
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

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Clerk of Supreme Court

TGIG, LLC; NEVADA HOLISTIC MEDICINE, LLC; GBS NEVADA PARTNERS, LLC; FIDELIS HOLDINGS, LLC; GRAVITAS NEVADA, LLC; NEVADA PURE, LLC; MEDIFARM, LLC; MEDIFARM IV LLC; THC NEVADA, LLC; HERBAL CHOICE, INC.; RED EARTH LLC; NEVCANN LLC, GREEN THERAPEUTICS LLC; AND GREEN LEAF FARMS HOLDINGS LLC,

Appellants,

v.

THE STATE OF NEVADA DEPARTMENT OF TAXATION

Respondent.

RESPONDENTS' APPENDIX IN SUPPORT
OF ANSWERING BRIEF
Volume I of III

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INDEX

Volume	Document	Page Nos
II.	Amended Trial Protocol No. 2, filed 7/2/20	381-401
III.	Department of Taxation’s Brief in Support of its Motion for Directed Verdict, filed 8/11/20	571-581
II.	Department of Taxation’s Joinder to Essence Entities’ Motion to Dismiss or, Alternatively, Motion for Judgment on the Pleadings, filed 2/12/20	374-375
I.	Department of Taxation’s Opposition to Motion for Preliminary Injunction, filed 5/9/19.....	1-250
II.	Department of Taxations’ Opposition to Motion for Preliminary Injunction, filed 5/9/19.....	251-262
II.	Essence Entities’ Motion to Dismiss or Alternatively, for Judgment on the Pleadings, filed 2/11/20.....	359-373
II.	ETW Plaintiffs’ Third Amended Complaint, filed 1/29/20	263-358
II.	Record on Review in Accordance with the Nevada Administrative Procedure Act, filed 6/12/20.....	376-380
III.	Transcript of Proceedings, Bench Trial – Day 9, Volume II, dated 7/29/20	512-569
II.	Trial Exhibit 84 (2018 Retail Marijuana Store Application Scores and Rankings) admitted 7/10/2020.....	402-408
II.	Trial Exhibit 1007 (Department of letter regarding allocation of licenses for retail marijuana stores) admitted 7/20/2020.....	409-410

II.	Trial Exhibit 1008 (Scoring tool for Organizational Structure (identified)) admitted 7/21/2020.....	475-480
II.	Trial Exhibit 1009 (Scoring tool for care, quality safekeeping (non-identified)) admitted 7/21/2020	481-494
II.	Trial Exhibit 1010 (Scoring tool for adequacy of size-building plans (non-identified)) admitted 7/21/2020	495-499
III.	Trial Exhibit 1011 (Scoring tool likely impact on the community (non-identified)) admitted 7/21/2020	500-503
III.	Trial Exhibit 1012 (Scoring tool for taxes beneficial financial contributions (identified)) admitted 7/21/202	504-507
III.	Trial Exhibit 1013 (Scoring tool for financial resources (identified)) admitted 7/21/2020.....	508-511
II.	Trial Exhibit 1125 (Train the Trainer Training PowerPoint presentation) admitted 7/20/2020.....	411-474
III.	Trial Exhibit 1259 (Department of Taxation's letter to THC, Nevada, LLC denying application for marijuana distributor license) admitted 8/5/2020	570

DATED this 29th day of March, 2022.

AARON D. FORD
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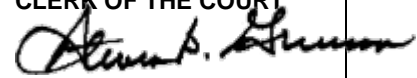
By: /s/ Akke Levin
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 29th day of March, 2022, and e-served the same on all parties listed on the Court's Master Service List.

/s/ Lucas Combs

Lucas Combs, an employee of
the office of the Nevada Attorney General



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DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, GIG,
LLC, a Nevada limited liability company,
NULEAF INCLINE DISPENSARY, LLC, a
Nevada limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada
limited liability company, TRYKE
COMPANIES SO NV, LLC, a Nevada
limited liability company, TRYKE
COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada
limited liability company, GBS NEVADA
PARTNERS, LLC, a Nevada limited
liability company, FIDELIS HOLDINGS,
LLC, a Nevada limited liability company,
GRAVIT AS NEVADA, LLC, a Nevada
limited liability company, NEVADA PURE,
LLC, a Nevada limited liability company,
MEDIFARM, LLC, a Nevada limited
liability company, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS
I through X,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

Case No. A-19-786962-B
Dept. No. 11

**OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

1 The State of Nevada ex. rel. the Department of Taxation (Department), by and
2 through its counsel, oppose Plaintiffs’ motion for preliminary injunction.

3 INTRODUCTION

4 This Court should deny Plaintiffs’ motion. Under Nevada’s nascent marijuana laws,
5 the legislature empowered the Department with vast discretion to formulate rules for a
6 licensure program that would allow sales of recreational marijuana. As part of its
7 obligations, the Department had to develop and administer a competitive bidding process
8 for awarding licenses for marijuana retail stores. Its only constraint was that it had to “use
9 an impartial and numerically scored competitive bidding process to determine which
10 application or applications among those competing will be approved.” NRS 453D.210(6).
11 It did. Plaintiffs present no evidence to the contrary. Confounded with this statute’s plain
12 language and their lack of evidence, Plaintiffs endeavor to find conflict between the Nevada
13 Revised Statutes and the Department’s regulations where none exists.

14 At the outset, the Department notes that Plaintiffs cannot seek judicial review here
15 because the Department’s licensing application process was not a contested case. But
16 Plaintiffs’ legal arguments supporting their mandamus claim also lack merit. Their textual
17 argument that NRS 453D.200(1)(b) somehow limits the criteria that the Department could
18 consider ignores that its phrase “shall include” is a term of illustration, not limitation. The
19 term simply means that Department must—in addition to other criteria—consider
20 qualifications related to the operation of a marijuana establishment. Similarly, Plaintiffs’
21 argument that NRS 453D.210(6) limited the Department’s discretion to ranking
22 applications countywide fails because nothing in the statute’s text prevents the
23 Department from further subdividing countywide applications before ranking them.
24 Notably, because of that subdivision, the Department ended up awarding licenses to more
25 entities—not less. Finally, Plaintiff’s argument that the Department violated
26 NAC 453D.272(5)’s requirement that not more than 10% of available licenses in a county
27 go to one entity relies on the incorrect, conclusory allegation that only 79 retail licenses
28 were allocated in Clark County. It fails legally because NAC 453D.272(5) states that the

1 limitation applies to “allocable” licenses, not “allocated” licenses. It fails factually because
2 the Department actually allocated the required 80 licenses.

3 Plaintiffs various constitutional theories fare no better. First, Plaintiffs’ federal
4 constitutional claims deserve dismissal because a state agency is not a “person” under 42
5 U.S.C. §1983, even for purposes of prospective injunctive relief. Second, Plaintiffs lack the
6 prerequisite of a property interest to support a procedural due process claim. NRS
7 453D.210 does not require that licenses go to any particular applicant. Third, Plaintiffs’
8 conclusory equal protection claim is not supported by any facts (or even conclusory
9 statements) suggesting the Department treated Plaintiffs differently than other
10 applicants, let alone in a way that violates equal protection law. Fourth, the Department’s
11 regulations pass the rational basis test for purposes of economic regulations, which only
12 requires that there be a “conceivable” reason for the subject regulations’ enactment.

13 **BACKGROUND**

14 When seeking a preliminary injunction, the “moving party bears the burden of
15 providing testimony, exhibits, or documentary evidence to support its request for an
16 injunction.” *Hosp. Int’l Grp. v. Gratitude Grp., LLC*, 387 P.3d 208 (Nev. 2016). “To sustain
17 a preliminary injunction, [e]vidence that goes beyond the unverified allegations of the
18 pleadings and motion papers must be presented.” *Id.*

19 Rather than provide facts, Plaintiffs make legal arguments disguised as factual ones
20 through the use of phrases like “bias” and “abuse of discretion” without demonstrating how
21 the Department, in fact, acted with bias or abused its discretion.

22 **I. Unsupported by Evidence, the Motion Must Be Construed as a Facial** 23 **Challenge**

24 Plaintiffs have not provided any admissible facts. Rather than support their motion
25 with testimony, declarations, or documentary evidence, Plaintiffs submitted the following
26 materials. Their Exhibit A is the Ballot Initiative. Their Exhibit B consists of various
27 materials from the Department concerning the application process, but no documents
28 concerning Plaintiffs’ actual applications. Their Exhibit C is a publicly available document

1 detailing how applicants can view score information in the competitive bidding process.
2 Finally, their Exhibit D consists of a putative expert disclosure concerning statistics.

3 In sum, Plaintiffs do not (1) discuss their specific applications; (2) identify the scoring
4 system they believe should have been used; (3) allege—let alone demonstrate with
5 evidence—that they would have achieved a qualifying score under the scoring system they
6 propose; or (4) provide citation to any evidence to support their various conclusions about
7 deficiencies in the process. Instead, Plaintiffs simply allege “on information and belief” that
8 the Department *may* have somehow improperly scored applications, and that if something
9 were done differently, then they *may* have received a license.

