficial financial contributions**  
Evidence of the amount of taxes paid and/or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the establishment must be included in this tab.

5.2.10. **Tab X – Organizational structure and owner, officer or board member information**  
The description of the proposed organizational structure of the proposed recreational marijuana establishment and information concerning each owner, officer and board member of the proposed recreational marijuana establishment must be included in this tab and demonstrate the following criteria:  
5.2.10.1. An organizational chart showing all owners, officers and board members of the recreational marijuana establishment including percentage of ownership for each individual.  
5.2.10.2. An Owner, Officer and Board Member Attestation Form must be completed for each individual named in this application (Attachment B).  
5.2.10.3. The supplemental Owner, Officer and Board Member Information Form should be completed for each individual named in this application. This attachment must also include the diversity information required by R092-17, Sec. 80.1(b) (Attachment C).  
5.2.10.4. A resume, including educational level and achievements for each owner, officer and board member must be completed for each individual named in this application.  
5.2.10.5. A narrative description not to exceed 750 words demonstrating the following:  
5.2.10.5.1. Past experience working with government agencies and highlighting past community involvement.



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- 5.2.10.5.2. Any previous experience at operating other businesses or non-profit organizations, including marijuana industry experience.
- 5.2.10.6. A Request and Consent to Release Application Form for Recreational Marijuana Establishment License(s) for each owner, officer and board member should be completed for each individual named in this application (Attachment D).
- 5.2.10.7. A copy of each individual's completed fingerprint submission form demonstrating he or she has submitted fingerprints to the Nevada Department of Public Safety.
- 5.2.11. **Tab XI— Financial plan**  
A financial plan must be included in this tab which includes:
  - 5.2.11.1. Financial statements showing the resources of the applicant, both liquid and illiquid.
  - 5.2.11.2. If the applicant is relying on funds from an owner, officer, board member or any other source, evidence that such person has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant.
  - 5.2.11.3. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation.
- 5.2.12. **Tab XII – Name, signage and advertising plan**  
A proposal of the applicant's name, signage and advertising plan which will be used in the daily operations of the recreational marijuana establishment on the form supplied by the Department (Attachment G) must be included in this tab.  
*Please note: This section will require approval, but will not be scored.*
- 5.2.13. **Application Fee**
  - 5.2.13.1. Include with this packet the \$5,000.00 non-refundable application fee per NRS 453D.230(1).

*Please note: Only cash, cashier's checks and money orders made out to the "Nevada Department of Taxation" will be accepted for payment of the nonrefundable application fee.*

### 5.3. Part II – Non-identified Criteria Response

The NON-IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password-protect electronic media or individual files.



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- The response must contain separate PDF files for each of the tabbed sections as described below:

## 5.3.1. **Tab I – Title Page**

*Please note: Title page will not be viewed by Non-Identified Criteria evaluators.*

The title page must include the following:

Part II –Non-Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

## 5.3.2. **Tab II – Table of Contents**

An accurate table of contents must be provided in this tab.

## 5.3.3. **Tab III – Building/Establishment information**

Documentation concerning the adequacy of the size of the proposed recreational marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana must be included in this tab. The content of this response must be in a **non-identified** format and include building and general floor plans with all supporting details

*Please note: The size or square footage of the proposed establishment should include the maximum size of the proposed operation per the lease and property ownership. The start-up plans and potential expansion should be clearly stated to prevent needless misunderstandings and surrendering of certification.*

## 5.3.4. **Tab IV – Care, quality and safekeeping of marijuana from seed to sale plan**

Documentation concerning the integrated plan of the proposed recreational marijuana establishment for the care, quality and safekeeping of recreational marijuana from seed to sale must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.4.1. A plan for verifying and testing recreational marijuana
- 5.3.4.2. A transportation or delivery plan
- 5.3.4.3. Procedures to ensure adequate security measures for building security
- 5.3.4.4. Procedures to ensure adequate security measures for product security

## 5.3.5. **Tab V – System and Inventory Procedures plan**



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A plan for the operating procedures for verification system and inventory control system must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.5.1. A description of the operating procedures for the verification system of the proposed marijuana establishment for verifying age.
- 5.3.5.2. A description of the inventory control system of the proposed recreational marijuana establishment.

*Please note: Applicants should demonstrate a system to include thorough tracking of product movement and sales. The applicant shall demonstrate capabilities for an external interface via a secure API to allow third party software systems to report all required data into the State database to allow seamless maintenance of records and to enable a quick and accurate update on demand. The system shall account for all inventory held by an establishment in any stage of cultivation, production, display or sale as applicable for the type of establishment, and demonstrate an internal reporting system to provide the Department with comprehensive information about an establishment's inventory.*

## 5.3.6. **Tab VI**– Operations and resources plan

Evidence that the applicant has a plan to staff and manage the proposed marijuana establishment on a daily basis must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.6.1. A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses.
- 5.3.6.2. An operations manual that demonstrates compliance with the regulations of the Department.
- 5.3.6.3. An education plan which must include providing training and educational materials to the staff of the proposed establishment.
- 5.3.6.4. A plan to minimize the environmental impact of the proposed establishment.

## 5.3.7. **Tab VII** – Community impact and serving authorized persons in need

A proposal demonstrating the likely impact on the community and convenience to serve the needs of persons authorized to use marijuana must be included in this tab. The content of this response must be in a **non-identified format** and include:

- 5.3.7.1. The likely impact of the proposed recreational marijuana establishment in the community in which it is proposed to be located.
- 5.3.7.2. The manner in which the proposed recreational marijuana establishment will meet the needs of the persons who are authorized to use marijuana.



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Executive Director

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

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

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

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

## 5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

- 5.4.1. A separate CD-R or thumb drive which contains only the Identified Criteria Response.
- 5.4.2. A separate CD-R or thumb drive which contains only the Non-Identified Criteria Response.
  - 5.4.2.1. The electronic files must follow the format and content section for the Identified Criteria Response and Non-Identified Criteria Response.
  - 5.4.2.2. All electronic files must be saved in "PDF" format with separate files for each required "Tab". Individual filenames must comply with the naming requirements specified in 5.1.5 of the General Submission Requirements.
  - 5.4.2.3. CD-Rs or thumb drives will be labeled as either Identified or Non-Identified Criteria Response. Identified Criteria Responses and Non-Identified Criteria Responses must not be saved to the same CD-R or thumb drive.
    - 5.4.2.3.1. Part I – Identified Criteria Response
    - 5.4.2.3.2. Part II – Non-Identified Criteria Response
  - 5.4.2.4. Seal the Identified Criteria Response and Non-Identified Criteria Response electronic media in separate envelopes and affix labels to the envelopes per the example below:

CDs or Thumb Drives	
Application	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Contents:	Part I – Identified Criteria Response <b>OR</b> Part II – Non-Identified Criteria Response



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### 5.5. Application Packaging and Instructions

- 5.5.1. Recreational Marijuana Establishment License Applications may be mailed or dropped off in person at:

**Department of Taxation  
Marijuana Enforcement Division  
1550 College Parkway  
Carson City, NV 89706**

- OR -

**Department of Taxation  
Marijuana Enforcement Division  
555 E. Washington Ave. Ste 1300  
Las Vegas, NV 89101**

- 5.5.2. Applications dropped off in person at one of the two Taxation office's must be received no later than **5:00 p.m. on September 20, 2018.**
- 5.5.3. Applications mailed in to one of the two Taxation office's must be postmarked by the United States Postal Service not later than **September 20, 2018.**
- 5.5.4. If an application is sent via a different delivery service (i.e. UPS, FedEx, etc.) and does not arrive at one of the two Taxation offices by **5:00 p.m. on September 20, 2018**, the application will not be considered.
- 5.5.5. If mailing the application, combine the separately sealed Identified and Non-Identified Criteria Response envelopes into a single package suitable for mailing.
- 5.5.6. The Department will not be held responsible for application envelopes mishandled as a result of the envelope not being properly prepared.
- 5.5.7. Email, facsimile, or telephone applications will **NOT** be considered.



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## 6. APPLICATION EVALUATION AND AWARD PROCESS

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

- 6.1. Applications shall be consistently evaluated and scored in accordance with NRS 453D, NAC 453D and R092-17 based upon the following criteria and point values.

*Grey boxes are the Identified Criteria Response. White boxes are Non-Identified Criteria Response.*

Nevada Recreational Marijuana Application Criteria		Points
The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member of the proposed marijuana establishment including the information provided pursuant to R092-17.		60
Evidence of the amount of taxes paid or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.		25
A financial plan which includes: <ul style="list-style-type: none"> <li>Financial statements showing the resources of the applicant, both liquid and illiquid.</li> <li>If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment.</li> <li>Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation.</li> </ul>		30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <ul style="list-style-type: none"> <li>That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets.</li> <li>The source of those liquid assets.</li> </ul>		10
Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: <ul style="list-style-type: none"> <li>A plan for testing recreational marijuana.</li> <li>A transportation plan.</li> <li>Procedures to ensure adequate security measures for building security.</li> <li>Procedures to ensure adequate security measures for product security.</li> </ul> <i>Please note: The content of this response must be in a <b>non-identified</b> format.</i>		40
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> <li>A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses.</li> <li>An operations manual that demonstrates compliance with the regulations of the Department.</li> <li>An education plan which must include providing educational materials to the staff of the proposed establishment.</li> <li>A plan to minimize the environmental impact of the proposed establishment.</li> </ul>		30



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<i>Please note: The content of this response must be in a <b>non-identified</b> format.</i>	
A plan which includes: <ul style="list-style-type: none"> <li>A description of the operating procedures for the electronic verification system of the proposed marijuana establishment.</li> <li>A description of the inventory control system of the proposed marijuana establishment.</li> </ul> <i>Please note: The content of this response must be in a <b>non-identified</b> format.</i>	20
Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: <ul style="list-style-type: none"> <li>Building and construction plans with supporting details.</li> </ul> <i>Please note: The content of this response must be in a <b>non-identified</b> format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> <li>The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located.</li> <li>The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana.</li> </ul> <i>Please note: The content of this response must be in a <b>non-identified</b> format.</i>	15
<b>Application Total</b>	<b>250</b>
Unweighted: <ul style="list-style-type: none"> <li>Review plan for all names and logos for the establishment and any signage or advertisement.</li> <li>Review results of background check(s). Applicant has until the end of the 90-day application period to resolve background check information which may cause the application to be rejected.</li> </ul>	

6.2. If the Department receives more than one application for a license for a retail marijuana store in response to a request for applications made pursuant to R092-17, Sec. 76 and the Department determines that more than one of the applications is complete and in compliance with R092-17, Sec. 78 and Chapter 453D of the NRS, the Department will rank the applications within each applicable locality for any applicants which are in a jurisdiction that limits the number of retail marijuana stores in order from first to last. Ranking will be based on compliance with the provisions of R092-17 Sec. 80, Chapter 453D of NRS and on the content of the applications relating to:

- 6.2.1. Operating experience of another kind of business by the owners, officers or board members that has given them experience which is applicable to the operation of a marijuana establishment.
- 6.2.2. Diversity of the owners, officers or board members.
- 6.2.3. Evidence of the amount of taxes paid and other beneficial financial contributions.
- 6.2.4. Educational achievements of the owners, officers or board members.
- 6.2.5. The applicant's plan for care, quality and safekeeping of marijuana from seed to sale.
- 6.2.6. The financial plan and resources of the applicant, both liquid and illiquid.
- 6.2.7. The experience of key personnel that the applicant intends to employ.
- 6.2.8. Direct experience of the owners, officers or board members of a medical marijuana establishment or marijuana establishment in this State.





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4600 Kietzke Lane  
Building L, Suite 235  
Reno, Nevada 89502  
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Grant Sawyer Office Building, Suite 1300  
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- 6.3. Applications that have not demonstrated a sufficient response related to the criteria set forth above will not have additional criteria considered in determining whether to issue a license and will not move forward in the application process.
- 6.4. Any findings from a report concerning the criminal history of an applicant or person who is proposed to be an owner, officer or board member of a proposed recreational marijuana establishment that disqualify that individual from serving in that capacity will also result in the disqualification of the application. The applicant will have the opportunity to resolve such an issue within the 90-day application period.
- 6.5. The Department and evaluation committee may also contact anyone referenced in any information provided for the owners, officers and board members of the proposed establishment; contact any applicant to clarify any response; solicit information from any available source concerning any aspect of an application; and, seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept any application, but shall make an award in the best interests of the State of Nevada per Regulation R092-17 and Chapter 453D of the NRS.
- 6.6. Clarification discussions may, at the Department's sole discretion, be conducted with applicants who submit applications determined to be acceptable and competitive per R092-17, Sec. 77-80 and NRS 453D.210. Applicants shall be afforded fair and equal treatment with respect to any opportunity for discussion and/or written clarifications of applications. Such clarifications may be permitted after submissions and prior to award for the purpose of obtaining best and final ranking of applications. In conducting discussions, there shall be no disclosure of any information derived from applications submitted by competing applicants. Any clarification given for the original application during the clarification discussions will be included as part of the application.
- 6.7. The Department will issue conditional recreational marijuana establishment licenses subject to final inspection in accordance with R092-17, Sec. 87 and subject to local jurisdiction to the highest ranked applicants up to the designated number of licenses the Department plans to issue.
- 6.8. If two or more applicants have the same total number of points for the last application being awarded a conditional license, the Department shall select the applicant which has scored the highest number of points as it is related to the proposed organizational structure of the proposed marijuana establishment and the information concerning each owner, officer and board member of the proposed marijuana establishment.
- 6.9. If the Department receives only one response within a specific jurisdiction; and, if the jurisdiction limits the number of a type of establishment to one; and, statewide, if there is not a limit on the number of a type of establishments to a request for applications for recreational marijuana establishments issued pursuant to R092-17, Sec. 76 (3) within 10 business days after the Department begins accepting responses to the request for applications; and, the



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Governor  
JAMES DEVOLLD  
Chair, Nevada Tax Commission  
WILLIAM D. ANDERSON  
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Department determines that the response is complete and in compliance with the regulations, the Department will issue a conditional license to that applicant to operate a recreational marijuana establishment in accordance with R092-17.

- 6.10. The issuance by the Department of a recreational marijuana establishment license is conditional and not an approval to begin business operations until such time as:
  - 6.10.1. The marijuana establishment is in compliance with all applicable local government ordinances and rules; and
  - 6.10.2. The local government has issued a business license or otherwise approved the applicant for the operation of the establishment.
- 6.11. If the local government does not issue business licenses and does not approve or disapprove marijuana establishments in its jurisdiction, a recreational marijuana establishment license becomes an approval to begin business operations when the marijuana establishment is in compliance with all applicable local government ordinances and rules and has fulfilled all the requirements of the approval to operate by the Department.
- 6.12. Any license resulting from this application shall not be effective until approved by the Department.



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Governor  
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Las Vegas, Nevada 89101  
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HENDERSON OFFICE  
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## ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

### GENERAL INFORMATION

Type of Marijuana Establishment: <input type="checkbox"/> Recreational Retail Marijuana Store			
Marijuana Establishment's Proposed Physical Address (this must be a Nevada address and cannot be a P.O. Box)			
City:	County:	State:	Zip Code:
Proposed Hours of Operation :			
Sunday	Monday	Tuesday	Wednesday
Thursday	Friday	Saturday	

### APPLYING ENTITY INFORMATION

Applying Entity's Name:		
Business Organization:	<input type="checkbox"/> Individual <input type="checkbox"/> LLC	<input type="checkbox"/> Corp. <input type="checkbox"/> Assoc. /Coop.
	<input type="checkbox"/> Partnership <input type="checkbox"/> Other specify:	
Telephone #:	E-Mail Address:	
State Business License #:	Expiration Date:	
Mailing Address:		
City:	State:	Zip Code:

### DESIGNEE INFORMATION

*Name of individual designated to manage agent registration card applications on behalf of the establishment.*

Last Name:	First Name:	MI:
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### SUPPLEMENTAL REQUESTS

Does the applicant agree to allow the Nevada Department of Taxation (Department) to submit supplemental requests for information? <input type="checkbox"/> Yes <input type="checkbox"/> No
--



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## ATTACHMENT A (continued)

### Recreational Marijuana Establishment Owner (OR), Officer (OF), Board Member (BM) Names

*For each owner, officer and board member listed below, please fill out a corresponding Establishment Principal Officers and Board Members Information Form (Attachment C).*

Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM



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## ATTACHMENT A (continued)

A marijuana agent identification card or recreational marijuana establishment license issued by the Nevada Department of Taxation (Department) pursuant to R092-17, Sec. 95 does not protect the applicant from legal action by federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana.

The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of “recreational” marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical & Recreational Marijuana Act(s) & Regulations (NAC- 453, NRS-453D, R092-17). Any failure to comply with these requirements may result in revocation of the marijuana agent identification card or Recreational Marijuana Establishment License issued by the Department.

The issuance of a license pursuant to section 80 of R092-17 of this regulation is conditional and not an approval to begin operations as a marijuana establishment until such time as all requirements in section 83 of R092-17 are completed and approved by the Department by means of a final inspection.

The State of Nevada, including but not limited to the employees of the Department, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of marijuana.

I attest that the information provided to the Department for this Recreational Marijuana Establishment License application is true and correct.

_____ Print Name	_____ Title
_____ Signature	_____ Date Signed
_____ Print Name	_____ Title
_____ Signature	_____ Date Signed



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## ATTACHMENT B OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, \_\_\_\_\_ (PRINT NAME)

Attest that:

I have not been convicted of an excluded felony offense as defined in NRS 453D; and

I agree that the Department may investigate my background information by any means feasible to the Department; and

I will not divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to R092-17, Sec. 94 and 453D of the NRS; and

All information provided is true and correct.

\_\_\_\_\_  
Signature of Owner, Officer or Board Member

\_\_\_\_\_  
Date Signed

State of Nevada

County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_ (date)

By \_\_\_\_\_ (name(s) of person(s) making statement)

Notary Stamp

Signature of notarial officer



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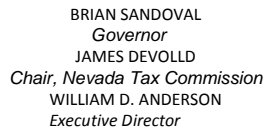
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## ATTACHMENT C OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

Provide the following information for each owner, officer and board member listed on the Recreational Marijuana Establishment Application. Use as many sheets as needed.			
Last Name:	First Name:	MI:	<input type="checkbox"/> OR <input type="checkbox"/> OF <input type="checkbox"/> BM
Date of Birth:	Race:	Ethnicity:	
Gender:			
Residence Address:			
City:	County:	State:	Zip:
Describe the individual's title, role in the organization and the responsibilities of the position of the individual:			
Has this individual served as a principal officer or board member for a marijuana establishment that has had their establishment license or certificate revoked? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has this individual previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual employed by or a contractor of the Department? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's signed and dated Recreational Retail Marijuana Store Principal Officer or Board Member Attestation Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual a law enforcement officer? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's fingerprints on a fingerprint card been submitted to the Nevada Department of Public Safety? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of the Request and Consent to Release Application Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			







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Henderson, Nevada 89074  
Phone: (702) 486-2300  
Fax: (702) 486-3377



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

# STATE OF NEVADA DEPARTMENT OF TAXATION

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## ATTACHMENT D REQUEST AND CONSENT TO RELEASE APPLICATION FORM RECREATIONAL MARIJUANA ESTABLISHMENT LICENSE

I, \_\_\_\_\_, am the duly authorized representative of \_\_\_\_\_ to represent and interact with the Department of Taxation (Department) on all matters and questions in relation to the Nevada Recreational Marijuana Establishment License(s) Application. I understand that R092-17, Sec. 242 makes all applications submitted to the Department confidential but that local government authorities, including but not limited to the licensing or zoning departments of cities, towns or counties, may need to review this application in order to authorize the operation of an establishment under local requirements. Therefore, I consent to the release of this application to any local governmental authority in the jurisdiction where the address listed on this application is located.

By signing this Request and Consent to Release Application Form, I hereby acknowledge and agree that the State of Nevada, its sub-departments including the Department of Taxation and its employees are not responsible for any consequences related to the release of the information identified in this consent. I further acknowledge and agree that the State and its sub-departments and its employees cannot make any guarantees or be held liable related to the confidentiality and safe keeping of this information once it is released.

\_\_\_\_\_  
Signature of Requestor/Applicant or Designee Date: \_\_\_\_\_

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	Signature of notarial officer



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ATTACHMENT E  
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

<i>To be completed by the applicant for the physical address of the proposed marijuana establishment.</i>			
Name of Individual or Entity Applying for a Marijuana Establishment License:			
Physical Address of Proposed Marijuana Establishment (must be a Nevada address, not a P.O. Box):			
City:	County:	State:	Zip Code:
Legal Description of the Property:			



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## ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

NRS 453D.210 places a limitation on the total number of Recreational Retail Marijuana Store licenses that can be issued within each county, and R092-17, Sec. 80 (5) places limitations on the number of recreational marijuana retail stores located in any one governmental jurisdiction and a limitation on the number of licenses issued to any one person, group or entity. Due to these limitations, please list below all applications submitted from this business organization and/or persons as identified in the recreational marijuana establishment owner, officer and board member names section of Attachment A in the 10-day window of **September 7, 2018 – September 20, 2018**.

If this business organization were to not receive approval on all applications submitted, would the applicant still want approval on the applications determined by the ranking below? ☐ Yes ☐ No

**Please list in order of preference for approval (use as many sheets as needed).**

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:



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**ATTACHMENT G  
NAME, SIGNAGE, AND ADVERTISING PLAN FORM**

A recreational marijuana establishment must have all advertising plans approved by the Department as a requirement for approval to operate a recreational marijuana establishment. A recreational marijuana establishment shall not use:

- A name or logo unless the name or logo has been approved by the Department; or
- Any sign of advertisement unless the sign or advertisement has been approved by the Department.

Please demonstrate the Name, Signage and Advertising Plans for the proposed marijuana establishment. Additional pages and documents can be included to demonstrate the full advertising plans of the proposed establishment.



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## ATTACHMENT I FACILITY JURISDICTION FORM

Mark the jurisdiction(s) and number of stores in each jurisdiction for which you are applying. Only one application is necessary for multiple jurisdictions and licenses, however, you must submit attachments “A” & “E” for each jurisdiction, location and the appropriate application fee for each of the jurisdictions/locality and number of licenses requested.

**No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.**

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Clark County	
City of Henderson	
City of Las Vegas	
City of Mesquite	
City of North Las Vegas	
Carson City	
Churchill County	
Douglas County	
Elko County	
Esmeralda County	
Eureka County	
Humboldt County	

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Washoe County	
City of Reno	
City of Sparks	
Lander County	
Lincoln County	
Lyon County	
Mineral County	
Nye County	
Pershing County	
Storey County	
White Pine County	



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### ATTACHMENT J

#### FEDERAL LAWS AND AUTHORITIES

*(Apply outside of NAC 453, NAC 453A, NRS 453A, NRS 453D, R092-17)*

*The information in this section does not need to be returned with the applicant's application. The following is a list of federal laws and authorities with which the awarded Applicant will be required to comply.*

#### ENVIRONMENTAL:

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

#### ECONOMIC:

- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- 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:

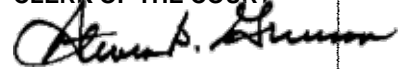
- Age Discrimination Act, PL 94-135 Civil Rights Act of 1964, PL 88-352
- Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
- Executive Order 11246, Equal Employment Opportunity
- Executive Orders 11625 and 12138, Women's and Minority Business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

#### MISCELLANEOUS AUTHORITY:

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



# Exhibit E



Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
n.rulis@kempjones.com  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MM DEVELOPMENT COMPANY, INC., a  
Nevada corporation,

Plaintiff,

vs.

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

Defendants.

Case No.: A-18-785818-W

Dept. No.: Department 18

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

**Arbitration Exemption Claimed:**

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

COMES NOW Plaintiff, MM DEVELOPMENT COMPANY, INC., by and through their  
counsel of record, Kemp, Jones & Coulthard, LLP, and hereby complains against Defendants STATE  
OF NEVADA, DEPARTMENT OF TAXATION, and Does I through X, and petitions this Court for  
Writ of Mandamus as follows:

**I.**  
**PARTIES & JURISDICTION**

1. Plaintiff, MM DEVELOPMENT COMPANY, LLC., is a Nevada corporation duly  
licensed under the laws of the State of Nevada.



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

4           7.       The application period for those licenses, including thirty-one (31) licenses in Clark  
5 County, seven (7) licenses in Washoe County and one (1) license in Nye County, opened on  
6 September 7, 2018 and closed on September 20, 2018.

7           8.       If the Department received more than one application for a license for a recreational  
8 marijuana retail store and the Department determined that more than one of the applications was  
9 complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department was required to  
10 rank the applications within each applicable locality for any applicants in a jurisdiction that limits the  
11 number of retail marijuana stores in order from first to last. Ranking is based on compliance with the  
12 provisions of R092-17 Sec. 80, NRS 453D and on the content of the applications relating to:  
13

- 14           a.       Operating experience of another kind of business by the owners, officers or  
15                   board members that has given them experience which is applicable to the  
16                   operation of a marijuana establishment.
- 17           b.       Diversity of the owners, officers or board members.
- 18           c.       Evidence of the amount of taxes paid and other beneficial financial  
19                   contributions.
- 20           d.       Educational achievements of the owners, officers or board members.
- 21           e.       The applicant's plan for care, quality and safekeeping of marijuana from seed to  
22                   sale.
- 23           f.       The financial plan and resources of the applicant, both liquid and illiquid.
- 24           g.       The experience of key personnel that the applicant intends to employ.
- 25
- 26
- 27
- 28

1 h. Direct experience of the owners, officers or board members of a medical  
2 marijuana establishment or marijuana establishment in this State.

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

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

11 11. Prior to the application process with the Department, Plaintiff was previously scored  
12 and ranked in the 2015 licensing procedure, pursuant to NRS 453A, in conjunction with a medical  
13 marijuana establishment permit application.  
14

15 12. At that time, Plaintiff received a score of 203.58 and was ranked as the fourth-highest  
16 applicant for a medical marijuana dispensary in unincorporated Clark County, Nevada.

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

19 14. The only major difference between the factors assessed for the 2015 rankings and the  
20 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners,  
21 officers, board members) to the existing merit criteria.  
22

23 15. Plaintiff submitted applications for recreational marijuana retail store licenses to own  
24 and operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark  
25 County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada;  
26 and Nye County, Nevada.  
27  
28

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

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

### **III.** **CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Relief)**

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

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

21. Plaintiff and the Defendant have adverse and/or competing interests as the Department, through its Marijuana Enforcement Division, has denied the application that violates Plaintiff's Constitutional Rights, Nevada law, and State policy.

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

23. Further, the Department's improper ranking of the other applicants for a recreational marijuana establishment license and the Department's subsequent, improper issuance to each of a "conditional" license also affects the rights of Plaintiff afforded it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

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

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

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

- 8           a.     That the Department improperly denied Plaintiff six (6) "conditional" licenses  
9 for the operation of a recreational marijuana establishment in the following  
10 jurisdictions: unincorporated Clark County, Nevada; Las Vegas, Nevada; North  
11 Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; and Nye County,  
12 Nevada.
- 13           b.     The denial of a "conditional" license to Plaintiff is void *ab initio*;
- 14           c.     The procedures employed in the denial violated Plaintiff's procedural due  
15 process rights and equal protection rights under the Nevada and United States  
16 Constitutions and, therefore, the denial is void and unenforceable;
- 17           d.     The denial violates Plaintiff's substantive due process rights and equal  
18 protection rights under the Nevada and United States Constitutions and,  
19 therefore, the denial is void and unenforceable;
- 20           e.     The denial is void for vagueness and therefore unenforceable;
- 21           f.     Defendant acted arbitrarily and capriciously or in contravention of a legal duty  
22 and Plaintiff is therefore entitled to a writ of mandamus;
- 23           g.     Plaintiff is entitled to judicial review; and
- 24           h.     The Department's denial lacked substantial evidence.
- 25  
26  
27  
28

1           27.     Plaintiff also seeks a declaration from this Court that the Department must issue  
2 Plaintiff six (6) “conditional” license for the operation of a recreational marijuana establishment in  
3 unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite,  
4 Nevada; Reno, Nevada; and Nye County, Nevada since Plaintiff’s score issued by the Department  
5 would have ranked high enough to entitle it to a “conditional” license had the Department properly  
6 applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

7  
8           28.     Plaintiff asserts and contends that a declaratory judgment is both necessary and proper  
9 at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of the  
10 Plaintiff afforded it by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and  
11 regulations.