10 **II. Plaintiffs’ Conclusory Factual Allegations Are Incorrect**

11 Plaintiffs argue that the Department violated NAC 453D.272(5) because it allocated
12 8 licenses in Clark County to a company called “Essence” when only 79 total licenses were
13 allocated countywide. Plaintiffs make their conclusory allegation without citation to any
14 evidence. They then argue this resulted in Essence having more than 10% of the licenses
15 “allocated” in Clark County because 8 is greater than 7.9. Apart from this being legally
16 wrong as NAC 453D.272(5)’s 10% limitation applies to “allocable,” not “allocated” licenses,
17 it is also factually wrong. The Department allocated 80 licenses in Clark County.

18 After the Initiative to Ballot Initiative passed, the Department issued Temporary
19 Regulations so retail marijuana sales could start on July 1, 2017.¹ Under Section 12 of those
20 regulations, an entity holding a medical dispensary registration certificate could apply for
21 a retail store license. This type of application became known as a “one-for-one” application.
22 Through the May 2017 one-for-one application period, the Department issued 47 retail
23 store licenses in Clark County.² The Department then issued 2 additional licenses in 2018
24 in Clark County—a conditional retail store license to NuLeaf CLV Dispensary, LLC and a
25 . . .

26 ¹ May 8, 2017, Temporary Regulations, attached as **Ex. D**.

27 ² Declaration of Damon Hernandez, attached as **Ex. A**.
28

1 retail store license to Wellness Connection of Nevada LLC dba Cultivate Dispensary.³
2 Thus, there were ultimately 49 one-for-one retail store licenses granted in Clark County—
3 not the 48 that Plaintiffs presumably claim in support of their argument that 1 license
4 remains unallocated.

5 **III. Plaintiffs' Expert Report Is Deficient Under Rule 26**

6 Plaintiffs' expert disclosure does not comply with Nevada Rule of Civil Procedure
7 16.1(a)(2)(B)(ii), (v), or vi). It fails to disclose a list of cases where the expert has testified
8 at trial or deposition in the last four years. It fails disclose the facts or data the expert
9 considered, instead alleging—without citation or production—that the purported expert
10 considered some completely unidentified (1) sample of applicant scores; (2) list of retail
11 store licenses; and (3) list of licenses awarded pursuant to the 2018 applications. Finally,
12 it fails to disclose the compensation paid to the expert.

13 **I. Because Plaintiffs Offer No Evidence to Support Their Various Theories,** 14 **the Department Provides a Background on the Initiative and Regulations**

15 On November 8, 2016, Nevada voters passed the Ballot Initiative, which became
16 effective on January 1, 2017.⁴ Although it immediately legalized use of recreational
17 marijuana, it required the adoption of regulations before marijuana could legally be sold.
18 Specifically, under Section 5(1), the Department was to “adopt all regulations necessary or
19 convenient to carry out the provisions of” the Ballot Initiative. Among other things, this
20 required the Department to create a licensing process to grant the limited retail licenses
21 authorized by NRS 453D.210(5)(d).

22 On May 8, 2017, the Department issued Temporary Regulations so retail marijuana
23 sales could start on July 1, 2017.⁵ Under Section 12 of those regulations, an entity holding
24 a medical dispensary registration certificate could apply for a retail store license. This type

25 ³ Declaration of Damon Hernandez, **Ex. A.**

26 ⁴ Ballot Initiative, attached as **Ex. C.** Under NRS 47.140, laws, such as statutes and
27 regulations, are subject to judicial notice.

28 ⁵ May 8, 2017, Temporary Regulations, attached as **Ex. D.**

1 of application became known as a “one-for-one” application. During that period, holders of
2 existing medical licenses applied for and received recreational licenses, thus receiving some
3 of the total retail marijuana licenses authorized by NRS 453D.210(5)(d). The Department
4 then drafted proposed Permanent Regulations and conducted Public Workshops.⁶ The
5 Department held its workshops between July 24 and 27, 2017. After the workshops, the
6 Department submitted the draft Permanent Regulations to the Legislative Counsel Bureau
7 for review on September 6, 2017.

8 Because the Temporary Regulations were set to expire in November, the Governor
9 enacted Emergency Regulations on November 1, 2017.⁷ The Emergency Regulations kept
10 the program operational while the Permanent Regulations were returned from the
11 Legislative Counsel Bureau, adopted by the Tax Commission, placed before the Legislative
12 Committee for approval, and submitted to the Secretary of State for filing.

13 The Permanent Regulations not only took into account the written and public
14 comments during the public workshops and meetings, but also incorporated
15 recommendations from the Final Report from Governor’s Task Force on the
16 Implementation of Ballot Initiative. The Legislative Counsel Bureau returned the proposed
17 Permanent Regulations on December 11, 2018. Thus, by the time Permanent Regulations
18 were adopted, there had been significant input made from the industry, the public, and
19 various levels of government in the promulgation in what would become NAC Chapter
20 453D. The Permanent Regulations were filed with the Secretary of State on February 27,
21 2018.⁸

22 ⁶ Information regarding those proposed regulations and workshops is publicly available
23 at https://tax.nv.gov/FAQs/Marijuana_Proposed_Temporary_Regulation_T002-17/ or
24 <https://bit.ly/2J3FCgu>. See *Johnson v. Cate*, No. 1:10-CV-00803-AWI, 2015 WL 5321784,
25 at *10 (E.D. Cal. Sept. 10, 2015) (explaining that “courts routinely consider records
26 from government websites to be self-authenticating” by relying on Federal Rule of
27 Evidence 902(5), which is the Federal equivalent of NRS 52.135).

28 ⁷ November 1, 2017 Emergency Regulations, attached as **Ex. E**.

⁸ Those permanent regulations which have now been codified at NAC 453D are publicly
available at <https://www.leg.state.nv.us/Nac/NAC-453D.html>.

1 In March of 2018, the Department began preparing for the limited application
2 period—which is the application period at issue in this lawsuit. During the limited
3 application period, *any* marijuana license holder—as opposed to only holders of a medical
4 dispensary registration certificate—could apply for a retail store license. For example, a
5 medical cultivator could apply for a retail store license. By contrast, in the one-for-one
6 application period, only a medical license holder could apply for a similar retail license. In
7 June 2018, the matter was presented to the Interim Finance Committee which included
8 budgeting for hiring application graders from outside the Department—just as had been
9 done in 2014 for the review of medicinal marijuana applications.⁹

10 Within days of the IFC approving the budget for the use of application graders, the
11 Department worked on the application and weighting of the scores.¹⁰ In doing so, the
12 Department reviewed the process that was used for scoring medical marijuana applications
13 in 2014, the regulations, and the statutes to determine application scoring and ranking
14 criteria.¹¹ The Department then edited the language in the application instructions
15 accordingly. On July 5, 2018, the Department posted the application and provided notice
16 that the limited application period for retail store licenses would be open from September
17 7 until September 20, 2018, with results being issued on December 5, 2018.¹²

18 The application included the scoring categories, the maximum number of points in
19 each category, the authority for the scoring categories, a timeline, and other relevant
20 information. The applications also indicate the “Evaluation committee” would consist of
21 “state officers or employees **and contracted professionals**” to evaluate and score

22 ⁹ See June 20, 2018 Interim Finance Committee Meeting Minutes, attached as **Ex. F**,
23 at p. 23. They are also publicly available at
24 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/13373> .

25 ¹⁰ Declaration of Steve Gilbert, **Ex. B**.

26 ¹¹ Declaration of Steve Gilbert, **Ex. B**.

27 ¹² See Application, attached as **Ex. G**. It is also publicly available at
28 [https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Recreational-Marijuana-Establishment-Application-7-2-18\(3\).pdf](https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Recreational-Marijuana-Establishment-Application-7-2-18(3).pdf) or <https://bit.ly/2J1fhj6> .

1 applications. The application also informed the applicants “**No applicant may be**
2 **awarded more than 1 (one) retail store license in a jurisdiction/locality unless**
3 **there are less applicants than licenses allowed in the jurisdiction.**” (Emphasis in
4 original). The Department also indicated the number of licenses available in each local
5 jurisdiction and notified the local jurisdiction of this allocation on August 16, 2018. The
6 application packet included Attachment I, which instructed the applicants to mark the
7 jurisdictions in which licenses were being requested.

8 After the Department received the application materials, administrative assistants
9 logged the application with arrival date, assigned a unique number and saved them into a
10 shared drive under the unique assigned numbers.¹³ The administrative assistants would
11 then supply evaluators with applications to be evaluated in a manner similar to the process
12 used for scoring medical marijuana applications in 2014.¹⁴ On December 5, 2018, the
13 Department sent physical letters and e-mail notifications to the retail store applicants
14 regarding whether they were granted conditional licenses.

15 LEGAL STANDARD

16 NRS 33.010 authorizes an injunction only when it appears from the complaint that
17 the plaintiff is entitled to relief requested and at least part of the relief consists of
18 restraining the challenged act. The district court has sound discretion to grant or deny a
19 preliminary injunction. *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev.
20 712, 721, 100 P.3d 179, 187 (2004). “Before a preliminary injunction will issue, the
21 applicant must show (1) a likelihood of success on the merits; and (2) a reasonable
22 probability that the non-moving party’s conduct, if allowed to continue, will cause
23 irreparable harm for which compensatory damage is an inadequate remedy.” *A Cab Taxi*
24 *Serv., LLC v. Murray*, 415 P.3d 16 (Nev. 2018) (internal quotations omitted).

25 . . .

27 ¹³ Declaration of Steve Gilbert, Ex. B.

28 ¹⁴ Declaration of Steve Gilbert, **Ex. B.**

1 **ARGUMENT**

2 **I. Plaintiffs Do Not Have a Likelihood of Success on the Merits**

3 Plaintiffs' pled state law claims for petition for judicial review, petition for writ of
4 mandamus, and procedural due process, substantive due process, and equal protection
5 under Nevada's constitution. Plaintiffs also pled identical constitutional claims via 42
6 U.S.C. §1983. Each claim lacks merit.

7 **A. Plaintiffs Fail to Explain How Mandamus or Judicial Review is**
8 **Procedurally Available under Nevada Law**

9 Plaintiffs mistakenly seek mandamus relief and a petition for judicial review
10 because the regulations they identify exceed the legislature's statutory grant of power. Br.
11 at 17-23. However, Plaintiffs never identify a case demonstrating that either of their causes
12 of action are available to them.

13 Plaintiffs request for judicial review lacks merit. Plaintiffs' petition for judicial
14 review fails because a petition for judicial review is only available to a party "[a]ggrieved
15 by a final decision in a contested case"—and the retail store licensing process was not a
16 contested case. NRS 233B.130. The Nevada Supreme Court clarified the limited authority
17 of district courts to consider petitions for judicial review in the context of medical marijuana
18 registration. In *State, Department of Health and Human Services v. Samantha Inc.*, the
19 Nevada Supreme Court explained that a rejected applicant for a medical marijuana license
20 "does not have a right to judicial review under the APA [Administrative Procedures Act] or
21 NRS Chapter 453A" because "the application process provided by NRS 453A.3222 does not
22 constitute a contested case." 407 P.3d 327, 328, 332 (Nev. 2017). The Court specifically
23 noted that the statutory provisions and regulations governing the registration of medical
24 marijuana establishes did not provide for any form of hearing regarding the review and
25 ranking of registration certificate applications. NRS and NAC 453D provisions relating to
26 the retail store licensing process similarly do not contemplate any hearings regarding the
27 ranking of applications and granting of conditional licenses. Therefore, the Department's

28 . . .

1 retail store licensing process did not constitute a contested case under the APA and a right
2 to a review of the process is not available pursuant to a petition for judicial review.

3 Plaintiffs' request for mandamus relief also lacks merit. Plaintiffs ignore the rule
4 that mandamus cannot be used to control a discretionary act. *Gragson v. Toco*, 90 Nev. 131,
5 133, 520 P.2d 616, 617 (1974). Plaintiffs also forget that it is their burden of proof to
6 demonstrate an exception to this rule by proving that the Department's discretion was
7 exercised arbitrarily or capriciously. *Id.* Here, Plaintiff's lack of evidence is revealing.
8 Rather than meet their burden of proof, Plaintiffs offer statutory construction arguments
9 seeking to have this Court declare that the Department's regulations are invalid because
10 they exceed the Department's statutory authority. The Department will demonstrate that
11 the text of Nevada Revised Statutes 453D.210 does not compel Plaintiffs' statutory
12 construction and Plaintiffs' wholly ignore the deference that Nevada's Supreme Court has
13 stated that the Department is entitled to receive.

14 **B. Plaintiffs Ignore the "Great Deference" that the Department is**
15 **Entitled to Receive When Determining a Regulation's Validity**

16 Plaintiff cite case law to argue that courts will not hesitate to invalidate a regulation
17 that exceeds the administrative agency's enabling statute. Br. 17:17-25. Plaintiffs do
18 correctly cite those portions of those cases, but Plaintiffs' salad bar approach to argument
19 ignores an inconvenient legal principle applicable to administrative law also cited in those
20 cases. "When determining the validity of an administrative regulation, courts generally
21 give great deference' to an agency's interpretation of a statute that the agency is charged
22 with enforcing." *State of Nev. ex. rel. Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev.
23 290, 293, 995 P.2d 482, 485 (2000) (internal quotations omitted). None of Plaintiffs'
24 statutory arguments are compelled by the statute under review's text, especially when
25 viewed under this deferential principle.

26 . . .

27 . . .

28 . . .

1 **1. The Department's Process Was Not Arbitrary and Capricious**
2 **Because It Used an Impartial and Numerically Scored**
3 **Competitive Bidding Process**

4 The Department's numeric scoring system was within the broad discretion granted
5 to the Department by the legislature. NRS 453D.210(6) provides that "[w]hen applications
6 are submitted for a proposed retail marijuana store within a single county, the Department
7 shall use an impartial and numerically scored competitive bidding process to determine
8 which application or applications among those competing will be approved." No other
9 provision of NRS 453D addresses the process that the Department must use when ranking.
10 The Legislature did not mandate that a particular scoring system be used. Accordingly, so
11 long as the Department used "an impartial and numerically scored bidding process," it had
12 broad discretion to adopt and apply regulations regarding the ranking of applications.

13 There is no dispute here that the Department used a numerically scored system.
14 Although Plaintiffs make generalized arguments that the process was not impartial, there
15 is no evidence to support such a claim. To begin, Black's Law Dictionary defines "impartial"
16 to mean "[n]ot favoring one side more than another; unbiased and disinterested; unswayed
17 by personal interest." BLACK'S LAW DICTIONARY (10th ed. 2014). Here, the Department's
18 process was impartial without any preference for any applicant. The Department developed
19 its scoring criteria prior to the receipt of any applications and did not develop those criteria
20 to favor any particular applicant or group of applicants. To the extent any particular groups
21 benefited from the scoring system, it was not the result of partiality but simply caused by
22 the inherent nature of a scoring system—regardless of the system used, some parties will
23 score higher than others. Because any advantage any party received was not the product
24 of favoritism, bias, or personal interest, the system is impartial.

25 **2. NRS 453D.200(1)(b) Does Not Require the Department to**
26 **Consider *Only* Qualifications Related to the Operation of a**
27 **Marijuana Establishment**

28 Unable to escape the Department's wide discretion in carrying out the competitive
bidding process, Plaintiffs pivot to arguing that the ranking system was constrained by
NRS 453D.200(1)(b), which provides that the regulations relating to the implementation of

1 NRS 453D “shall include ... [q]ualifications for licensure that are directly and demonstrably
2 related to the operation of a marijuana establishment.” Plaintiffs ask this Court to read
3 that provision as a limitation upon the Department’s discretion to evaluate a variety of
4 factors that are of consequence to the State. That argument fails for several reasons.

5 **First**, NRS 453D.200(1) specifically states that the Department has the authority to
6 “adopt all regulations necessary or convenient to carry out the provisions of this chapter.”
7 This broad grant of authority to adopt all regulations “necessary or convenient” vests the
8 Department with wide discretion to promulgate regulations.

9 **Second**, the canon of statutory construction regarding “the presumption of
10 nonexclusive ‘include’” provides that the “verb to *include* introduces examples, not an
11 exhaustive list.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*,
12 Canon #15 (2012). The “term ‘including’ is not one of all embracing definition, but connotes
13 simply an illustrative applicant of the general principle.” *Fed. Land Bank of St. Paul v.*
14 *Bismarck Lumber Co.* 314 U.S. 95, 100 (1941). For purposes of interpreting administrative
15 regulations, “include” is a term of illustration, not limitation. *Richardson v. Nat’l City Bank*
16 *of Evansville*, 141 F.3d 1228, 1232 (7th Cir. 1998). Accordingly, the simple fact that the
17 regulation must include certain qualifications does not mean it cannot include other
18 qualifications.

19 **Third**, as the Nevada Supreme Court recognized in *Nevada Department of Wildlife*
20 *v. Bentz*, Nevada, through NRS 233B.090, has codified the statutory canon that regulations
21 are presumed to be valid. 106 Nev. 294, 298, 792 P.2d 28, 30 (1990) (“We note that NRS
22 233B.090 states that there is a rebuttable presumption that a regulation by an
23 administrative agency is valid.”). Under that canon, “an interpretation that validates
24 outweighs one that invalidates” (*ut res magis valeat quam pereat*). A. Scalia & B. Garner,
25 *Reading Law: The Interpretation of Legal Texts*, Canon #5 (2012). When a provision “is
26 reasonably susceptible of two interpretations, by one of which it is unconstitutional and by
27 the other valid, the court prefers the meaning that preserves to the meaning that destroys.”
28 *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935). Here, although the Plaintiffs

1 proffered interpretation is incorrect for other reasons, it also would invalidate several
2 regulations. Given the choice between an interpretation that validates the regulations and
3 one that invalidates, this Court should choose the one that validates.