12           29.     Plaintiff has found it necessary to retain the legal services of Kemp, Jones & Coulthard,  
13 LLP, to bring this action, and Plaintiff is entitled to recover its reasonable attorneys’ fees and costs  
14 therefor.

15  
16                               **SECOND CLAIM FOR RELIEF**  
17                               **(Injunctive Relief)**

18           30.     Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

19           31.     The Department’s flawed interpretation of the provisions of NRS 453D, NAC Chapter  
20 453D, and R092-17, and refusal to issue “conditional” licenses in accordance with the law constitute  
21 and cause continuing and irreparable harm to Plaintiff with no adequate remedy at law.

22           32.     The purpose of this refusal was and is to unreasonably interfere with Plaintiff’s  
23 business and causing Plaintiff to suffer irreparable harm.

24           33.     The Department will suffer no harm by following the law with respect to issuing  
25 “conditional” licenses.

26           34.     The Department’s interpretation of NRS 453D, NAC Chapter 453D, and R092-17 is  
27 flawed and Plaintiff is likely to succeed on the merits in this litigation.  
28



1           35.     The public interest favors Plaintiffs because in the absence of injunctive relief, the  
2 consumers who would have benefitted will have less available options from which they can receive  
3 recreational marijuana.

4           36.     Therefore, Plaintiffs is entitled to preliminary injunctive relief, and after a trial on the  
5 merits, permanent injunctive relief, ordering the Department to issue “conditional” licenses to Plaintiff  
6 in accordance with NRS 453D, NAC 453D, and R092-17.

7  
8                               **THIRD CLAIM FOR RELIEF**  
9                               **(Violation of Procedural Due Process)**

10          37.     Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

11          38.     The procedures employed by the Department in denying Plaintiff’s applications have  
12 deprived Plaintiff of due process of law as guaranteed by the Nevada Constitution and the United  
13 States Constitution.

14          39.     The process in which denial was considered, noticed to the public, and passed failed to  
15 provide Plaintiff a meaningful opportunity to be heard at a consequential time and was fundamentally  
16 unfair and violated the due process requirements of the Nevada and United States Constitutions.

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

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

21          42.     As the action of the Department necessitated that Plaintiff retain the legal services of  
22 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiff is also entitled  
23 to attorneys’ fees and costs of suit.  
24

25          43.     Plaintiff has found it necessary to bring this action, and Plaintiff is entitled to recover  
26 its reasonable attorneys’ fees and costs therefor.  
27  
28

**FOURTH CLAIM FOR RELIEF**  
**(Violation of Substantive Due Process)**

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

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

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

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

48. As the action of the Department necessitated that Plaintiff retain the legal services of Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiff is also entitled to attorneys' fees and costs of suit.

**FIFTH CLAIM FOR RELIEF**  
**(Equal Protection Violation)**

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

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

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

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

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

54. As the action of the Department necessitated that Plaintiff retain the legal services of Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiff is also entitled to attorneys' fees and costs of suit.

## SIXTH CLAIM FOR RELIEF (Petition for Judicial Review)

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

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

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

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

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

- a. A determination that the decision lacked substantial evidence;
- b. A determination that the denial is void *ab initio* for non-compliance with NRS 453D, NAC 453D, R092-17, and other Nevada state laws or regulations; and
- c. Other relief consistent with those determinations.

60. Plaintiff has found it necessary to retain the legal services of Kemp, Jones & Coulthard, LLP, to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

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**SEVENTH CLAIM FOR RELIEF  
(Petition for Writ of Mandamus)**

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

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

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

- a. Providing proper pre-hearing notice of the denial; and
- b. Arbitrarily and capriciously denying the application for no legitimate reason.

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

- a. The Board lacked substantial evidence to deny the application; and
- b. The Board denied the application solely to approve other competing applicants without regard to the merit of Plaintiffs’ application.

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

66. As a result of the Defendants’ unlawful and arbitrary and capricious actions, Plaintiff has been forced to retain legal counsel to prosecute this action and is therefore also entitled to its damages, costs in this suit, and an award of attorneys’ fees pursuant to NRS 34.270.

**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 December 11, 2018

**KEMP, JONES & COULTHARD LLP**



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Will Kemp, Esq. (NV Bar No. 1205)  
Nathanael R. Rulis (NV Bar No. 11259)  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
*Attorneys for Plaintiff*

# Exhibit F



**COMP**

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA M. DICKEY  
Nevada Bar No. 6621  
SARAH E. HARMON  
Nevada Bar No. 8106  
KELLY B. STOUT  
Nevada Bar No. 12105  
**BAILEY❖KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com  
JDickey@BaileyKennedy.com  
SHarmon@BaileyKennedy.com  
KStout@BaileyKennedy.com

*Attorneys for Plaintiffs/Petitioners*

D.H. FLAMINGO, INC., d/b/a THE  
APOTHECARY SHOPPE; CLARK NATURAL  
MEDICINAL SOLUTIONS LLC, d/b/a  
NuVEDA; NYE NATURAL MEDICINAL  
SOLUTIONS LLC, d/b/a NuVEDA; CLARK  
NMSD LLC, d/b/a NuVEDA; and INYO FINE  
CANNABIS DISPENSARY L.L.C., d/b/a INYO  
FINE CANNABIS DISPENSARY

DISTRICT COURT

CLARK COUNTY, NEVADA

Case No. A-19-787035-C  
Dept. No. Department 6

**COMPLAINT AND PETITION FOR  
JUDICIAL REVIEW AND/OR WRITS  
OF CERTIORARI, MANDAMUS, AND  
PROHIBITION**

- Exempt from Arbitration NAR 3(A), 5**
- Action Seeking Judicial Review of Administrative Decisions
  - Action for Declaratory Relief
  - Action Presenting a Significant Issue of Public Policy
  - Action Seeking Equitable or Extraordinary Relief

D.H. FLAMINGO, INC., d/b/a THE  
APOTHECARY SHOPPE, a Nevada  
corporation; CLARK NATURAL MEDICINAL  
SOLUTIONS LLC, d/b/a NuVEDA, a Nevada  
limited liability company; NYE NATURAL  
MEDICINAL SOLUTIONS LLC, d/b/a  
NuVEDA, a Nevada limited liability company;  
CLARK NMSD LLC, d/b/a NuVEDA, a Nevada  
limited liability company; and INYO FINE  
CANNABIS DISPENSARY L.L.C., d/b/a INYO  
FINE CANNABIS DISPENSARY, a Nevada  
limited liability company,

Plaintiffs/Petitioners,

vs.

STATE EX REL. DEPARTMENT OF  
TAXATION; STATE EX REL. NEVADA TAX

COMMISSION; ESSENCE TROPICANA, LLC, a Nevada limited liability company; ESSENCE HENDERSON, LLC, a Nevada limited liability company; NEVADA ORGANIC REMEDIES LLC, a Nevada limited liability company; HELPING HANDS WELLNESS CENTER, INC., a Nevada corporation; CHEYENNE MEDICAL, LLC, a Nevada limited liability company; LONE MOUNTAIN PARTNERS, LLC, a Nevada limited liability company; GREENMART OF NEVADA NLV, LLC, a Nevada limited liability company; COMMERCE PARK MEDICAL L.L.C., a Nevada limited liability company; CLEAR RIVER, LLC, a Nevada limited liability company; WELLNESS CONNECTION OF NEVADA, LLC, a Nevada limited liability company; CIRCLE S FARMS, LLC, a Nevada limited liability company; TRNV/P098 LLC, a Nevada limited liability company; GREEN THERAPEUTICS LLC, a Nevada limited liability company; POLARIS WELLNESS CENTER L.L.C., a Nevada limited liability company; PURE TONIC CONCENTRATES LLC, a Nevada limited liability company; DEEP ROOTS MEDICAL LLC, a Nevada limited liability company; EUREKA NEWGEN FARMS LLC, a Nevada limited liability company; and DOES 1-300.

Defendants/Respondents.

**COMPLAINT AND PETITION FOR JUDICIAL REVIEW AND/OR  
WRITS OF CERTIORARI, MANDAMUS, AND PROHIBITION**

Plaintiffs/Petitioners D.H. Flamingo, Inc. d/b/a The Apothecary Shoppe; Clark Natural Medicinal Solutions LLC d/b/a NuVeda; Nye Natural Medicinal Solutions LLC d/b/a NuVeda; Clark NMSD LLC d/b/a NuVeda; and Inyo Fine Cannabis Dispensary L.L.C. d/b/a Inyo Fine Cannabis Dispensary (collectively “Plaintiffs/Petitioners”) complain against defendants/respondents, and each of them, as follows:

**I. THE PARTIES**

1. This is a Complaint and Petition for Judicial Review. As required by NRS 233B.130(2)(a) and *Washoe Cnty. v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012), all parties to the proceeding being challenged in this petition are named as defendants/respondents.



1                   2.       Plaintiff/Petitioner D.H. Flamingo, Inc., d/b/a The Apothecary Shoppe (“DH  
2       Flamingo”) is a Nevada corporation.  
3                   3.       Plaintiffs/Petitioners Clark Natural Medicinal Solutions LLC, d/b/a NuVeda; Nye  
4       Natural Medicinal Solutions LLC d/b/a NuVeda; and Clark NMMSD LLC, d/b/a NuVeda  
5       (collectively, “NuVeda”) are each a Nevada limited liability company.  
6                   4.       Plaintiff/Petitioner Inyo Fine Cannabis Dispensary L.L.C., d/b/a Inyo Fine Cannabis  
7       Dispensary (“Inyo”) is a Nevada limited liability company.  
8                   5.       Defendant/Respondent State of Nevada, Department of Taxation (the “Department”)  
9       is an agency of the State of Nevada.  
10                  6.       Defendant/Respondent Nevada Tax Commission (the “Commission”) is the head of  
11       the Department.  
12                  7.       Defendant/Respondent Essence Tropicana, LLC is a Nevada limited liability  
13       company.  
14                  8.       Defendant/Respondent Essence Henderson, LLC is a Nevada limited liability  
15       company.  
16                  9.       Defendant/Respondent Nevada Organic Remedies LLC is a Nevada limited liability  
17       company.  
18                  10.      Defendant/Respondent Helping Hands Wellness Center, Inc. is a Nevada corporation.  
19                  11.      Defendant/Respondent Cheyenne Medical, LLC is a Nevada limited liability  
20       company.  
21                  12.      Defendant/Respondent Lone Mountain Partners, LLC is a Nevada limited liability  
22       company.  
23                  13.      Defendant/Respondent Greenmart of Nevada NLV, LLC is a Nevada limited liability  
24       company.  
25                  14.      Defendant/Respondent Commerce Park Medical L.L.C. is a Nevada limited liability  
26       company.  
27                  15.      Defendant/Respondent Clear River, LLC is a Nevada limited liability company.  
28

1 16. Defendant/Respondent Wellness Connection of Nevada, LLC is a Nevada limited  
2 liability company.  
3 17. Defendant/Respondent Circle S Farms, LLC is a Nevada limited liability company.  
4 18. Defendant/Respondent TRNVP098 LLC is a Nevada limited liability company.  
5 19. Defendant/Respondent Green Therapeutics LLC is a Nevada limited liability  
6 company.  
7 20. Defendant/Respondent Polaris Wellness Center L.L.C. is a Nevada limited liability  
8 company.  
9 21. Defendant/Respondent Pure Tonic Concentrates LLC is a Nevada limited liability  
10 company.  
11 22. Deep Roots Medical LLC is a Nevada limited liability company.  
12 23. Eureka NewGen Farms LLC is a Nevada limited liability company.  
13 24. Upon information and belief, Defendants/Respondents Essence Tropicana, LLC,  
14 Essence Henderson, LLC, Nevada Organic Remedies LLC, Helping Hands Wellness Center, Inc.,  
15 Cheyenne Medical, LLC, Lone Mountain Partners, LLC, Greenmart of Nevada NLV, LLC,  
16 Commerce Park Medical L.L.C., Clear River, LLC, Wellness Connection of Nevada, LLC, Circle S  
17 Farms, LLC, TRNVP098 LLC, Green Therapeutics LLC, Polaris Wellness Center L.L.C., Pure  
18 Tonic Concentrates LLC, Deep Roots Medical LLC, and Eureka NewGen Farms LLC were granted  
19 conditional recreational retail marijuana establishment licenses by the Department on or after  
20 December 5, 2018.  
21 25. On information and belief, DOES 1-300 are each Nevada individuals and residents or  
22 Nevada entities.  
23 26. On information and belief, DOES 1-50 are natural persons or entities who are  
24 qualified holders of Medical Marijuana Establishment (“MME”) Certificates, who submitted an  
25 application to operate a recreational retail marijuana establishment to the Department between 8:00  
26 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018, and were granted one or more  
27 conditional licenses on or after December 5, 2018 (collectively, with the Defendants/Respondents  
28 identified in paragraphs 7-23, the “Recipient Entities”). The identities of all of the applicants

1 awarded a license have not yet been publicly disclosed; therefore, the identities of DOES 1-50 are  
2 unknown. At such time as the identities of DOES 1-50 become known to Plaintiffs/Petitioners,  
3 leave of this Court will be sought to add them as Defendants/Respondents in this matter.

4 27. On information and belief, DOES 51-300 are natural persons or entities who are  
5 qualified holders of MME Certificates, who submitted an application to operate a recreational retail  
6 marijuana establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m.  
7 on September 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the  
8 “Denied Entities”). The Department does not publicly disclose the identities of all of the applicants  
9 who were denied a license; therefore, the identities of DOES 51-300 are unknown. At such time as  
10 the identities of DOES 51-300 become known to Plaintiffs/Petitioners, leave of this Court will be  
11 sought to add them as Defendants/Respondents in this matter.

## 12 II. JURISDICTION AND VENUE

13 28. This Court has jurisdiction over this matter pursuant to NRS 233B.130, NRS 34.020,  
14 NRS 34.160, and NRS 34.330.

15 29. Venue is proper in that the aggrieved parties are businesses whose principal places of  
16 business are located in Clark County, Nevada, and the causes of action arose in Clark County,  
17 Nevada.

## 18 III. FACTUAL ALLEGATIONS

### 19 A. The Approved Regulations

20 30. Pursuant to Nevada law, the Commission shall prescribe regulations for carrying on  
21 the business of the Commission and of the Department.