4 **Finally** and similarly, the constitutional-doubt canon requires that a “statute
5 should be interpreted in a way that avoids placing its constitutionality in doubt.”
6 A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*, Canon #38 (2012);
7 *see also United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408
8 (1909). This canon is not a restatement of the presumption canon, but goes even further. It
9 militates against not only those interpretations that would render the statute
10 unconstitutional but also those that would *even raise serious* questions of constitutionality.
11 *Id.* Here, if Plaintiffs legal arguments were to be accepted—which they should not—their
12 proffered reading of NRS 453D.200(1)(b) would, by their own admission, raise questions
13 regarding the constitutionality of the various statutes and regulations. The constitutional-
14 doubt canon requires that such an interpretation be avoided.

15 **3. The Department had Discretion to Establish Criteria for**
16 **Ranking Applicants in its Competitive Bidding Process**

17 The Department used its discretion to develop its scoring criteria in good faith with
18 good reasons. Plaintiffs generally complain that (a) the Department subdivided the
19 rankings by local jurisdictions and limited each applicant to one license per locality; (b)
20 considered “irrelevant” criteria like diversity; (c) failed to issue the 80 required licenses in
21 Clark County; and (d) exceeded the 10% cap per jurisdiction of licenses that could be
22 awarded to a single company. For the following reasons, Plaintiffs arguments all fail.

23 **a. The Department Had Discretion to Rank Applicants by**
24 **Local Jurisdiction**

25 Plaintiffs argue that NAC 453D272(1)—which allows the Department to allocate
26 licenses within local jurisdictions rather than countywide—somehow conflicts with NRS
27 453D.210(6)—which requires the Department to use a competitive bidding process when
28 competing applications are received within a single county. Br. at 18-21. Contrary to

1 Plaintiffs’ argument, however, there is no conflict between NAC 453D.272(1) and NRS
2 453D.210(6). In deciding whether NRS 453D.210 conflicts with NAC 453.272, this Court
3 should be guided by the deference that is due to the Department under Nevada law. “An
4 agency’s interpretation of a statute that it is authorized to execute is entitled to deference
5 ‘unless it conflicts with the constitution or other statutes, exceeds the agency’s powers, or
6 is otherwise arbitrary and capricious.” *Nuleaf CLV Dispensary, LLC v. State Dep’t of*
7 *Health & Human Servs., Div. of Pub. & Behavioral Health*, 134 Nev. Adv. Op. 17, 414 P.3d
8 305, 308 (2018) (quoting *Cable v. State ex rel. Emp’rs Ins. Co. of Nev.*, 122 Nev. 120, 126,
9 127 P.3d 528, 532 (2006)).

10 Here, Plaintiffs are reading conflict into these provisions where none exists.
11 NRS 453D.210(6) simply provides that “[w]hen applications are submitted for a proposed
12 retail marijuana store within a single county, the Department shall use an impartial and
13 numerically scored competitive bidding process to determine which application or
14 applications among those competing will be approved.” Nothing textually prohibited the
15 Department from enacting NAC 453D.272(3) and ranking applications within local
16 jurisdictions rather than countywide. Because the statute does not prohibit the
17 Department from further subdividing the rankings into local jurisdictions, the Department
18 was allowed to do so and this Court’s inquiry should end there.

19 Far from acting arbitrarily, the Department had good reason for further subdividing
20 the rankings by local jurisdictions and limiting each applicant to one license per locality.
21 The Governor’s Task Force Report recommended this exact action. It suggested that “the
22 retail marijuana store licenses allocated to the counties . . . be distributed to the local
23 jurisdiction(s) within those counties based on the population in the jurisdiction(s).” NAC
24 453.272(3) tracks that language, requiring the Department to “allocate the licenses for
25 retail marijuana stores . . . to [local] jurisdictions within each county and to the
26 unincorporated area of the county proportionally based on the population of each
27 jurisdiction and of the unincorporated area of the county.”

28 . . .

1 Subdividing into localities serves to prevent monopolistic practices. Unless the
2 Legislature removes the license cap or greatly increases the number of licenses, future
3 application periods will likely involve only a very limited number of licenses being available
4 owing to revocation, surrender, or return after a wind-down of operations (such as in a
5 receivership). The Limited Application Period, by contrast, posed a great risk of giving a
6 limited number of applicants a distorted market share, as roughly half of the available
7 licenses in each local jurisdiction were available for distribution during the Limited
8 Application Period.

9 For example, in Clark County, 80 licenses are available. These licenses were
10 allocated as follows: 35 in Unincorporated Clark County, 22 in Las Vegas, 11 in Henderson,
11 11 in North Las Vegas, and 1 in Mesquite. Thus, under the monopoly rules, up to 8 retail
12 store licenses could be held in Clark County. In 2018, only 31 licenses remained available
13 in Clark County. The 31 licenses were to be allocated as follows: 10 in Unincorporated Clark
14 County, 10 in Las Vegas, 6 in Henderson, and 5 in North Las Vegas.

15 To show the need for the stated limitation in this application period, assume the
16 applicants with the four highest scores in Clark County only held cultivation licenses. By
17 holding such a license, this meant each license holder was eligible to apply for a retail store
18 license, but the cultivation facility would not count towards the monopoly limit on retail
19 stores. Without the limitation listed in the application, the four highest ranked applicants
20 could each request 7 or 8 of the conditional retail store licenses available in Clark County.
21 All told, under this scenario, all the new store licenses in Clark County could go to 4
22 applicants who would then control almost 40% of the retail store licenses in Clark County—
23 even though they held no retail store licenses before this application period. Even if each
24 applicant already held a store license in Clark County, all the licenses could go to as few as
25 five applicants. These 5 applicants would control up to 45% of the licenses in Clark County.
26 Such an uneven distribution would not comply with the intent or spirit of the Ballot
27 Initiative, the Governor’s Task Force Report, or the regulations. Instead, through
28 . . .

subdivision and limitations, the Department awarded the 31 licenses available in Clark County to 12 different applicants.

Finally, even if there were something improper about limiting the applications by locality—which there is not—there is no admissible evidence that the Plaintiffs have standing to complain about this issue. They have not demonstrated that but for this provision, they would have scored any higher or received a license. Indeed, given that these procedures expanded the pool of successful applicants, it is not possible that Plaintiffs would have had received a license without these limitations. Removing these limitations simply would have further concentrated licenses among those already successful licensees, to the exclusion of other successful licensees.

b. The Department Had Discretion to Develop Scoring Criteria for the License Applications

As explained above, NRS 453D.200(1)(b) did not limit the Department’s discretion to consider factors it determined to be relevant. Nonetheless, Plaintiffs complain that the Department considered (1) operating experience of another kind of business; (2) the diversity and educational achievements of the owners, officers, and board members; and (3) the financial resources of the applicant; and (4) the amount of taxes paid and other beneficial financial contributions. Brief at 22:7-10. The Department, however, was not arbitrary or capricious in considering these criteria. Indeed, the Department is now *required* by statute to consider these criteria when deciding whether issue a medical marijuana license. Under NRS 453A.328, the Department must consider:

1. The total financial resources of the applicant, both liquid and illiquid;
2. The previous experience of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment at operating other businesses or nonprofit organizations;
3. The educational achievements of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment;
- ...
9. The amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to

1 be owners, officers or board members of the proposed medical
2 marijuana establishment;

3 10. The diversity on the basis of race, ethnicity or gender of the
4 applicant or the persons who are proposed to be owners, officers
5 or board members of the proposed medical marijuana
6 establishment; and

7 11. Any other criteria of merit that the Department determines
8 to be relevant.
9

10 As a result, Plaintiffs cannot argue that the Department's consideration of these
11 criteria in the recreational marijuana context is irrational and arbitrary without also
12 arguing that the Nevada legislature is also irrational and arbitrary or that medical and
13 recreational marijuana are so different that it somehow renders these criteria relevant to
14 medical, but not recreational marijuana.
15

16 Moreover, the Department had good independent reasons for considering these
17 criteria. **First**, individuals who have experience operating one kind of business are likely
18 to fare better operating another kind of business. **Second**, there is wide agreement—aside
19 from arguments regarding the methods for achieving it—that more diversity within an
20 industry helps both individual companies and the industry as a whole better service
21 customers and the community. Similarly, educational achievements are routinely
22 considered by employers and business when hiring and recruiting talent because it is
23 believed that—even if an imperfect measure—educational achievements are a predictor of
24 success in business. It is likely for this reason that the Nevada legislature added NRS
25 453A.328 which mandates that the Department consider diversity and educational
26 achievements with regard to the issuance of medical marijuana licenses. **Third**, the
27 financial resources of an applicant are relevant in a nascent and growing industry because
28 it is important that the initial market entrants be sufficiently capitalized to both grow their
business, service clients, and withstand individual and general downturns. **Fourth**, the
Department is justified in seeking out business owners who contribute both financially and
otherwise to their communities.

...

...

1 **c. The Department Did Not Exceed the Cap on Licenses**
2 **That Can Be Issued to a Single Company and Did Issue**
3 **the Required 80 Licenses in Clark County**

4 NAC 453D.272(5) provides that:

5 5. To prevent monopolistic practices, the Department will
6 ensure, in a county whose population is 100,000 or more, that
7 the Department does not issue, to any person, group of persons
8 or entity, the greater of:

- 9 (a) One license to operate a retail marijuana store; or
10 (b) More than 10 percent of the licenses for retail marijuana
11 stores allocable in the county.

12 Plaintiffs argue that the Department violated this provision when it issued 8 total
13 licenses in Clark County to Essence and only 79 licenses in Clark County total, resulting
14 in Essence having more than 7.9 licenses (10% of the allocated licenses). This argument
15 fails for two reasons. First, NAC 453D.272(5) states that the 10% limitation applies to
16 “allocable” licenses, not “allocated” licenses. There is no dispute that under NRS
17 453D.210(5)(d)(1), there are 80—not 79—allocable licenses in Clark County. Second, the
18 Department actually allocated 80 licenses in Clark County. It allocated 49 during the one-
19 for-one application period and 31 during the Limited Application Period.

20 **d. Plaintiffs’ Expert Provides No Helpful Opinion**

21 Plaintiffs attempt to use an alleged expert report from Dr. Amei, an Associate
22 Professor in Statistics at UNLV, to support two arguments. Both attempts fail.
23 Preliminarily, Dr. Amei has provided a report which purports to critique the Department’s
24 scoring without having actually analyzed or reviewed the underlying applications or
25 scoring process. Indeed, not only has Dr. Amei not reviewed the scored applications, her
26 report does not indicate she has even reviewed the blank application. As such, it is
27 impossible to know whether she knows what the various scoring criteria is. That being said,
28 whatever general statistical value that Dr. Amei’s report may have, it is not helpful to
29 Plaintiffs.

30 Plaintiffs first attempt to use Dr. Amei’s report to argue that the Department
31 violated NAC 453D.272(5)(b)’s limitation that no entity receive “[m]ore than 10 percent of
32 the licenses for retail marijuana stores allocable in the county.” They claim that

1 Department's awarding of 8 licenses in Clark County to an entity called Essence was
2 inappropriate because each entity was limited to 7 licenses because the Department has
3 only allocated 79 licenses in Clark County (and 10% of 79, which is 7.9, rounds down to 7).
4 This argument fails both factually and legally. First, the Department issued 80 licenses in
5 Clark County—not 79.¹⁵ Second, NAC 453D.272(5)(b) does not place a 10% limit based upon
6 the number of licenses “allocated.” It places the limit based on the number of licenses
7 “allocable”—and there is no dispute that there were 80 licenses allocable in Clark County.
8 Plaintiffs alternatively argue that the 10% limit somehow applies to the licenses allocated
9 in each period, rather than the total licenses allocable. They say this limited the
10 Department to issuing only 10% of the licenses awarded in each application period to one
11 entity. Such a reading of the regulation is not consistent with any method of interpretation
12 and would be absurd as it would allow the Department to issue *every* single license to one
13 entity so long as it did so through separate application periods. By that interpretation, the
14 Department could have had successive small rounds of applications with all or the majority
15 of the licenses going to one or a few entities. Such a provision could hardly be called an
16 anti-monopoly provision.

17 Plaintiffs then try to use Dr. Amei's report to argue that it was statistically
18 impossible for some entities to receive similar scores across jurisdictions and, as a result,
19 the Department could not have scored the applications objectively and fairly. Apart from
20 being pure speculation given that she has not reviewed the underlying applications, Dr.
21 Amei's conclusions regarding the likelihood of an applicant receiving such similar scores
22 across jurisdictions relies on the incorrect assumption that the score in each jurisdiction
23 was random and completely independent of the applicant's other score. There is no basis
24 for this assumption, and it makes no sense. An applicant who submits a high scoring
25 application in one jurisdiction and receives a high score for jurisdiction specific criteria is
26 likely going to be the type of applicant who submits good applications. In short, while Dr.
27 . . .

28 ¹⁵ See generally Exs. A and B.

1 Amei's analysis of random probability may or may not be accurate—it is of not relevant to
2 this matter.

3 **C. Plaintiffs' Constitutional Claims All Fail as a Matter of Law**

4 Preliminarily, the Department notes that it is not the correct party for a suit under
5 42 U.S.C. §1983. The United State Supreme Court held in *Will v. Mich. Dep't of State Police*
6 that states and their agencies are not “persons” capable of being sued under §1983. 491
7 U.S. 58, 64-70, 71 (1989). The Court then explained that a plaintiff to use §1983 for
8 prospective injunctive relief would have to sue the responsible state officer in his official
9 capacity. *Id.* at n.10. The Department simply is not a “person” under §1983, even where
10 Plaintiffs seek prospective injunctive relief. Even if Plaintiffs could overcome this hurdle,
11 which they cannot, their constitutional theories for procedural due process, substantive due
12 process, and equal protection fail as a matter of law.

13 Plaintiffs' constitutional theories, properly considered, arise under administrative
14 law and not constitutional law. Plaintiffs' constitutional theories are but a re-casting of
15 their administrative law arguments that the Department's regulations are improper in
16 light of the NRS 453D.210. Br. at 31:15-20. However, that does not turn those allegations
17 into a constitutional question. To be sure, Nevada courts could invalidate regulations on
18 constitutional grounds. *Meridian Gold Co. v. State ex rel. Dep't of Taxation*, 119 Nev. 630,
19 635, 81 P.3d 516, 519 (2003). But, Plaintiffs only assume a constitutional question because
20 they argue the Department's scoring criteria regulations exceeded the Department's power
21 delegated by the legislature. Br. 39:18-27. In other words, Plaintiffs are improperly relying
22 on administrative law to create a constitutional question. *See generally Brown v. Holder*,
23 763 F.3d 1141, 1148 (9th Cir. 2014) (collecting cases).

24 Plaintiffs' procedural due process theory fails for other reasons. Plaintiffs waste
25 nearly 10 pages of their brief to support the unremarkable proposition that a statutory
26 entitlement can support a sufficiently concrete interest to be protected by procedural due
27 process. Br., pp. 31-40. However, Plaintiffs fail to cite a single case where a property
28 interest was recognized where a party had a mere right to apply for a license, which would

1 only be awarded after a competitive bidding process. A procedural due process right may
2 ripen after a benefit, for example, such as welfare benefits, have already been issued to
3 prevent the arbitrary discontinuance of those benefits. *See Goldberg v. Kelly*, 397 U.S. 254,
4 260-66 (1970).

5 Contrary to Plaintiff's argument, the Department does not need to demonstrate that
6 it has "unfettered discretion." Br., 40:1-5. Plaintiffs have the burden of proof and persuasion
7 backward. It is Plaintiffs' burden to demonstrate that a statute "greatly restrict[s] the
8 discretion" of the government officials who administer the licensure process. *See Griffeth v.*
9 *Detrich*, 603 F.2d 118, 121 (9th Cir. 1979). In other words, Plaintiffs can meet their burden
10 to show a property interest if the statute "mandates a benefit when specific non-
11 discretionary factual criteria are met." *Doyle v. City of Medford*, 606 F.3d 667, 673 (9th Cir.
12 2010). Here, there is no such language in 453D.210(6). Rather, Plaintiffs only have a right
13 to participate in a competitive bidding process. NRS 453D.210(6).

14 The Department's reading of 453D.200 and 453D.210 is by far the best reading. The
15 legislature gave the Department broad discretion to adopt regulations "necessary or
16 convenient to carry out the provisions of this chapter." NRS 453D.200(1). The legislature
17 then further delegated authority to the Department to create an impartial and numerically
18 scored competitive bidding process..." NRS 453D.210(6).

19 The Departments' discretion is not limited by NRS 453D.210(5). This statute is a
20 procedural directive which states that the Department shall approve a license application
21 when certain conditions are met, but only "if . . . there are not more than" the capped
22 number of licenses already issued in that county. Although NRS 453D.210(5) creates a
23 mandatory duty on the part of the Department to issue a specific number of applications if
24 certain criteria are met, it does not dictate who receives those licenses. Instead, consistent
25 with the harmonious-reading canon, NRS 453D.210(5) dovetails with NRS 453D.210(6),
26 which requires the Department to use a competitive bidding process to determine which
27 applicant receives a license when there are more qualified applicants than there are
28 licenses to issue. A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*,

1 Canon #27 (2012). As a result, the only mandatory duty that the Department has under
2 NRS 453D.210 is to issue a certain number of licenses—which it did. The Department,
3 however, has broad discretion to decide how to distribute those licenses among a
4 superabundance of applicants.

5 Plaintiffs’ attempt to constrain the discretion the legislature imparted to the
6 Department runs square against the lack of “particularized standards or criteria” from the
7 legislature. *See e.g. Allen v. City of Beverly Hills*, 911 F.2d 367, 370 (9th Cir. 1990)
8 (quoting *Fid. Fin. Corp. v. Fed. Home Loan Bank of S.F.*, 792 F.2d 1432, 1436 (9th Cir.
9 1986)). In *Allen v. City of Beverly Hills*, the Ninth Circuit held that an ordinance providing
10 that a city “may abolish any position” when “in the judgment of the Council it becomes
11 necessary in the interests of economy or because the necessity for a position no longer
12 exists,” gave the government “broad discretion,” rather than imposing “particularized
13 standards or criteria that *significantly* constrain.” *Id.* at 370–71 (emphasis added) (internal
14 quotation marks and alteration omitted). Thus, it did not create a protected property
15 interest. *Id.* at 372. Similarly, in *Shanks v. Dressel*, the Ninth Circuit held that a statute
16 containing several open-ended criteria, as well as one that looked to “other factors of public
17 interest,” did not contain “particularized standards” that significantly constrained
18 discretion. 540 F.3d 1082, 1091 (9th Cir. 2008) (internal quotation marks omitted).