22 31. During Nevada’s 2016 General Election, the voters approved an initiative petition to  
23 legalize the recreational use of marijuana by persons 21 years of age or older (“Regulation and  
24 Taxation of Marijuana Act”).

25 32. The Regulation and Taxation of Marijuana Act required the Department to adopt all  
26 regulations necessary or convenient to carry out the Act no later than January 1, 2018, including  
27 regulations that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a  
28

1 license to operate a marijuana establishment” and “[q]ualifications for licensure that are directly and  
2 demonstrably related to the operation of a marijuana establishment.” NRS 453D.200(1)(a)-(b).  
3 33. On or about May 8, 2017, the Department adopted temporary regulations that expired  
4 on November 1, 2017.  
5 34. Marijuana establishments became licensed under the temporary regulation to sell  
6 adult-use marijuana starting July 1, 2017.  
7 35. The Department drafted proposed regulations and held public workshops from July  
8 24, 2017 through July 27, 2017 on proposed permanent regulations.  
9 36. The draft permanent regulations were submitted to the Legislative Counsel Bureau on  
10 September 9, 2017 and assigned LCB File No. R092-17.  
11 37. On December 16, 2017, the Commission gave notice of its intent to adopt final  
12 marijuana regulations.  
13 38. On January 16, 2018, the Commission unanimously approved the proposed  
14 permanent regulations (“Approved Regulations”).  
15 39. The Approved Regulations became effective February 27, 2018. All provisions  
16 related to the procedures for the issuance, suspension or revocation of licenses issued by the  
17 Department of Taxation for marijuana establishments were implemented immediately.  
18 40. Subsection 1 of Section 76 of the Approved Regulations provides that “[a]t least once  
19 each year, the Department will determine whether a sufficient number of marijuana establishments  
20 exist to serve the people of this State and, if the Department determines that additional marijuana  
21 establishments are necessary, the Department will issue a request for applications to operate a  
22 marijuana establishment.”  
23 41. Pursuant to Subsection 3 of Section 76 of the Approved Regulations, the Department  
24 will accept applications in response to such a request for applications “for 10 business days  
25 beginning on the date which is 45 business days after the date on which the Department issued the  
26 request for applications.”  
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42. Section 77 of the Approved Regulations provides the procedures for an existing  
MME registration certificate holder to apply for one license, of the same type, for recreational  
marijuana.

43. Section 78 of the Approved Regulations provides the procedures for an existing  
MME registration certificate holder to apply for one or more licenses, of the same type or of a  
different type, for recreational marijuana.

44. A license application submitted pursuant to Section 78 of the Approved Regulations  
“must include,” among other things, the following:

a. The physical address where the proposed marijuana establishment will be located  
(Section 78(1)(b)(5) of the Approved Regulations);

b. Documentation concerning the size of the proposed marijuana establishment,  
including, without limitation, building and general floor plans with supporting  
details (Section 78(1)(f) of the Approved Regulations);

c. Proof that the physical address of the prospective marijuana establishment is  
owned by the applicant or that the applicant has the written permission of the  
property owner to operate the proposed marijuana establishment on that property  
(NRS 453D.210(5)(b)); and

d. A response to and information which supports any other criteria the Department  
determines to be relevant, which will be specified and requested by the  
Department at the time the Department issues a request for applications which  
includes the point values that will be allocated to the applicable portions of the  
application pursuant to subsection 2 of Section 76 of the Approved Regulations  
(Section 78(1)(l) of the Approved Regulations).

45. Section 80 of the Approved Regulations provides that when the Department receives  
more than one complete and qualified application for a license for a retail marijuana store in  
response to its request for applications, the Department will rank the applicants in order from first to  
last based on numerous categories of information including, but not limited to:

1 a. Whether the owners, officers, or board members have experience  
2 operating another kind of business that has given them experience  
3 which is applicable to the operation of a marijuana establishment;  
4  
5 b. The diversity of the owners, officers, or board members of the  
6 proposed marijuana establishment;  
7  
8 c. The educational achievements of the owners, officers, or board  
9 members of the proposed marijuana establishment;  
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11 d. The financial plan and resources of the applicant, both liquid and  
12 illiquid;  
13  
14 e. Whether the applicant has an adequate integrated plan for the care,  
15 quality and safekeeping of marijuana from seed to sale;  
16  
17 f. The amount of taxes paid and other beneficial financial  
18 contributions, including, without limitation, civic or philanthropic  
19 involvement with this State or its political subdivisions, by the  
20 applicant or the owners, officers, or board members of the  
21 proposed marijuana establishment;  
22  
23 g. Whether the owners, officers, or board members of the proposed  
24 marijuana establishment have direct experience with the operation  
25 of a medical marijuana establishment or marijuana establishment  
26 in this State and have demonstrated a record of operating such an  
27 establishment in compliance with the laws and regulations of this  
28 State for an adequate period of time to demonstrate success; and

46. Pursuant to Section 91(4) of the Approved Regulations and NRS 453D.210(4)(b), if  
an application for a marijuana establishment license is not approved, the Department must send the  
applicant a notice of rejection setting forth the specific reasons why the Department did not approve  
the license application.

**B. The Department's Request for License Applications**

47. On July 6, 2018 the Department issued a Notice of Intent to Accept Applications for  
Marijuana Licenses ("Notice") and released version 5.4 of the Recreational Marijuana Establishment  
License Application: Recreational Retail Marijuana Store Only, which was dated June 22, 2018  
("Original Application").

48. The footer of the Original Application stated: "*Version 5.4 – 06/22/2018*  
*Recreational Marijuana Establishment License Application*" and consisted of 34 pages.

1 49. The request for applications was limited to existing MME certificate holders seeking  
2 a retail recreational marijuana establishment license pursuant to Section 78 of the Approved  
3 Regulations, and the Notice required that all applications be submitted between 8:00 a.m. on  
4 September 7, 2018 and 5:00 p.m. on September 20, 2018.

5 50. Pursuant to Subsection 2 of Section 76 of the Approved Regulations, the Original  
6 Application included the point values associated with various categories of requested information.  
7 For example, the Original Application assigned 60 points to: “The description of the proposed  
8 organizational structure of the proposed marijuana establishment and information concerning each  
9 owner, officer and board member of the proposed marijuana establishment including the information  
10 provided pursuant to R092-17.”

11 51. Upon information and belief, the rankings referenced in Section 80 of the Approved  
12 Regulations are based on the scores awarded to each applicant for these categories of information  
13 included in the application.

14 52. On or about July 30, 2018 (less than 45 days before applications would be accepted),  
15 the Department released a revised version of the Recreational Marijuana Establishment License  
16 Application: Recreational Retail Marijuana Store Only (“Revised Application”).

8 53. Just like the Original Application, the footer of the Revised Application states:

“Version 5.4 – 06/22/2018 *Recreational Marijuana Establishment License Application*” and consists  
of 34 pages.

54. In the Revised Application, the Department made clerical revisions, clarifying  
revisions, and substantive revisions. The substantive revisions include, but are not limited to, the  
following:

- a. Elimination of the requirement that the application include the proposed physical address of the prospective marijuana establishment;
- b. Elimination of the requirement that applicants prove ownership of the physical address of the prospective marijuana establishment or written permission of the property owner to operate the proposed marijuana establishment on that property; and

c. Revision to the highest-scored category of information in the application (regarding the organizational structure of the proposed marijuana establishment) to now require information about “key personnel” of the proposed marijuana establishment.

55. Neither the Approved Regulations nor NRS Chapter 453D were properly amended to reflect the changes to the Revised Application, and applicants were not given proper notice of the revisions (as license applications were due to be submitted to the Department less than 45 days after the Revised Application was released).

56. Further, it is not detailed in NRS Chapter 453D, the Department’s Approved Regulations, the Original Application, or the Revised Application who will be reviewing the applications and awarding the point totals, whether more than one person is involved in scoring each application (or section of each application), how uniformity is ensured in the scoring process, or what specific information is considered for each criteria when awarding points.

57. For example, when assessing the proposed organizational structure of the proposed recreational retail marijuana establishment and information concerning each owner, officer, and board member (and, potentially, key personnel) of the proposed recreational retail marijuana establishment, how many points are awarded for diversity of the owners, officers, and board members? Are specific races, nationalities, or genders given more points than others?

58. Similarly, when assessing the proposed organizational structure of the proposed recreational retail marijuana establishment and information concerning each owner, officer, and board member (and, potentially, key personnel) of the proposed recreational retail marijuana establishment, how many points are awarded for the educational achievements of the owners, officers, and board members? Are the points based on the cumulative number of years of education of each owner, officer, and board member of the proposed recreational retail marijuana establishment or the highest level of education received by any one officer, owner, or board member of the proposed recreational retail marijuana establishment?

#### C. The Plaintiffs/Petitioners’ Applications

59. Plaintiffs/Petitioners are each existing MME certificate holders.



1                    60.     Plaintiffs/Petitioners each sought retail store licenses for recreational marijuana and  
2 each submitted a Recreational Marijuana Establishment License Application: Recreational Retail  
3 Marijuana Store Only (“Application”) between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on  
4 September 20, 2018.

5                    61.     D.H. Flamingo, which currently holds a retail shop license in Unincorporated Clark  
6 County, submitted applications seeking licenses for the following locations:

- 7                    a.     5701 West Charleston Boulevard in Las Vegas;  
8                    b.     Sunset Road & Decatur Boulevard in Unincorporated Clark County; and  
9                    c.     1901 Civic Center in North Las Vegas.

10                  62.     Inyo, which currently holds a retail shop license in Las Vegas, submitted applications  
11 seeking licenses for the following locations:

- 12                  a.     9744 West Flamingo Road in in Unincorporated Clark County;  
13                  b.     2301 North Decatur Boulevard in Las Vegas;  
14                  c.     43 W. Cheyenne Avenue in North Las Vegas; and  
15                  d.     634 Ryland Street in Reno.

16                  63.     NuVeda submitted applications for a combination of 10 locations on behalf of its  
17 three licensed entities: Clark NMSD LLC, which holds two retail shop licenses in Las Vegas and  
18 North Las Vegas; Nye Natural Medicinal Solutions LLC, which holds a cultivation and production  
19 license; and Clark Natural Medicinal Solutions LLC, which holds a cultivation and production  
20 license:

- 21                  a.     2180 East Craig Road in North Las Vegas;  
22                  b.     330 Emery Street in Nye County;  
23                  c.     Two locations to be determined in Unincorporated Clark County;  
24                  d.     A location to be determined in Las Vegas;  
25                  e.     A location to be determined in Henderson;  
26                  f.     A location to be determined in Carson City;  
27                  g.     A location to be determined in Reno;  
28                  h.     A location to be determined in Unincorporated Washoe County; and

i. A location to be determined in Sparks.

Each of Nu Veda's three MME registration certificate holders (Clark NMSD LLC; Nye Natural Medicinal Solutions LLC; and Clark County Medicinal Solutions LLC) submitted an application for eight of the locations. The applications for North Las Vegas and one of the locations in Unincorporated Clark County were submitted only by Nye Natural Medicinal Solutions, LLC and Clark County Medicinal Solutions, LLC.

**C. The Department's Decision**

On December 5, 2018, the Department provided each applicant with written notice of either the grant or denial of their application for a license.

Upon information and belief, the Department awarded approximately 31 recreational retail marijuana store licenses for Clark County, Nevada.

The Department denied each of the Plaintiffs/Petitioners' applications.

Although Section 91(4) of the Department's Approved Regulations requires that the Department provide a denied applicant with the specific reasons for the denial of the license, the Department merely informed each of the Plaintiffs/Petitioners that it "did not achieve a score high enough to receive an available license" within the applicable jurisdiction.

On December 5, 2018, DH Flamingo requested its score total, pursuant to Section 93(1) of the Department's Approved Regulations, and on December 5, 2018, it was informed that its applications received the following number of points:

- a. Las Vegas – 196;
- b. Unincorporated Clark County – 195.67; and
- c. North Las Vegas – 195.67.

On December 18, 2018, NuVeda requested its score totals, pursuant to Section 93(1) of the Department's Regulations, and on that same day, it was informed that its applications received the following number of points:

- a. Clark Natural Medicinal Solutions, LLC's Applications:
  - i. North Las Vegas – 191.67;
  - ii. Nye County – 191.67;

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- iii. Unincorporated Clark County – 191.67;
- iv. Las Vegas – 191.67;
- v. Unincorporated Clark County – 191.67;
- vi. Henderson – 191.67;
- vii. Carson City – 191.67;
- viii. Reno – 191.67;
- ix. Unincorporated Washoe County – 191.67; and
- x. Sparks – 192.01.
- b. Nye Natural Medicinal Solutions, LLC's Applications:
- i. North Las Vegas – 191.67;
- ii. Nye County – 191.67;
- iii. Unincorporated Clark County – 191.67;
- iv. Las Vegas – 191.67;
- v. Unincorporated Clark County – 191.67;
- vi. Henderson – 191.67;
- vii. Carson City – 191.67;
- viii. Reno – 191.67;
- ix. Unincorporated Washoe County – 191.67; and
- x. Sparks – 191.67.
- c. Clark NMSD, LLC
- i. Nye County – 178.84;
- ii. Las Vegas – 178.84;
- iii. Unincorporated Clark County – 178.84;
- iv. Henderson – 178.84;
- v. Carson City – 178.84;
- vi. Reno – 178.84;
- vii. Unincorporated Washoe County – 178.84; and
- viii. Sparks – 178.84.

71. On December 6, 2018, Inyo requested its score total, pursuant to Section 93(1) of the Department's Regulations, and on December 17, 2018, it was informed that each of its applications scored the exact same number of points:

- a. Las Vegas— 189.68;
- b. Unincorporated Clark County— 189.68;
- c. North Las Vegas— 189.68;
- d. Reno — 189.68.

72. If an applicant wishes to know the scores assigned to each criterion included in the Application, the applicant must, pursuant to Section 93(2) of the Department's Regulations, submit a request to the Department to review this scoring information.

73. On December 5, 2018, DH Flamingo submitted such a request to review its scoring information, and the Department scheduled a meeting with one of its employees on January 9, 2019.

74. DH Flamingo requested that the meeting occur prior to January 4, 2019, so that it could timely appeal the Department's denial of its license application, if such an appeal was warranted, but the Department denied this request.

75. On December 6, 2018, NuVeda, pursuant to Section 93(2) of the Department's Approved Regulations, submitted a request to review its scoring information on the earliest available date, and the Department scheduled the meeting with one of its employees on January 11, 2019.

76. On December 6, 2018, Inyo, pursuant to Section 93(2) of the Department's Approved Regulations, submitted a request to review its scoring information on the earliest available date, and the Department scheduled a meeting with one of its employees on January 9, 2019.

77. Pursuant to Section 93(3) of the Department's Regulations, when the Plaintiffs/Petitioners finally are able to meet with a Department employee to review their scoring information, their meetings will be limited to no more than thirty (30) minutes in duration, and while the Plaintiffs/Petitioners are permitted to take notes during the meeting, they cannot photocopy, scan, record, photograph, or otherwise duplicate any of the records and information they review. They are also not permitted to ask the Department's employee to comment on or otherwise discuss: (1) the

1 scores; (2) the Department's review of the application; or (3) the applications submitted by any other  
2 applicants.

3 78. Neither NRS Chapter 453D nor the Department's Approved Regulations expressly  
4 provide for an appeal or reconsideration of the Department's licensing determination.

5 79. Because the Department has failed to provide the Plaintiffs/Petitioners with written  
6 notice of the specific reasons for the denial of their license application, will not even let them review  
7 the scoring for their license application until after the time to appeal the licensing determination has  
8 run (pursuant to NRS 233B.130), will not let them ask for any explanation as to how their scores for  
9 each criterion was determined, and does not allow them to obtain copies of the scoring for their own  
10 applications or the applications for any of the Recipient Entities or other Denied Entities, the  
11 Department has attempted to deprive the Plaintiffs/Petitioners of any means to: (1) determine  
12 whether the Department accurately scored their applications; (2) appeal the Department's licensing  
13 determinations; or (3) obtain proper judicial review of the Department's administrative decisions.

14 80. Upon information and belief, the Department did not properly score the  
15 Plaintiffs/Petitioners' license applications submitted between 8:00 a.m. on September 7, 2018 and  
16 5:00 p.m. on September 20, 2018.

17 81. Upon information and belief, the Department's ranking and scoring process was  
18 corrupted and the applications of the Recipient Entities were not fairly and accurately scored in  
19 comparison to the Plaintiffs/Petitioners' applications.

20 82. Upon information and belief, the Department improperly allocated licenses and  
21 improperly favored certain applicants to the detriment of the Plaintiffs/Petitioners.

22 83. Plaintiffs/Petitioners are each parties to a proceeding by the Department which  
23 determined their rights, duties, and privileges; namely, the Department's scoring and ranking of  
24 Plaintiffs/Petitioners' applications for a recreational retail marijuana establishment license and the  
25 Department's refusal to issue a conditional license to Plaintiffs/Petitioners.

26 84. The Department's scoring and ranking process was marred by significant errors,  
27 procedural flaws, and/or violations of Nevada law.  
28

1           85.       After publishing the Notice of Intent to Accept Applications on June 6, 2018, the  
2 Department revised the application in violation of the Approved Regulations and NRS Chapter  
3 453D.

4           86.       As such, the Department's scoring and ranking process and subsequent issuance of  
5 conditional recreational retail marijuana establishment licenses was unlawful, arbitrary, capricious,  
6 in excess of the Department's jurisdiction, and clearly erroneous.

7           87.       The Department's scoring and ranking of the applications was unlawful and in excess  
8 of its jurisdiction because the Department eliminated certain categories of application information  
9 clearly required by the Approved Regulations and NRS 453D.210 (i.e., the physical address and  
10 property ownership requirements) without following the proper procedures to amend its Regulations  
11 and/or NRS 453D.210 to officially eliminate these requirements from the license application  
12 process.

13           88.       The Department's scoring and ranking was also unlawful and in excess of its  
14 jurisdiction because the Department added a new category of information to its scoring criterion  
15 (i.e., information relating to key personnel of the proposed recreational retail marijuana  
16 establishment) after issuing its Notice and without clearly informing applicants of the revision.

17           89.       Further, the Department's scoring and ranking of applications was arbitrary and  
18 capricious because it was conducted by unknown persons whose qualifications have never been  
19 made public.

20           90.       The Department's scoring and ranking of applications was also arbitrary and  
21 capricious because the Department has not provided any information to the public regarding how  
22 scores are assessed for each criterion in the Application or any information as to how the Department  
23 ensures uniformity in the assessment of scores by the unknown persons conducting the scoring  
24 process.

25           91.       Moreover, the Department's scoring and ranking was unlawful and in excess of its  
26 jurisdiction because the process of scoring and ranking the license applications submitted between  
27 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018 was corrupted and certain  
28 application were favored over others.

92. Finally, the denial of the Plaintiffs/Petitioners' applications for recreational retail marijuana establishment licenses was clearly erroneous, unlawful, arbitrary, capricious, and in excess of the Department's jurisdiction, because the Department has failed to provide the specific reasons for the denial of the applications and has not provided any record demonstrating the basis for the denial of the applications.

93. Upon information and belief, a complete review of the record will show that the Department's final scoring and ranking of the Plaintiffs/Petitioners', Denied Entities', and Recipient Entities' applications was arbitrary, capricious, and clearly erroneous.

94. Plaintiffs/Petitioners request that the entire record of the Department's scoring and ranking (not only for the Plaintiffs/Petitioners' applications, but also the applications submitted by each of the Denied Entities and Recipient Entities) – including the process by which the scorers were hired, the qualifications of the scorers, and the guidelines and procedures followed by the scorers to ensure uniformity in assessing the scores and ranks – be immediately provided for review.

#### IV. CLAIMS FOR RELIEF

##### First Claim for Relief: Injunctive Relief Against the Department

95. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-93, inclusive.

96. As set forth above, the Department's denial and award of licenses for recreational retail marijuana establishments was unlawful, clearly erroneous, arbitrary, capricious, and in excess of the Department's jurisdiction.

97. As a result of the Department's unlawful, erroneous, arbitrary, and capricious denial of the Plaintiffs/Petitioners' applications for recreational retail marijuana establishment licenses, the Plaintiffs/Petitioners have each suffered and continue to suffer irreparable harm with no adequate remedy at law.

98. The Department will suffer no harm by: (1) releasing the record for the entire application review, scoring, and ranking proceeding for the applications submitted by the Plaintiffs/Petitioners, the Denied Entities, and the Recipient Entities; (2) releasing information about the identity and qualifications of the individuals conducting the scoring and ranking of the

1 applications; (3) releasing information about the policies and procedures governing the scorers for  
2 the applications and ensuring uniformity in the scoring and ranking process; (4) providing applicants  
3 with specific reasons for the denial of their license applications in compliance with the Approved  
4 Regulations and NRS 453D.210(4)(b); and/or (5) conducting a review, scoring, and ranking of  
5 applications for recreational retail marijuana establishment licenses with qualified scorers who are  
6 governed by express, detailed policies and procedures which comply with the Approved Regulations  
7 and NRS Chapter 453D.

8 99. The Plaintiffs/Petitioners are likely to succeed on the merits in this litigation.

9 100. The public interest favors Plaintiffs/Petitioners because the actions and decisions of  
10 an agency of the State should comply with Nevada laws and regulations, should be free of any  
11 corruption, and should not be arbitrary and capricious.

12 101. After the Plaintiffs/Petitioners meet with Department employees to obtain any  
13 available information regarding the scoring of the applications and the specific reasons for the denial  
14 of their applications, the Plaintiffs/Petitioners intend to file a Motion for Preliminary Injunction.

15 102. Plaintiffs/Petitioners are entitled to preliminary injunctive relief, and after a trial on  
16 the merits, permanent injunctive relief, ordering the Department as follows:

- 17 a. To disclose all applications and scoring information for every applicant  
18 seeking a recreational retail marijuana establishment license between 8:00  
19 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
- 20 b. To disclose the identities and qualifications of the scorers for the applications  
21 for recreational retail marijuana establishment licenses submitted between  
22 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
- 23 c. To disclose the policies, procedures, guidelines, and/or regulations which  
24 governed how the scorers assessed points to each criterion in the license  
25 application and how uniformity was ensured in the scoring assessment process  
26 for the applications submitted between 8:00 a.m. on September 7, 2018 and  
27 5:00 p.m. on September 20, 2018;
- 28



- d. To cease issuing any conditional licenses to applicants whose applications were approved on December 5, 2018;
- e. To revoke any conditional licenses already issued on or after December 5, 2018; and
- f. To conduct the recreational retail marijuana establishment license application process again, with scoring and ranking to be consistent with the Approved Regulations, NRS Chapter 453D, and the new policies and procedures implemented for the scorers.

**Second Claim for Relief: Declaratory Relief Against the Department**

103. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-101, inclusive.

104. The Department has denied the Plaintiffs/Petitioners recreational retail marijuana establishment license applications.

105. The basis for the denial is unknown because the Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of the Approved Regulations and did not inform the Plaintiffs/Petitioners of the specific reasons for the denial of the license applications.

106. The Plaintiffs/Petitioners contend that the denial of their license applications was unlawful, arbitrary, capricious, clearly erroneous, and in excess of the jurisdiction of the Department.

107. The parties' dispute presents an actual justiciable controversy.

108. The Plaintiffs/Petitioners request a declaratory judgment that:

- a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of the Approved Regulations; and
- b. The Department's scoring and ranking of the applications submitted for recreational retail marijuana establishment licenses between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018 was arbitrary, capricious, unlawful, clearly erroneous, and in excess of the Department's jurisdiction.

**Third Claim for Relief: Petition for Judicial Review**

109. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-107, inclusive.

110. Plaintiff/Petitioners are parties to a proceeding at the Department—specifically, the review, scoring, and ranking of applications for and issuance of recreational retail marijuana establishment licenses—and have been aggrieved by what the Department claims is its final decision.

111. Under NRS 233B.010, *et seq.*, Plaintiffs/Petitioners are entitled to Judicial Review of the proceeding at the Division by which they were denied the rights and privileges afforded to them by Nevada law.

112. Accordingly, Plaintiffs/Petitioners petition this Court for Judicial Review of the proceeding at the Department whereby their applications for recreational retail marijuana establishment licenses were reviewed, scored, and ranked, and demand that the entire record of the proceeding (for each and every application submitted by the Plaintiffs/Petitioners, the Denied Entities, and the Recipient Entities) be transmitted in accordance with NRS 233B.131.

**Fourth Claim for Relief: Petition for Writ of Certiorari**

113. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-111, inclusive.

114. The Department has exceeded its jurisdiction to review, score, and rank applications for recreational retail marijuana establishment licenses and to issue recreational retail marijuana establishment licenses by, among other things, employing unqualified and improperly trained employees to conduct the review, scoring, and ranking of applications; by failing to ensure uniformity in the assessment of the applications and the assignment of scores to various categories of information in the applications; by allowing the license application process to be corrupted; by unfairly favoring certain applicants over others; by eliminating categories of information from the license application despite such categories being required under the Approved Regulations and/or NRS Chapter 453D; by adding a new category of information to the license application after issuing the Notice for license application submissions and without providing adequate notice to the license

1 applicants; and by failing to inform the Plaintiffs/Petitioners of the specific reasons for the denial of  
2 their applications.

3 115. There is no provision in NRS Chapter 453D or the Department's Regulations which  
4 expressly allows for an administrative appeal of the Department's decision, and, therefore, apart  
5 from injunctive relief, there is no plain, speedy, and adequate remedy for the Department's improper  
6 actions.

7 116. Plaintiffs/Petitioners petition this Court for a writ of certiorari regarding the  
8 Department's reviewing, scoring, and ranking of Plaintiffs/Petitioners' applications for recreational  
9 retail marijuana establishment licenses, and the Plaintiffs/Petitioners intend to file an application for  
10 a writ of certiorari after their upcoming meetings with Department employees regarding the scoring  
11 of their applications.

12 117. Plaintiffs/Petitioners also request that the Court order the Department to provide the  
13 complete record of the Department's proceeding with respect to the Plaintiffs/Petitioners'  
14 applications for recreational retail marijuana establishment licenses (along with the complete record  
15 of the Department's proceeding for each of the applications for the Denied Entities and the Recipient  
16 Entities), and to restrain the Department from any further proceedings with respect to the issuance or  
17 recognition of new conditional recreational retail marijuana establishment licenses.

18 **Fifth Claim for Relief: Petition for Writ of Mandamus**

19 118. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained  
20 in paragraphs 1-116, inclusive.

21 119. The Department has failed to perform an act which the law compels it to perform;  
22 specifically, (1) to inform applicants for recreational retail marijuana establishment licenses of the  
23 specific reasons for the denial of their license application, in accordance with NRS 453D.210(4)(b)  
24 and Section 91(4) of the Department's Approved Regulations; and (2) to review license applications  
25 and issue licenses in compliance with Nevada laws and regulations.

26 120. There is no plain, speedy, and adequate remedy in the ordinary course of law to  
27 correct the Division's failure to perform the acts required by law.  
28

121. The Plaintiffs/Petitioners therefore petition this Court to issue a writ of mandamus to the Department compelling them to: (1) provide the Plaintiffs/Petitioners with the specific reasons that their license applications were scored and ranked lower than other applications and why their license applications were denied; and (2) issue a new Notice for recreational retail marijuana establishment license applications and to conduct the scoring and ranking of such applications in accordance with Nevada law and the Approved Regulations.

122. The Plaintiffs/Petitioners intend to file an application for this writ of mandamus after their upcoming meetings with Department employees regarding the scoring of their applications.

**Sixth Claim for Relief: Petition for Writ of Prohibition**

123. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-121, inclusive.

124. The Department has issued conditional recreational retail marijuana establishment licenses in excess of its jurisdiction by, among other things: (1) eliminating key categories of information from the application (despite the Approved Regulations and NRS Chapter 453D requiring that the Department consider such information); and (2) by adding a new category of information to the application after it issued its Notice for license applications and failing to adequately inform license applicants of this new category of information.

125. There is no plain, speedy, and adequate remedy in the ordinary course of law to correct the Department's improper review, scoring, and ranking of the license applications or the issuance of the conditional recreational retail marijuana establishment licenses.

126. Plaintiffs/Petitioners therefore petition the Court to issue a writ of prohibition which prohibits the Department from issuing and/or recognizing any new recreational retail marijuana establishment licenses for applicants who submitted a license application between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

127. The Plaintiffs/Petitioners intend to file an application for a writ of prohibition after their upcoming meetings with Department employees regarding the scoring of their applications.