19 Plaintiffs’ substantive due process argument is not persuasive. The Fourteenth
20 Amendment confers substantive due process rights, but these unenumerated rights are
21 limited to fundamental rights and liberty interests. *Wash. v. Glucksberg*, 521 U.S. 702,
22 720-21 (1997); *see also Does v. Munoz*, 507 F.3d 961, 965 (6th Cir. 2007) (holding that
23 substantive due process protects only “certain fundamental rights and liberty interests”).
24 Generally, substantive due process does not apply to economic and property interests.
25 *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 n. 4 (9th Cir. 1998). “The protections of
26 substantive due process have for the most part been accorded to matters relating to
27 marriage, family, procreation, and the right to bodily integrity.” *Albright v. Oliver*, 970 510
28 U.S. 266, 272 (1994) (citations omitted).

1 Plaintiffs argue that the pursuit of an occupation is a fundamental right. Br. 41:8-
2 27. Plaintiffs again ignore the test of whether substantive due process is offended where
3 the government activity in question arises in the economic sphere. Although the Supreme
4 Court has not defined the boundaries of an individual's right to pursue his chosen
5 profession, it has state that there is "some generalized due process right to choose one's
6 field of private employment." *Conn v. Gabbert*, 526 U.S. 286, 291-92 (1999). The Court has
7 emphasized, however, that all cases recognizing such a right have "deal[t] with a *complete*
8 *prohibition* on the right to engage in a calling." *Id.* at 292. Plaintiffs however can show no
9 such complete prohibition. Indeed, every single plaintiff in every single lawsuit suing the
10 Department over this application period was previously granted a license relating to
11 medical marijuana. As a result, they are all participating in the marijuana field.

12 Apart from this, even if Plaintiffs could prove they were unable to purse an
13 occupation, they would still need to prove that this is due to actions that substantively were
14 "clearly arbitrary and unreasonable, having no substantial relation to the public health,
15 safety, morals, or general welfare." *FDIC v. Henderson*, 940 F.2d 465, 474 (9th Cir.1991)
16 (citing *Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d 1398, 1407 (9th
17 Cir.1989), cert. denied, 494 U.S. 1016, (1990) (quoting *Village of Euclid v. Ambler Realty*
18 *Co.*, 272 U.S. 365, 395 (1926))). Plaintiffs cannot hope to meet either element.

19 That Plaintiffs were unsuccessful in the competitive bidding process is not a
20 complete bar to entry into a profession. Plaintiffs do not and cannot point to any language
21 in either a Nevada statute or regulation that gave them an entitlement to a license. At
22 most, Plaintiffs had an expectation of success, like other applicants, but nothing that had
23 ripened under state law into an entitlement. *See e.g. Board of Regents v. Roth*, 408 U.S.
24 564, 577 (1972).

25 Absent a fundamental right, Nevada courts "scrutiniz[es] the challenged legislation
26 for foundational support containing an ingredient of rational basis.'" *Barrett v. Baird*, 111
27 Nev. 1496, 1509, 908 P.2d 689, 698 (1995) (quoting *Allen v. State Pub. Emp. Ret. Bd.*, 100
28 Nev. 130, 136, 676 P.2d 792, 795-96 (1984)). No fundamental right is at issue here based

1 on a statutory right to participate in competitive bidding. There is a conceivable basis for
2 considering operating experience, diversity, educational experience, amount of taxes paid,
3 and the resources of the applicant. Br. at 12:1-16. It is rational to believe that all of these
4 characteristics have a nexus to the operational and educational skills of the applicant, the
5 potential economic stability of the applicant. Further, it is beyond peradventure that the
6 government can use diversity among other factors in government programs. *See e.g. Univ.*
7 *and Comm. Coll. Sys. of Nev. v. Farmer*, 113 Nev. 90, 97-98, 930 P.2d 730, 734-35 (1997).

8 Plaintiffs' equal protection clause argument is also not persuasive. The Equal
9 Protection Clause of the Fourteenth Amendment guarantees, "No state shall ... deny to any
10 person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, §
11 1. "The standard for testing the validity of legislation under the equal protection clause of
12 the state constitution is the same as the federal standard." *Barrett v. Baird*, 111 Nev. 1496,
13 1509, 908 P.2d 689, 698 (1995), *overruled on other grounds by Lioce v. Cohen*, 124 Nev. 1,
14 174 P.3d 970 (2008).

15 Plaintiffs allege that the Department intentionally treated them differently from
16 other similarly situated applicants under a "class of one" theory. To succeed on a "class of
17 one" claim, Plaintiffs must demonstrate that the Department: "(1) intentionally (2) treated
18 [Plaintiffs] differently than other similarly situated applicants, (3) without a rational
19 basis." *Gerhart v. Lake Cty., Mont.*, 637 F.3d 1013, 1022 (9th Cir. 2011). When analyzing
20 the rational basis requirement, the Court looks at whether there was a rational basis for
21 treating Plaintiffs differently, not whether there was a rational basis for denying Plaintiffs'
22 application. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (explaining that a class
23 of one claim requires plaintiff to show that "there is no rational basis for the difference in
24 treatment"). As pled, this claim is virtually indistinguishable from Plaintiffs' generalized
25 request for a writ of mandamus challenging the Department's scoring.

26 The Department, however, did not treat Plaintiffs differently than similarly situated
27 applicants. As to their claim of unconstitutional discrimination, Plaintiffs' allegations are
28 entirely conclusory. They complain without explanation that they were subject to

1 “disparate treatment” but the nature of the alleged “disparate treatment” remains a
2 mystery. As a result, Plaintiffs’ equal protection claim fails and is not a proper basis for
3 injunctive relief.

4 **III. The Balance of Harms and Public Interest Weigh Against an Injunction**

5 As they do not have a right to a conditional license, Plaintiffs will suffer no harm
6 absent an injunction. The State, on the other hand, would be harmed by an injunction
7 because retail licenses are a significant source of potential tax revenue. Indeed, this is often
8 cited as the major reason Ballot Initiative 2 passed. Numerous conditional licenses will
9 become active by December 4, 2019, unless an injunction is ordered. The operations from
10 those retail stores would provide the State with tax revenue beginning in 2019 as the
11 licenses were perfected and the businesses became operational.

12 **IV. Plaintiffs’ Motion Ignores the Bond Requirement**

13 Plaintiffs fail to address the amount of the bond that would be required should an
14 injunction issue. *Strickland v. Griz Corp.*, 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976)
15 (“[w]here a bond is required by statute before the issuance of an injunction, it must be
16 exacted or the order will be absolutely void.”) (quoting *Shelton v. Dist. Ct.*, 64 Nev. 487,
17 494, 185 P.2d 320, 323–24 (1947)). *See also* NEV. R. CIV. P. 65(c) (“no restraining order or
18 preliminary injunction shall issue except upon the giving of security by the applicant”). The
19 Department, however, does not insist on a large bond. Although the Department does not
20 believe an injunction should issue because the Department acted in good faith, it has no
21 goal other than defending its process, statutes, and regulations. The Department intends
22 to demonstrate that every decision it made was guided by a good faith desire to implement
23 the laws and the will of the voters without any prejudice for or against any party.

24 **CONCLUSION**

25 Plaintiffs received precisely what they bargained for in the competitive bidding
26 process—a chance to compete for but not an entitlement to a license. The Department acted
27 well within its discretion to promulgate regulations to foster a healthy, fair competitive
28 environment where many succeeded even if Plaintiffs did not. This Court should not

1 disrupt this new Nevada industry to favor those that failed. This Court should deny
2 Plaintiffs' motion for preliminary injunction.

3 DATED this 9th day of May, 2019.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Ketan D. Bhirud

Ketan D. Bhirud (Bar No. 10515)
Chief Litigation Counsel
Steve Shevorski (Bar No. 8256)
Head of Complex Litigation
David J. Pope (Bar No. 8617)
Chief Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing **OPPOSITION TO MOTION**
3 **FOR PRELIMINARY INJUNCTION** with the Clerk of the Court by using the electronic
4 filing system on the 9th day of May, 2019.

5 I certify that the following participants in this case are registered electronic filing
6 systems users and will be served electronically:

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23 /s/ Traci Plotnick
24 Traci Plotnick, an employee of the
25 Office of the Attorney General
26
27
28

EXHIBIT A

EXHIBIT A

1 **DECLARATION OF DAMON HERNANDEZ**

2 I, Damon Hernandez, declare under penalty of perjury under the law of the State of
3 Nevada that the foregoing is true and correct:

4 1. I am currently employed by the State of Nevada and serve as the Chief
5 Compliance Audit Investigator for the Nevada Department of Taxation (Department)
6 relating to recreational marijuana.

7 2. Through the May 2017 one-for-one application period, the Department
8 issued 47 retail store licenses in Clark County.

9 3. In 2018, the Department issued 2 additional licenses in Clark County - a
10 conditional retail store license was issued to NuLeaf CLV Dispensary, LLC and a retail
11 store license was issued to Wellness Connection of Nevada LLC dba Cultivate
12 Dispensary.

13 Dated: May 9, 2019.

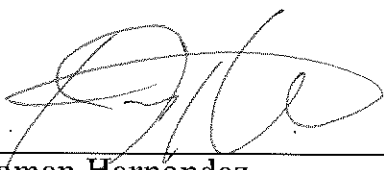
14 
15 Damon Hernandez
16 Chief Compliance Audit Investigator
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EXHIBIT B

EXHIBIT B

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Steve Gilbert
Health Program Manager III

EXHIBIT C

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APR 23 2014

INITIATIVE TO REGULATE AND TAX MARIJUANA

SECRETARY OF STATE

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Short Title. Sections 1 to 18, inclusive, of this act may be cited as the Regulation and Taxation of Marijuana Act.

Sec. 2. Preamble.

In the interest of the public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.

The People of the State of Nevada declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and to the enforcement of the regulations in this act.

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

- (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- (c) Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;
- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the state will be tested and labeled.

Sec. 3. Definitions. As used in sections 1 to 18, inclusive, of this act, unless the context otherwise requires:

1. “Community facility” means a facility licensed to provide day care to children, a public park, a public playground, a public swimming pool, a center or facility the primary purpose of which is to provide recreational opportunities or services to children or adolescents, or a church, synagogue, or other building, structure, or place used for religious worship or other religious purpose.

2. “Concentrated marijuana” means the separated resin, whether crude or purified, obtained from marijuana.

3. “Consumer” means a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others.

4. “Department” means the Department of Taxation.

5. “Dual Licensee” means a person or group of persons who possess a current, valid registration certificate to operate a medical marijuana establishment pursuant to Chapter 453A of NRS and a license to operate a marijuana establishment under sections 1 to 18, inclusive, of this act.

6. “Excluded felony offense” means a conviction of an offense that would constitute a category A felony if committed in Nevada or convictions for two or more offenses that would constitute felonies if committed in Nevada. “Excluded felony offense” does not include:

- (a) A criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed more than 10 years ago; or
- (b) An offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to Chapter 453A of NRS, except that the conduct occurred before the effective date of Chapter 453A of NRS, or was prosecuted by an authority other than the State of Nevada.

7. “Locality” means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.

8. “Marijuana” means all parts of any plant of the genus *Cannabis*, whether growing or not, 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:

(a) 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 therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

9. “Marijuana cultivation facility” means an entity licensed to cultivate, process, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

10. “Marijuana distributor” means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.

11. “Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.

12. “Marijuana product manufacturing facility” means an entity licensed to purchase marijuana, manufacture, process, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

13. “Marijuana products” means products comprised of marijuana or concentrated marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

14. “Marijuana paraphernalia” means any equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

15. “Marijuana testing facility” means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.

16. “Process” means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.

17. “Public place” means an area to which the public is invited or in which the public is permitted regardless of age. “Public place” does not include a retail marijuana store.

18. “Retail marijuana store” 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.

19. “Unreasonably Impracticable” means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Sec. 4. Limitations. 1. Sections 1 to 18 do not permit any person to engage in and do not prevent the imposition of any civil, criminal, or other penalty for:

(a) Driving, operating, or being in actual physical control of a vehicle, aircraft, or vessel under power or sail while under the influence of marijuana or while impaired by marijuana;

(b) Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under 21 years of age, unless:

(1) The recipient is permitted to possess marijuana pursuant to Chapter 453A of NRS; or

(2) The person demanded and was shown bona fide documentary evidence of the majority and identity of the recipient issued by a federal, state, county, or municipal government, or subdivision or agency thereof;

(c) Possession or use of marijuana or marijuana paraphernalia on the grounds of, or within, any facility or institution under the jurisdiction of the Nevada Department of Corrections;

(d) Possession or use of marijuana on the grounds of, or within, a school providing instruction in preschool, kindergarten, or any grades 1 through 12; or

(e) Undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.

2. Sections 1 to 18 do not prohibit:

(a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act;

(b) A state or local government agency that occupies, owns, or controls a building from prohibiting or otherwise restricting the consumption, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana in that building;

(c) A person who occupies, owns, or controls a privately owned property from prohibiting or otherwise restricting the smoking, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana on that property; or

(d) A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.

3. Nothing in the provisions of sections 1 to 18, inclusive, of this act shall be construed as in any manner affecting the provisions of Chapter 453A of NRS relating to the medical use of marijuana.

Sec. 5. Powers and duties of the Department. 1. Not later than 12 months after the effective date of this act, the Department shall adopt all regulations necessary or convenient to carry out the provisions of sections 1 to 18, inclusive, of this act. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:

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

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

(c) Requirements for the security of marijuana establishments;

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

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

(f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(g) Requirements for record keeping by marijuana establishments;

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

(i) Procedures for the collection of taxes, fees, and penalties imposed by sections 1 to 18, inclusive, of this act;

(j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of section 13 of this act.

2. The Department shall approve or deny applications for licenses pursuant to section 9 of this act.
3. The Department may by motion or on complaint, after investigation, notice of the specific violation, and an opportunity for a hearing, pursuant to the provisions of Chapter 233B of NRS, suspend, revoke, or fine a licensee for the violation of sections 1 to 18, inclusive, of this act or for a violation of a regulation adopted by the Department pursuant to this section.
4. The Department may immediately suspend the license of any marijuana establishment if the marijuana establishment knowingly sells, delivers, or otherwise transfers marijuana in violation of sections 1 to 18, inclusive, of this act, or knowingly purchases marijuana from any person not licensed pursuant to sections 1 of 18, inclusive, of this act or to Chapter 453A of NRS. The Department must provide an opportunity for a hearing pursuant to the provisions of NRS 233B.121 within a reasonable time from a suspension pursuant to this subsection.
5. To ensure that individual privacy is protected:
 - (a) The Department shall not require a consumer to provide a retail marijuana store with identifying information other than government-issued identification to determine the consumer's age; and
 - (b) A retail marijuana store must not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.
6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.
7. The Department shall inspect marijuana establishments as necessary to enforce sections 1 to 18, inclusive, of this act or the regulations adopted pursuant to this section.

Sec. 6. Personal Use and Cultivation of Marijuana. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, it is lawful, in this State, and must not be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana;
2. Possess, cultivate, process, or transport not more than six marijuana plants for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that:
 - (a) Cultivation takes place within a closet, room, greenhouse, or other enclosed area that is equipped with a lock or other security device that allows access only to persons authorized to access the area; and
 - (b) No more than 12 plants are possessed, cultivated, or processed at a single residence, or upon the grounds of that residence, at one time;
3. Give or otherwise deliver one ounce or less of marijuana, other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana without remuneration to a person provided that the transaction is not advertised or promoted to the public; or
4. Assist another person who is 21 years of age or older in any of the acts described in this section.

Sec. 7. Marijuana Paraphernalia Authorized. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, it is not unlawful and shall not be an offense or be a basis for seizure or forfeiture of assets for persons 21 years of age or older to manufacture, possess, use, transport, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is 21 years of age or older.

Sec. 8. Lawful operation of marijuana establishments. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, or the regulations adopted pursuant to section 5 of this act, it is lawful and must not, in this

State, be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess marijuana and marijuana products, purchase marijuana from a marijuana cultivation facility, purchase marijuana and marijuana products from a marijuana product manufacturing facility, return marijuana or marijuana products to a facility from which they were purchased, transport marijuana and marijuana products to or from a marijuana testing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, or sell marijuana and marijuana products to consumers, if the person conducting the activities described in this subsection has a current, valid license to operate a retail marijuana store or is acting in the person's capacity as an agent of a retail marijuana store.
2. Cultivate, harvest, process, package, or possess marijuana, sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store, transport marijuana to or from a marijuana cultivation facility, a marijuana product manufacturing facility, or a marijuana testing facility, use the services of a marijuana distributor to transport marijuana to or from marijuana establishments, or purchase marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an agent of a marijuana cultivation facility.
3. Package, process, manufacture, or possess marijuana and marijuana products, transport marijuana and marijuana products to or from a marijuana testing facility, a marijuana cultivation facility, or a marijuana product manufacturing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, sell marijuana and marijuana products to a retail marijuana store or a marijuana product manufacturing facility, purchase marijuana from a marijuana cultivation facility, or purchase marijuana and marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an agent of a marijuana product manufacturing facility.
4. Possess marijuana and marijuana products and transfer and transport marijuana and marijuana products between marijuana establishments, if the person transporting the marijuana and marijuana products has a current, valid license to operate as a marijuana distributor or is acting in his or her capacity as an agent of a marijuana distributor.
5. Possess, process, repackage, transport, or test marijuana and marijuana products if the person has a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an agent of a marijuana testing facility.
6. Lease or otherwise allow property owned, occupied, or controlled by any person, corporation, or other entity to be used for any of the activities conducted lawfully in accordance with this section.