WHEREFORE, Plaintiffs/Petitioners pray for the following relief:

1. For preliminary injunctive relief, and after a trial, permanent injunctive relief, ordering the Department:

- a. To disclose all applications and scoring information for every applicant seeking a recreational retail marijuana establishment license between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
  - b. To disclose the identities and qualifications of the scorers for the applications for recreational retail marijuana establishment licenses submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
  - c. To disclose the policies, procedures, guidelines, and/or regulations which governed how the scorers assessed points to each criterion in the license application and how uniformity was ensured in the scoring assessment process for the applications submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
  - d. To cease issuing any conditional licenses to applicants whose applications were approved on December 5, 2018;
  - e. To revoke any conditional licenses already issued on or after December 5, 2018; and
  - f. To conduct the recreational retail marijuana establishment license application process again, with scoring and ranking to be consistent with the Approved Regulations, NRS Chapter 453D, and the new policies and procedures for the scorers.
2. For a declaratory judgment that:
- a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of the Approved Regulations; and
  - b. The Department's scoring and ranking of the applications submitted for recreational retail marijuana establishment licenses between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018 was arbitrary,

capricious, unlawful, clearly erroneous, and in excess of the Department's jurisdiction.

3. Judicial Review of the Department's review, scoring, and ranking of applications for recreational retail marijuana establishment licenses submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018, and an order that the entire record of the Department's proceeding (for each and every application submitted by the Plaintiffs/Petitioners, the Denied Entities, and the Recipient Entities) be transmitted in accordance with NRS 233B.131.

4. A writ of certiorari ordering the review of the Department's review, scoring, and ranking of applications for recreational retail marijuana establishment licenses submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018; an order that the Department provide the complete record of the Department's proceeding with respect to the Plaintiffs/Petitioners' applications for recreational retail marijuana establishment licenses (along with the complete record of the Department's proceeding for all other applications submitted by the Denied Entities and the Recipient Entities); and an order restraining the Department from conducting any further proceedings with respect to the issuance or recognition of new conditional recreational retail marijuana establishment licenses.

5. A writ of mandamus compelling the Department to: (1) provide the Plaintiffs/Petitioners with the specific reasons that their license applications were scored and ranked lower than other applications and why their license applications were denied; and (2) issue a new Notice for recreational retail marijuana establishment license applications and to conduct the scoring and ranking of such applications in accordance with Nevada law and the Approved Regulations.

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6. A writ of prohibition barring the Department from issuing and/or recognizing any new recreational retail marijuana establishment licenses based on applications submitted between

8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

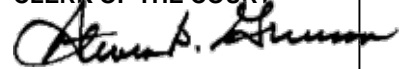
DATED this 4<sup>th</sup> day of January, 2019.

BAILEY ❖ KENNEDY

By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY  
JOSHUA M. DICKEY  
SARAHE. HARMON  
KELLY B. STOUT

*Attorneys for Plaintiffs/Petitioners*  
D.H. FLAMINGO, INC., d/b/a THE  
APOTHECARY SHOPPE; CLARK  
NATURAL MEDICINAL SOLUTIONS  
LLC, d/b/a NuVEDA; NYE NATURAL  
MEDICINAL SOLUTIONS LLC, d/b/a  
NuVEDA; CLARK NMDS LLC, d/b/a  
NuVEDA; and INYO FINE  
CANNABIS DISPENSARY L.L.C.,  
d/b/a INYO FINE CANNABIS  
DISPENSARY



James J. Pisanelli, Esq., Bar No. 4027  
[JJP@pisanellibice.com](mailto:JJP@pisanellibice.com)  
Todd L. Bice, Esq., Bar No. 4534  
[TLB@pisanellibice.com](mailto:TLB@pisanellibice.com)  
Jordan T. Smith, Esq., Bar No. 12097  
[JTS@pisanellibice.com](mailto:JTS@pisanellibice.com)  
Dustun H. Holmes, Esq., Bar No. 12776  
[DHH@pisanellibice.com](mailto:DHH@pisanellibice.com)  
PISANELLI BICE PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: 702.214.2100  
Facsimile: 702.214.2101

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ARMEN YEMENIDJIAN, an individual,  
Plaintiff,

v.

NICOLA SPIRTOS, an individual;  
DOES 1-20; and ROES 1-20,  
Defendants.

Case No.: A-19-804785-C

Dept. No.: 22

**OPPOSITION TO SPECIAL MOTION  
TO DISMISS PURSUANT TO NRS  
41.660, OR IN THE ALTERNATIVE,  
MOTION TO DISMISS PURSUANT TO  
NRCPC 12(B)(5)**

Hearing Date: January 23, 2020

Hearing Time: 9:00 a.m.

**I. INTRODUCTION**

Defendant Nicola Spirtos' ("Spirtos") attempt to enlist Nevada's anti-SLAPP statute, NRS 41.650, to immunize his slander of a business competitor is simply groundless. Nevada's anti-SLAPP statute protects citizens who make truthful statements in good faith about matters of public importance, principally when those statements are made to government officials in an attempt to achieve some legitimate government action. Yet, Plaintiff Armen Yemenidjian's ("Yemenidjian") claims against Spirtos is in no way a strategic lawsuit against public participation ("SLAPP") and Spirtos admits as much. Spirtos admits he had no factual basis to accuse Yemenidjian of any form of impropriety, let alone insinuating criminal activity. Thus, Spirtos says that he's never disparaged Yemenidjian, a denial that takes Spirtos outside of NRS 41.650's operation. After all, a party cannot claim the statute's protections when they



1 simultaneously claim that they made no statements that would fall within the statute's purview.  
2 Besides that, as the attached affidavit confirms, Spirtos did indeed make the slanderous statement  
3 at a late-night party.

4 Spirtos similarly misstates Nevada's litigation privilege, erroneously suggesting that  
5 because a company with which he was affiliated had filed a lawsuit, any gossip he spreads  
6 anywhere – no matter how false and improper – is immune from liability. The Nevada Supreme  
7 Court has held the exact opposite. Contrary to Spirtos' wants and needs, Nevada law does not  
8 protect baseless smear and gossip campaigns against ones' business competitors.

9 Finally, cognizant that his claims of immunity fail, Spirtos argues that Yemenidjian's  
10 claims for conspiracy and request for punitive damages should somehow be dismissed under  
11 NRCP 12(b)(5). But Spirtos confesses a lack of merit to that request when he resorts to  
12 misapplying federal cases needing to sidestep Nevada's notice pleading standard. Under Nevada  
13 law, all factual allegations must be accepted as true, and Yemenidjian's allegations plainly state a  
14 claim for conspiracy and entitlement to punitive damages. Although Yemenidjian is not a  
15 limited-purpose public figure as Spirtos suggests, that argument is irrelevant at this point because  
16 the Complaint alleges that Spirtos' statements were made with actual malice. After all, Spirtos  
17 admits that he had no basis to suggest any impropriety by Yemenidjian. Making a false  
18 statement without any factual basis – as Spirtos is alleged to have done – is the very definition of  
19 actual malice.

20 Spirtos' motion is meritless and must be denied.

## 21 **II. BACKGROUND**

22 The facts giving rise to this narrow case are straightforward: Spirtos is a successful doctor  
23 who for years wanted to become a successful cannabis operator, ever since Nevada first legalized  
24 medical marijuana. But Spirtos had to initially muscle his way into the business through  
25 litigation. When he proved unsuccessful (again) in the latest licensing rounds, Spirtos again  
26 resorted to lashing out, this time slandering someone – Yemenidjian – who has proven successful  
27 in the business. Spirtos admits that he has no factual basis to accuse Yemenidjian of any  
28 impropriety, let alone criminal corruption of the regulatory process, but that is precisely what

1 Spirtos did. As set forth in the Complaint, and as confirmed by the attached affidavit, Spirtos  
2 accused Yemenidjian of corruption in a private conversation that Spirtos had with Jon Ocegüera.  
3 Spirtos accused Yemenidjian of engaging in criminal activity in order to obtain licenses. (Exhibit  
4 1.) Ocegüera understood Spirtos' statement to accuse Yemenidjian of criminal activity. (*Id.* ¶ 8.)  
5 Thus, Spirtos' self-serving denials are expressly controverted by the recipient of the slanderous  
6 statement.

7 Not only has Spirtos engaged in spreading malicious falsehoods against Yemenidjian  
8 outside of court, Spirtos embarrasses himself further in his motion before this Court. Now,  
9 according to Spirtos' motion, the timing of Yemenidjian's lawsuit is supposedly in response to  
10 Spirtos' reporting Yemenidjian to the Federal Bureau of Investigation. (Mot. at 3.) Yet, this is  
11 more desperate spin by Spirtos' counsel. In his deposition, Spirtos admitted he said nothing to  
12 the FBI about Yemenidjian, because Spirtos had no evidence of any improprieties by  
13 Yemenidjian. (Ex. 2, Depo. Tr. of N. Spirtos, Oct. 9, 2019, at 147:3-5.) Simply put, Spirtos is  
14 just incapable of being honest. Spirtos' own motion advances stories to this Court that are  
15 contrary to his testimony in other proceedings.

16 The evidence – which must be viewed in the light most favorable to Yemenidjian – is  
17 simple: Spirtos maliciously slandered Yemenidjian, admitting he had no basis to suggest  
18 Yemenidjian had done anything improper, because Spirtos lashed out to harm the reputation of a  
19 successful competitor. There is no law in Nevada that provides quarter for such disgraceful  
20 conduct. Spirtos' attempt at evading accountability fails.

### 21 III. ARGUMENT

#### 22 A. Nevada's Anti-SLAPP Law does not apply here.

23 Spirtos' enlistment of Nevada's anti-SLAPP statute is odd, considering that Spirtos claims  
24 he made no statements about Yemenidjian. After all, the very purpose of that statute is to  
25 provide limited protection when someone makes a good-faith communication on a matter of  
26 public importance. NRS 41.637. But here, Spirtos claims that he made no statement about  
27 Yemenidjian whatsoever and thus how the statute would even apply is never explained by  
28 Spirtos. Again, under Nevada law, to even trigger the statute, Spirtos has the burden to show

1 that he made a protected communication in good faith, the very communication he now says  
2 didn't occur. NRS 41.660(3)(a); *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019). How can  
3 Spirtos satisfy good faith when he denies making the statement? "Only after the movant has  
4 shown that he or she made the protected statement in good faith do we move to prong two and  
5 evaluate 'whether the plaintiff has demonstrated with prima facie evidence a probability of  
6 prevailing on the claim.'" *Rosen*, 135 Nev. Adv. Op. 59 (quoting NRS 41.660(3)(b)).

7 Spirtos never claims that his communication with Ocegüera were made in good faith; he  
8 conveniently omits that portion of the analysis, hypothesizing instead that a different  
9 communication could somehow be protected. (Mot. at 8-9.) Spirtos declares that he never  
10 mentioned Yemenidjian in his conversation with Ocegüera, and instead spoke only generally  
11 about generic corruption in the application process. (*Id.* at 9; Ex. C to Mot., ¶ 21.)

12 This denial is self-serving, and flies in the face of the fundamental purpose of the anti-  
13 SLAPP statute to protect good faith communications. NRS 41.650. Spirtos cannot hedge his  
14 bets and say that he did not make slanderous statements, but simultaneously say he acted in good  
15 faith when making the statement. Besides, Spirtos' denial is directly controverted. As confirmed  
16 by Ocegüera, Spirtos did in fact slander Yemenidjian at the Inaugural Gala on January 18, 2019.  
17 (Ex. 1, ¶¶ 8-9.) And, as this Court knows, because Spirtos' special motion to dismiss is treated as  
18 one for summary judgment under NRCP 56, the evidence submitted by Yemenidjian must be  
19 viewed in the light most favorable to him. *Rosen*, 135 Nev. Adv. Op. 59. Thus, Ocegüera's  
20 direct contravention of Spirtos is a material issue of fact for the jury and necessarily forecloses  
21 Spirtos' motion. (Ex. 1, ¶¶ 8-9.)

22 Indeed, at the time of trial, the only issue will be whether Spirtos made the statement,  
23 since Spirtos admits that if he did it was knowingly false. During his testimony in other  
24 proceedings, Spirtos admitted that he lacked any facts upon which to make such an accusation  
25 against Yemenidjian. (Ex. 2, 147:3-5 ("Q: Do you have any facts that Mr. Yemenidjian has  
26 committed any crime whatsoever? A: No. . . .").) Hence, by Spirtos' own admissions, the  
27 statements he made to Ocegüera were not in good faith and were knowingly false, because  
28 Spirtos lacked any factual basis upon which to accuse Yemenidjian.

1 Even on top of that fatal flaw, Spirtos also fails the next step under Nevada's anti-SLAPP  
2 statute. Spirtos claims that because his company, D.H. Flamingo had commenced a lawsuit  
3 around the time of his discussions with Ocegüera, any such statement would somehow constitute  
4 a "[w]ritten or oral statement made in direct connection with an issue under consideration by a . .  
5 . judicial body, . . ." NRS 41.637(3). But allowing anti-SLAPP protection to any false  
6 statements made at a private party just because a lawsuit had been filed would turn Nevada law  
7 on its head and undermine the entire purpose of the anti-SLAPP statute. *Patin v. Ton Vinh Lee*,  
8 134 Nev. 722, 726-27, 429 P.3d 1248, 1251-52 (2018). Indeed, "in order for a statement to be  
9 protected under NRS 41.637(3), which requires a statement to be '*in direct* connection with an  
10 issue under consideration by a . . . judicial body,' the statement must (1) relate to the substantive  
11 issues in the litigation and (2) be directed to persons having some interest in the litigation." *Id.* at  
12 726, 429 P.3d at 1251 (emphasis in original).

13 Confessing the obvious, Spirtos fails to address this standard. Even Spirtos' supposed  
14 statements about potential corruption were hardly substantive issues in the litigation at the time  
15 of Spirtos' statements, and Spirtos fails to demonstrate that Ocegüera had some interest in the  
16 litigation. In *Patin*, the Nevada Supreme Court drew a direct comparison between "some interest  
17 in the litigation" in NRS 41.637 and the requirements for the litigation privilege as set forth  
18 *Shapiro v. Welt*, 133 Nev. 35, 41, 389 P.3d 262, 269 (2017). *Id.* at n. 4. "For a statement to fall  
19 within the scope of the absolute litigation privilege it must be made to a recipient who has a  
20 significant interest in the outcome of the litigation or who has a role in the litigation." *Shapiro*,  
21 133 Nev. at 41, 389 P.3d at 269.

22 Spirtos' slander also did not relate to a matter of public interest so as to be protected by  
23 the anti-SLAPP statute. The Court must consider whether, at the time of the statement it was  
24 "made in direct connection with an issue of public interest in a place open to the public or in a  
25 public forum." NRS 41.637(4). To support his motion, Spirtos identifies certain media coverage  
26 of the lawsuit. (Ex. B to Mot.) Yet, only one of the articles Spirtos identified had been  
27 published at the time of Spirtos' statements on January 18, 2019 and the article never mentions  
28 any supposed corruption. (See Ex. 1 to Ex. B to Mot. (*Marijuana Companies Denied Nevada*

1 *Dispensary Licenses Sues State, Alleges 'Flawed Interpretation' of Law*, Nevada Independent,  
2 Dec. 14, 2018).)

3 In *Coker v. Sassone*, the Nevada Supreme Court identified the guiding principles to  
4 determine whether an issue of public interest under NRS 41.637(4):

- 5 (1) "public interest" does not equate with mere curiosity;  
6 (2) a matter of public interest should be something of concern to a substantial  
7 number of people; a matter of concern to a speaker and a relatively small specific  
8 audience is not a matter of public interest;  
9 (3) there should be some degree of closeness between the challenged statements  
10 and the asserted public interest—the assertion of a broad and amorphous public  
11 interest is not sufficient;  
12 (4) the focus of the speaker's conduct should be the public interest rather than a  
13 mere effort to gather ammunition for another round of private controversy; and  
14 (5) a person cannot turn otherwise private information into a matter of public  
15 interest simply by communicating it to a large number of people.

16 135 Nev. 8, 13, 432 P.3d 746, 750 (2019) (citing *Shapiro*, 133 Nev. at 39, 389 P.3d at 268).

17 Spiritos' spreading of gossip at an invitation-only function satisfies none of the Supreme  
18 Court's criteria. Instead, the D.H. Flamingo lawsuit and Spiritos' attempts to undermine  
19 Yemenidjian go to Spiritos' personal financial interests. Spiritos' smear campaign about a  
20 business competitor does not constitute an issue of public interest.<sup>1</sup>

21 Because Spiritos' statements about Yemenidjian to Ocegura were not good faith  
22 communications in direct connection with an issue of public concern, the Court need not to  
23 determine whether Yemenidjian can present prima facie evidence demonstrating a probability of  
24 prevailing on his claims. NRS 41.660(3)(b). However, Yemenidjian has plainly done so. *Nev.*  
25 *Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 409, 664 P.2d 337, 341 (1983) (accusing another of  
26 impropriety in business, particularly criminal impropriety, is the very definition of slander per se).  
27 Spiritos did specifically mention Yemenidjian in his conversation with Ocegura on January 18,  
28 2019, his self-serving denials notwithstanding. (Ex. 1, ¶ 8.)

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26 <sup>1</sup> Nor does the Governor's Inaugural Gala constitute "a place open to the public," within  
27 NRS 41.637(4). Unlike a public meeting, the Inaugural Gala was sponsored by the Sisolak  
28 Inaugural Committee PAC, and invited individuals, entities, or PACs to contribute. (Ex. 3,  
Exhibit 2 to Spiritos' Deposition.) Spiritos admits that D.H. Flamingo purchased a table at the  
Inaugural Gala, which is how he gained access. (Ex. C to Mot., ¶ 20.)

**B. The Litigation Privilege Does Not Protect Spirtos.**

Spirtos next boldly claims that because D.H. Flamingo had filed litigation, he is then absolved of any responsibility for any false statements he makes, including at private functions to people not involved. (Mot. at 9-10.) But, like his arguments about Nevada's anti-SLAPP statute, Spirtos misstates the scope and purpose of the litigation privilege. The purpose of the litigation privilege is to protect litigation participants from liability or their advocacy before the court. *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d 640, 643 (2002). The privilege exists so as to protect the merits of judicial proceedings, because the law has made the policy choice that it is better to promote zealous advocacy before the court despite the risk of potential abuse with false statements.<sup>2</sup> *Id.*

But outside the courthouse, the litigation privilege has limited application, and is only implicated when a statement is made relating to the litigation and if the recipient of the communication has a "significant interest" in the litigation, such as when lawyers/litigants communicate outside court regarding potential settlement. *Id.* at 436, 49 P.3d at 645–46. Even then, the statement must be sufficiently relevant to the litigation in order to fall within the litigation privilege. *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 62, 657 P.2d 101, 105 (1983).

Spirtos' motion fails to make any showing of how his communication with Ocegüera was related to the litigation or that Ocegüera had any interest in it, let alone the "significant" interest the law demands. "In order to determine whether a person who is not directly involved in the judicial proceeding may still be 'significantly interested in the proceeding,' the district court must review 'the recipient's legal relationship to the litigation, not their interest as an observer.'" *Shapiro*, 133 Nev. at 41, 389 P.3d at 269 (quoting *Jacobs v. Adelson*, 130 Nev. 408, 416, 325 P.3d 1282, 1287 (2014)). Ocegüera is not a party to the D.H. Flamingo lawsuit. There is nothing before this Court on a motion to dismiss to permit Spirtos to make a claim of litigation

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<sup>2</sup> After all, the court retains the power to sanction any misconduct that occurs during the judicial proceedings.

1 privilege. Contrary to his wants, the litigation privilege does not permit his spreading of lies  
2 outside of court.

3 **C. Sirtos Ignores Nevada's Standard under Rule 12(b)(5).**

4 Cognizant that his assertions of privilege and anti-SLAPP will fail, Sirtos claims that  
5 certain of the Complaint's claims should be dismissed for failure to state a claim. But further  
6 confirming his lack of legal merit, Sirtos ignores Nevada law and instead selectively chooses  
7 inapplicable pleading standards from other jurisdictions that have no relevancy here. Nevada is a  
8 notice pleading state. *Stubbs v. Strickland*, 129 Nev. 146, 153, 297 P.3d 326, 330 (2013). A  
9 plaintiff need only provide a "short and plain statement of the claim showing that the pleader is  
10 entitled to relief" and a "demand for the relief sought." NRCP 8(a)(2)-(3). Thus, under Nevada  
11 Rule of Civil Procedure 12(b)(5), "[a] complaint should be dismissed for failure to state a claim  
12 'only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it  
13 to relief.'" *DeBoer v. Sr. Bridges of Sparks Fam. Hosp.*, 128 Nev. 406, 410, 282 P.3d 727, 730  
14 (2012) (quoting *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672  
15 (2008)).

16 The court must accept all of the plaintiff's factual allegations as true and must draw all  
17 reasonable inferences in the plaintiff's favor. *Id.* Nevada has rejected the heightened  
18 "plausibility" federal standard, which Sirtos advances as requiring that "a complaint must  
19 contain sufficient factual matter to 'state a claim to relief that is plausible on its face.'" *Chavez v.*  
20 *California Reconveyance Co.*, 2:10-CV-00325-RLHLRL, 2010 WL 2545006, at \*1 (D. Nev. June  
21 18, 2010) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). But as shown below, not  
22 only is Sirtos misstated the pleading standard, Yemenidjian's Complaint plainly states  
23 cognizable claims for slander per se, civil conspiracy and shows an entitlement to punitive  
24 damages.

25 ***i. The Complaint states a Claim for Civil Conspiracy.***

26 Sirtos claims to identify four reasons to dismiss the civil conspiracy claim. These  
27 arguments all rely on out of jurisdiction case law intended to impose a heightened pleading  
28 burden, on one that does not exist here. Again, Nevada is a notice pleading state, and a

1 complaint need only give "fair notice of the nature and basis of the claim." *Vacation Vil., Inc. v.*  
2 *Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994).

3 The Complaint does just what the law requires, detailing Spirtos' conduct that was  
4 intended to harm Yemenidjian. Despite knowing that Nevada has not adopted the heightened  
5 federal pleading standard, Spirtos' second and third argument rely solely on federal cases to  
6 claim that Yemenidjian's conspiracy claim is insufficiently pled. (Mot. at 10-12.) *See, e.g.*,  
7 *Chavez*, 2:10-CV-00325-RLHLRL, 2010 WL 2545006, at \*1; *Davis v. 1568 Broadway Hotel*  
8 *Mgmt. LLC DoubleTree Hotel Times Square*, 17-CV-1895 (VEC), 2018 WL 317849, at \*1  
9 (S.D.N.Y. Jan. 5, 2018) (same); *Galicki v. New Jersey*, CIV.A. 14-169 JLL, 2015 WL 3970297,  
10 at \*2 (D.N.J. June 29, 2015) (same). Spirtos cannot identify any Nevada cases to show that  
11 Yemenidjian's claims do not give him fair notice of the nature and basis of the civil conspiracy  
12 claim. After all, unlike elsewhere, Nevada law recognizes the claim for civil conspiracy for the  
13 doing of a wrongful act in conjunction with another. *Guilfoyle v. Olde Manmouth Stock Transfer*  
14 *Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 198-99 (2014).

15 Spirtos also argues that the claim should be dismissed because he "is the sole non-  
16 fictitious defendant named in the claim." (Mot. at 10.) Yet, this acknowledges that the  
17 complaint identifies Doe and Roe defendants who have conspired with Spirtos. Neither  
18 defamation nor conspiracy concerning defamation are claims governed by NRCP 9, as Spirtos  
19 pretends.<sup>3</sup> A claim for conspiracy stems from concerted action between two or more persons.  
20 *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 117-18, 345 P.3d 1049, 1052 (2015).

21 But even Spirtos acknowledges that there is no case mandating that a plaintiff must name  
22 each and every potential defendant – let alone in the initial pleading – in order to state a  
23 conspiracy claim. (Mot. at 10.) In fact, the only Nevada law case that Spirtos cites – a federal  
24 decision – states only that it would be difficult to ultimately prove a conspiracy claim against a  
25 single defendant, not that the claim can be dismissed if only one party is named as a defendant in  
26

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27 <sup>3</sup> Spirtos' citation to cases involving conspiracy to commit fraud or other acts that are  
28 governed by Rule 9, are wholly inapplicable. The underlying claim for defamation does not  
implicate Rule 9, thus, neither does a claim for conspiracy related to that underlying tort.



1 the initial pleading. *Voga v. U.S. Bank*, No. 3:11-CV-316-RCJ-VPC, 2011 WL 50180978, at \*7  
2 (D. Nev. Oct. 27, 2011).

3 Finally, Spirtos' final argument for dismissal of the conspiracy claim is that it is  
4 duplicative of the claim for slander per se. This both ignores the law that acts can give rise to  
5 more than one cause of action as well as misconstrues the claims. While his claim for slander  
6 per se arises out of Spirtos' statement to Ocegüera, the claim for civil conspiracy is broader. As  
7 the complaint alleges, Spirtos and the Doe and Roe Defendants undertook a campaign to  
8 undermine Yemenidjian and his business. Through his backroom maneuvering, Spirtos worked  
9 to slander and spread lies about Yemenidjian to harm him in his business. These are adequately  
10 pled claims.

11 ***ii. Yemenidjian is Not a Limited Purpose Public Figure, but His Complaint***  
12 ***Alleges Actual Malice Nonetheless.***

13 To state a claim for slander or defamation, a complaint need only state "(1) a false and  
14 defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to  
15 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages."  
16 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002) (quoting *Chowdhry*  
17 *v. NLH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993).) The complaint alleges the necessary  
18 facts of each such element. On January 18, 2019, Spirtos told Ocegüera that Yemenidjian was  
19 actively involved in outright corruption in order to secure licenses. (Compl. ¶¶ 16-17.) In doing  
20 so, he committed slander per se against Yemenidjian. Stating that the plaintiff committed a crime  
21 or making an allegation that would tend to injure the plaintiff in his trade, business, profession, or  
22 officer constitutes slander per se. *Nev. Indep. Broad. Corp.*, 99 Nev. at 409, 664 P.2d at 341.

23 In response, Spirtos argues that Yemenidjian is a limited-purpose public figure in order to  
24 require Yemenidjian to plead that Spirtos acted with actual malice. But whether a plaintiff is a  
25 limited-purpose public figure and requires a fact-based analysis into "whether the person's role in  
26 a matter of public concern is voluntary and prominent." *Bongiovi v. Sullivan*, 122 Nev. 556, 572,  
27 138 P.3d 433, 445 (2006). "This is determined by examining the "nature and extend of an  
28

individual's participation in the particular controversy giving rise to the defamation.'" *Id.* (quoting *Pegasus*, 118 Nev. at 720, 57 P.3d at 91).

In support of his position on a motion to dismiss, Spirtos includes a long list of articles that mention Yemenidjian and his business. Not only are these matters not properly before this Court on a motion to dismiss, Spirtos is again engaged in misdirection of the court. Only two articles were published prior to Spirtos' statements, and those spanned nearly two years. The test is whether Yemenidjian was a limited-purpose public figure at the time of the statements, not whether later circumstances (including those manufactured by Spirtos) generated publicity. The sparse media attention identified by Spirtos is insufficient to qualify Yemenidjian as a limited-purpose public figure, let alone doing so by way of a motion to dismiss.

Regardless, Yemenidjian has already plead that Spirtos acted with actual malice when he slandered Yemenidjian. "Actual malice is defined as knowledge of the falsity of a statement or a reckless disregard for its truth." *Posadas v. City of Reno*, 109 Nev. 448, 454, 851 P.2d 438, 443 (1993). "Reckless disregard for the truth may be defined as a high degree of awareness of the probable falsity of a statement. It may be found where the defendant entertained serious doubts as to the truth of the statement, but published it anyway." *Id.* Here again, Yemenidjian alleges that Spirtos "simply fabricated the story because he hoped that it would generate adverse publicity and interfere with Yemenidjian's ability to get license in the future." (Compl. ¶ 21.) While Spirtos did have an economic motive to lie about Yemenidjian, this is not the sole basis for the showing of actual malice, as Spirtos claims. (Mot. at 15.) The decision to lie about Yemenidjian, despite having no basis for the statement, is the very definition of actual malice.<sup>4</sup>

### ***iii. Spirtos' Conduct Entitles Yemenidjian to Punitive Damages.***

Spirtos' request to strike Yemenidjian's prayer for punitive damages is, once again, based on an inapplicable pleading standard. *See, e.g., Amini v. CSAA Gen. Ins. Co.*, 2:15-CV-0402-

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<sup>4</sup> Tellingly, Spirtos tries to slip in his denial, saying that he never mentioned Yemenidjian. (Mot. at 14.) But a motion to dismiss must be based on the allegations in the pleadings, and the Court must accept all of Yemenidjian's factual allegations as true. *DeBoer v. Sr. Bridges of Sparks Fam. Hosp.*, 128 Nev. at 410, 282 P.3d at 730. The Court must not consider Spirtos' denials in determining whether the complaint adequately pleads a claim for slander *per se*.

JAD-GWF, 2015 WL 3466517, at \*1 (D. Nev. May 29, 2015) ("These mere labels and conclusions are simply insufficient to survive dismissal under *Iqbal* and *Twombly*"). Regardless, even applying that heightened pleading standard, Yemenidjian's Complaint identifies the basis for his prayer for punitive damages: despite knowing that there were no facts to support his statements, Spirtos slandered Yemenidjian. (Compl. ¶ 22-23.) Spirtos told Oceguela that Yemenidjian was involved in outright corruption in order to secure licenses. Spirtos intended to falsely accuse Yemenidjian of criminal activity in an attempt to undermine him and harm his reputation and business. This is the type of behavior that punitive damages were intended to punish and to discourage. NRS 42.005. Indeed, that is why Nevada law places no cap on the amount of punitive damages for slander. *Id.* Nevada's Legislature has determined that the type of conduct undertaken by Spirtos here is so repugnant to a civilized society that the potential amount of punitive damages should be unlimited.

#### IV. CONCLUSION

In many ways, the facts here are not in dispute. Spirtos had no factual basis upon which to make an accusation of impropriety against Yemenidjian. Spirtos has admitted it. While Spirtos has denied disparaging Yemenidjian, the recipient of Spirtos' accusation – Oceguela – has confirmed it under oath and it is not privileged. Indeed, Spirtos' efforts to hide behind Nevada's anti-SLAPP statute is particularly meritless, considering that Spirtos claims that he made no statement whatsoever about Yemenidjian. The complaint states viable claims for slander per se, conspiracy and entitlement to punitive damages. That Spirtos wishes to avoid discovery into these claims is obvious. But the law entitles Yemenidjian to proceed.

DATED this 6th day of January, 2020.

PISANELLI BICE

By: /s/ Todd L. Bice

James J. Pisanelli, Esq., #4027

Todd L. Bice, Esq., #4534

Jordan T. Smith, Esq., #12097

Dustun H. Holmes, Esq., #12776

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 6th day of January, 2020, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **OPPOSITION TO SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)** to all parties listed on the Court's Master Service List.

/s/ Shannon Dinkel  
An employee of Pisanelli Bice PLLC

# **EXHIBIT 1**

**DECLARATION OF JOHN OCEGUERA IN SUPPORT OF ARMEN YEMENIDJIAN'S  
OPPOSITION TO SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR  
IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)**

I, JOHN OCEGUERA, declare as follows:

1. I am over 18 years of age and am competent to testify as to the matters set forth in this Declaration based upon my own personal knowledge.

2. I make this Declaration in support of Armen Yemenidjian's Opposition to Special Motion to Dismiss Pursuant to NRS 41.060, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5).

3. I currently serve as the Senior Vice President for Nevada for Strategies 360, a firm specializing in government relations.

4. In that role, I have represented certain Nevada cannabis companies, including the companies operated by Armen Yemenidjian.

5. I have known Mr. Yemenidjian for ten years.

6. In January 2018, I attended the Governor's Ball held in a ballroom of the Aria Hotel & Casino. I believe that the Governor's Ball was a ticketed event, access to which was limited to those possessing a ticket.


7. At the Aria ballroom, I was approached by Dr. Nicola Spirtos, someone I have known for many years.

8. During our conversation, Dr. Spirtos stated that Armen Yemenidjian was knee deep in the corruption at the center of the licensing process for recreational cannabis licenses that the State of Nevada had awarded in early December 2018. I was taken aback about the allegation that Mr. Yemenidjian had supposedly corrupted the process. I was sufficiently startled by Dr. Spirtos' statements that insinuated a crime that I subsequently spoke with Mr. Yemenidjian about Dr. Spirtos' accusation.

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9. I understand now that Dr. Spirtos is denying making any reference to Armen Yemenidjian and insinuations of corruption. Respectfully, any such denials are simply not true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that I executed this Declaration on this \_\_\_\_ day of January, 2020.

  
JOHN OCEGUERA

# **EXHIBIT 2**



1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 MM DEVELOPMENT COMPANY, INC., )  
a Nevada Corporation; et al., )  
5 )  
Plaintiffs, )  
6 )  
vs. ) CASE NO.  
7 ) A-18-785818-W  
8 )  
STATE OF NEVADA, DEPARTMENT )  
OF TAXATION; et al., )  
9 )  
Defendants. )  
10  
11  
12 VIDEO DEPOSITION OF NICOLA MICHAEL SPIRTOS, M.D.  
13  
Taken at the Law Offices of Kemp, Jones & Coulthard  
14 3800 Howard Hughes Parkway  
17th Floor  
15 Las Vegas, Nevada 89169  
16  
17 Wednesday, October 9, 2019  
9:35 a.m.  
18  
19  
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21  
22  
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24 Job No. 575440  
25 Reported by: Angela Campagna, CCR #495

1 APPEARANCES:

2 For the Plaintiffs:

3 WILLIAM SIMON KEMP, ESQ.  
 4 NATHANAEL R. RULIS, ESQ.  
 5 Kemp, Jones & Coulthard  
 6 3800 Howard Hughes Parkway  
 17th Floor  
 Las Vegas, Nevada 89169  
 A.hayslett@kempjones.com

7 For Dr. Spirtos: MARK J. HESIAK, ESQ.  
 8 Lowe Law Group  
 6028 S. Ridgeline Avenue  
 Suite 200  
 9 Ogden, UT 84405  
 Mark@markdhesiakpc.com

10 For the Defendants:

11 DENNIS L. KENNEDY, ESQ.  
 12 Bailey Kennedy  
 8984 Spanish Ridge Avenue  
 13 Las Vegas, Nevada 89148  
 Dkennedy@baileykennedy.com

14 STEVEN G. SHEVORSKI, ESQ.  
 15 Nevada Attorney General's Office  
 555 East Washington Avenue  
 16 Las Vegas, Nevada 89110  
 Sshevorski@ag.nv.gov

17 RUSTY J. GRAF, ESQ.  
 18 Black & LoBello  
 10777 W. Twain  
 19 Suite 300  
 Las Vegas, Nevada 89135  
 20 Rgraf@blacklobello.law

21 TODD L. BICE, ESQ.  
 Pisanelli Bice, LLC  
 22 400 South 7th Street  
 Suite 300, Las Vegas, Nevada 89101  
 23 Tlb@pisanellibice.com

24 / / / /  
 25 / / / /  
 / / / /

## 1 APPEARANCES (Cont.)

2 DAVID R. KOCH, ESQ.  
3 Koch & Scow LLC  
4 11500 S. Eastern Avenue  
5 Suite 210  
6 Henderson, Nevada 89052  
7 Dkoch@kochscow.com

8 JARED B. KAHN, ESQ.  
9 JK Legal & Consulting LLC  
10 9205 W. Russell Road  
11 Suite 240  
12 Las Vegas, Nevada 89148  
13 Jkahn@jk-legalconsulting.com

14 CHET A. GLOVER, ESQ.  
15 Maier Gutierrez & Associates  
16 8816 Spanish Ridge Avenue  
17 Las Vegas, Nevada 89148  
18 Cag@mgalaw.com

19 ADAM K. BULT, ESQ.  
20 Brownstein Hyatt Farber  
21 Schreck, LLP  
22 100 North City Parkway  
23 Suite 1600  
24 Las Vegas, Nevada 89106  
25 Abult@bhfs.com

THEODORE PARKER, III, ESQ.  
Parker, Nelson & Associates, Chtd.  
2460 Professional Court  
Suite 200  
Las Vegas, Nevada 89128  
Tparker@pnalaw.net

ALINA MARIA SHELL, ESQ.  
701 E Bridger Avenue  
Suite 520  
Las Vegas, Nevada 89101  
Alina@nvlitigation.com

ERIC D. HONE, ESQ.  
H1 Law Group  
701 N. Green Valley Pkwy.  
Suite 200  
Henderson, Nevada 89074

1     Appearances (cont.)

2

3     Also Present:         Armen Yemenidjian  
                             Phil Peckman

4

                             Dustin Kittleson  
5                             Videographer

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1           A.    I said I'm not sure, but it would  
2 either be D.H. Flamingo or us personally.

3           Q.    Okay. Well, you personally -- other  
4 than through D.H. Flamingo, did you have anything to  
5 do with the marijuana business?

6           A.    I'm not sure what that means.

7           Q.    Well, you as a person, you personally,  
8 you have any investments or interest in marijuana  
9 business other than through D.H. Flamingo?

10          A.    No.

11          Q.    Okay. So, and you would have records  
12 of whether D.H. Flamingo purchased that table for  
13 the Governor's Ball somewhere I assume; correct?

14          A.    Yes.

15          Q.    Who would have handled booking that?

16          A.    I don't know who would have actually  
17 handled it, but there would clearly be a record  
18 whether it was paid, if we paid individually or we  
19 paid as a group.

20          Q.    Okay. So do you deny saying to  
21 Mr. Oceguela that Essence and Armen are into this up  
22 to their eyebrows? Do you deny that?

23          A.    I've never said that.

24          Q.    You never said that? You never said  
25 anything like that; correct?

1 A. Correct.

2 Q. You've never suggested to Mr. Oceguela  
3 that Armen Yemenidjian was involved in corruption?

4 A. Correct.

5 Q. And if Mr. Oceguela says that you told  
6 him that, then he would be lying; is that correct?

7 A. Yes. He would be lying.

8 Q. Okay. Did you tell him that  
9 Mr. Greenspun, Brian Greenspun was also involved in  
10 corruption?

11 A. Absolutely deny ever saying that.

12 Q. Just like you absolutely deny ever  
13 saying that about Armen; correct?

14 A. Correct.

15 Q. Do you deny that you've spoken to the  
16 governor about Mr. Yemenidjian?

17 A. I absolutely deny speaking to the  
18 governor about Mr. Armen.

19 Q. About Armen?

20 A. Absolutely.

21 Q. You never mentioned his name to the  
22 governor?

23 A. Correct.

24 Q. Do you deny that you mentioned  
25 Mr. Yemenidjian's name to law enforcement?

1 A. I deny having mentioned his name.

2 Q. You never mentioned his name to law  
3 enforcement?

4 A. Absolutely.

5 Q. Do you deny that you have told people  
6 that Mr. Yemenidjian is under investigation by the  
7 FBI?

8 A. Absolutely.

9 Q. So you never told anyone that?

10 A. Never told anyone.

11 Q. If they ever say you said it, they are  
12 liars?

13 A. Completely untrue.

14 Q. You would agree with me accusing  
15 someone of a crime is defamatory; correct? You know  
16 that?

17 MR. HESIAK: Calls for legal conclusion.

18 BY MR. BICE:

19 Q. I'll rephrase.

20 Do you understand that accusing  
21 someone of a crime is defamatory?

22 MR. HESIAK: Same objection.

23 THE WITNESS: I don't know what that means,  
24 but I wouldn't do -- I would not accuse an  
25 individual of anything illegal unless I knew it to

1 be true, period.

2 BY MR. BICE:

3 Q. Okay. Do you have any facts that  
4 Mr. Yemenidjian has committed any crime whatsoever?

5 A. No. And I've said that to him directly  
6 and I've said that -- I've never said it to any  
7 other human being that he has.

8 Q. In fact, when he confronted you being  
9 Armen Yemenidjian about spreading rumors about him,  
10 you said that you had no facts that he had lied,  
11 correct, or that he had committed a crime? My  
12 apologies.

13 MR. HESIAK: Can you repeat the question?

14 MR. BICE: Sure. I'll rephrase.

15 Can you read it back for me really  
16 quick?

17 (Record read by reporter.)

18 THE WITNESS: That's correct.

19 BY MR. BICE:

20 Q. So how long did you speak to  
21 Mr. Oceguela at the Governor's Ball, do you think?

22 A. Short minute, two minutes. Very short  
23 period of time.

24 Q. And, so that would have been in  
25 January, this was after you had -- you think it was



## REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

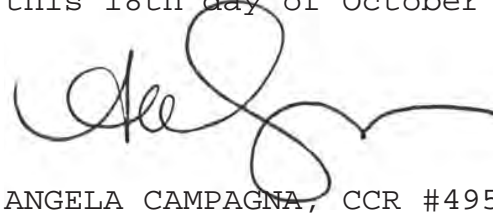
That I reported the taking of the video deposition of the witness, NICOLA MICHAEL SPIRTOS, on Wednesday, October 9, 2019, commencing at the hour of 9:35 a.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 18th day of October 2019.



ANGELA CAMPAGNA, CCR #495

# **EXHIBIT 3**



**SAVE THE DATE**  
**The 2019 Governor's Inaugural Events**  
**With Newly Elected Governor Steve Sisolak**  
**and First Lady Kathy Ong**

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**Southern Nevada Gala**

**Friday, January 18<sup>th</sup>, 2019**

**Event begins at 6:30PM**

**At the Aria Resort and Casino**  
**3730 S Las Vegas Blvd**  
**Las Vegas, NV 89109**

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**Northern Nevada Gala**

**Thursday, January 24<sup>th</sup>, 2019**

**Events begin at 6:30PM**

**At the Grand Sierra Resort**  
**2500 E 2<sup>nd</sup> St.**  
**Reno, NV 89502**

For more information please email Kerry Cahoon at  
[kerry@sisolakinauguration.com](mailto:kerry@sisolakinauguration.com)

An individual, entity or PAC may contribute  
*Authorized by Sisolak Inaugural Committee PAC - PO Box 850, Las Vegas, NV 89125*

**EXHIBIT**

2

Spiritos