Sec. 9. Contracts pertaining to marijuana enforceable. It is the public policy of the People of the State of Nevada that contracts related to the operation of marijuana establishments under sections 1 to 18, inclusive, of this act should be enforceable, and no contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

Sec. 10. Certification of marijuana establishments. 1. No later than 12 months after the effective date of this act, the Department shall begin receiving applications for marijuana establishments.

2. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities pursuant to sections 1 to 18, inclusive, of this act,

from persons holding a medical marijuana establishment registration certificate pursuant to Chapter 453A of NRS.

3. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to sections 1 to 18, inclusive, of this act, only to persons holding a wholesale dealer license pursuant to Chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

- (a) Issue the appropriate license if the license application is approved; or
- (b) Send a notice of rejection setting forth the reasons why the Department did not approve the license application.

5. The Department shall approve a license application if:

- (a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to section 12;
- (b) The physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property;
- (c) The property is not located within:
 - (1) 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or
 - (2) 300 feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;
- (d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:
 - (1) 80 licenses already issued in a county with a population greater than 700,000;
 - (2) 20 licenses already issued in a county with a population that is less than 700,000 but more than 100,000;
 - (3) 4 licenses already issued in a county with a population that is less than 100,000 but more than 55,000;
 - (4) 2 licenses already issued in a county with a population that is less than 55,000;
- (5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph;
- (e) The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality; and
- (f) The persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment:
 - (1) Have not been convicted of an excluded felony offense; and
 - (2) Have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked.

6. Competing applications. When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall use an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.

Sec. 11. Expiration and renewal. 1. All licenses expire one year after the date of issue.

2. The Department shall issue a renewal license within 10 days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment if its license is not under suspension or has not been revoked.

Sec. 12. Fee schedule. 1. The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of \$5,000.

2. The Department may require payment of an annual licensing fee not to exceed:

For the initial issuance of a license for a retail marijuana store.....	\$20,000
For a renewal license for a retail marijuana store.....	\$6,600
For the initial issuance of a license for a marijuana cultivation facility.....	\$30,000
For a renewal license for a marijuana cultivation facility.....	\$10,000
For the initial issuance of a license for a marijuana product manufacturing facility.....	\$10,000
For a renewal license for a marijuana product manufacturing facility.....	\$3,300
For the initial issuance of a license for a marijuana distributor.....	\$15,000
For a renewal license for a marijuana distributor.....	\$5,000
For the initial issuance of a license for a marijuana testing facility.....	\$15,000
For a renewal license for a marijuana testing facility.....	\$5,000

Sec. 13. Marijuana establishment operating requirements. In addition to requirements established by rule pursuant to section 5 of this act:

1. Marijuana establishments shall:

- (a) Secure every entrance to the establishment so that access to areas containing marijuana is restricted to persons authorized to possess marijuana;
- (b) Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana;
- (c) Determine the criminal history of any person before the person works or volunteers at the marijuana establishment and prevent any person who has been convicted of an excluded felony offense or who is not 21 years of age or older from working or volunteering for the marijuana establishment.

2. All cultivation, processing, and manufacture of marijuana must take place at a physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons authorized to access the area. The area may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least 8 feet high.

3. All cultivation, processing, and manufacture of marijuana must not be visible from a public place by normal unaided vision.

4. All cultivation, processing, and manufacture of marijuana must take place on property in the marijuana establishment's lawful possession or with the consent of the person in lawful physical possession of the property.

5. A marijuana establishment is subject to reasonable inspection by the Department, and a person who holds a marijuana establishment license must make himself or herself, or an agent thereof, available and present for any inspection required by the Department. The Department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

Sec. 14. Penalties. 1. Restrictions on personal cultivation.

(a) Except as otherwise provided in 453A of NRS, any person who:

- (1) Cultivates marijuana plants within 25 miles of a retail marijuana store licensed pursuant to sections 1 to 18, inclusive, of this act, unless the person is a marijuana cultivation facility or a person acting in his or her capacity as an agent of a marijuana cultivation facility;
- (2) Cultivates marijuana plants where they are visible from a public place by normal unaided vision; or
- (3) Cultivates marijuana on property not in the cultivator's lawful possession or without the consent of the person in lawful physical possession of the property;

(b) Is guilty of:

- (1) For a first violation, a misdemeanor punished by a fine of not more than \$600.
- (2) For a second violation, a misdemeanor punished by a fine of not more than \$1,000.
- (3) For a third violation, a gross misdemeanor.
- (4) For a fourth or subsequent violation, a category E felony.

2. A person who smokes or otherwise consumes marijuana in a public place, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than \$600.

3. A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana is guilty of a misdemeanor.

4. A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana establishment shall be punished by a fine of not more than \$500 unless the person is authorized to possess marijuana pursuant to Chapter 453A NRS and the marijuana establishment is a dual licensee.

5. A person who manufactures marijuana by chemical extraction or chemical synthesis, unless done pursuant to a marijuana product manufacturing license issued by the Department or authorized by Chapter 453A of NRS, is guilty of a category E felony.

6. A person who knowingly gives marijuana to any person under 21 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 21 years of age is guilty of a misdemeanor.

7. A person who knowingly gives marijuana to any person under 18 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 18 years of age is guilty of a gross misdemeanor.

8. Notwithstanding the provisions of sections 1 to 18, inclusive, of this act, after the effective date of this act, the legislature may amend provisions of this act to provide for the conditions in which a locality may permit consumption of marijuana in a retail marijuana store.

Sec. 15. Marijuana excise tax. 1. An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this subsection:

- (a) Is the obligation of the marijuana cultivation facility; and
- (b) Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

Sec. 16. Any tax revenues, fees, or penalties collected pursuant to sections 1 to 18, inclusive, of this act, first must be expended to pay the costs of the Department and of each locality in carrying out sections 1 to 8, inclusive, of this act and the regulations adopted pursuant thereto. The Department shall remit any remaining money to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Sec. 17. Severability. If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 18. Effective Date. This act shall become effective on October 1, 2015 if approved by the legislature, or on January 1, 2017 if approved by the voters.

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DESCRIPTION OF EFFECT

The initiative proposes statutory amendments that would regulate and tax marijuana similar to alcohol. If passed, persons at least 21 years old would be allowed to possess and use a limited amount of marijuana. Giving or selling marijuana to minors, driving under the influence of marijuana, and marijuana use in public would remain prohibited.

The Nevada Department of Taxation would issue licenses to marijuana retailers, suppliers, testing facilities, and distributors. The Department would determine the qualification for licensure, security, packaging, labeling and testing of marijuana. Counties, cities, and towns would control marijuana business locations. Marijuana businesses would not be able to operate near schools, childcare facilities, houses of worship, or certain other community facilities. Retail licenses will be limited in number. The Department would oversee marijuana businesses and licensees. Licensees who engage in certain conduct, including selling marijuana to minors, allowing minors on their premises, or permitting on-site marijuana consumption would be subject to penalties.

An excise tax of 15% would be imposed on wholesale sales of marijuana. The existing sales tax would apply to retail sales of marijuana. Net revenue generated under this proposal would be deposited in the Distributive School Account and used for support of K-12 education.

County of _____

(Only registered voters of this county may sign below)

Petition District: _____

(Only registered voters of this petition district may sign below)

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17	PRINT YOUR NAME (first, initial, last)		RESIDENCE ADDRESS ONLY			
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DESCRIPTION OF EFFECT

The initiative proposes statutory amendments that would regulate and tax marijuana similar to alcohol. If passed, persons at least 21 years old would be allowed to possess and use a limited amount of marijuana. Giving or selling marijuana to minors, driving under the influence of marijuana, and marijuana use in public would remain prohibited.

The Nevada Department of Taxation would issue licenses to marijuana retailers, suppliers, testing facilities, and distributors. The Department would determine the qualification for licensure, security, packaging, labeling and testing of marijuana. Counties, cities, and towns would control marijuana business locations. Marijuana businesses would not be able to operate near schools, childcare facilities, houses of worship, or certain other community facilities. Retail licenses will be limited in number. The Department would oversee marijuana businesses and licensees. Licensees who engage in certain conduct, including selling marijuana to minors, allowing minors on their premises, or permitting on-site marijuana consumption would be subject to penalties.

An excise tax of 15% would be imposed on wholesale sales of marijuana. The existing sales tax would apply to retail sales of marijuana. Net revenue generated under this proposal would be deposited in the Distributive School Account and used for support of K-12 education.

County of _____

(Only registered voters of this county may sign below)

Petition District: _____

(Only registered voters of this petition district may sign below)

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Office Use Only

19	PRINT YOUR NAME (first, initial, last)		RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE	DATE / /	CITY	COUNTY	PETITION DISTRICT	
20	PRINT YOUR NAME (first, initial, last)		RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE	DATE / /	CITY	COUNTY	PETITION DISTRICT	

AFFIDAVIT OF CIRCULATOR

(To be signed by circulator in the presence of a notary public)

STATE OF NEVADA)

)

County of _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

____ day of _____, _____, by _____.

Notary Public

EXHIBIT D

EXHIBIT D

PROPOSED REGULATION OF THE

NEVADA TAX COMMISSION

LCB File No. T002-17

May 8, 2017

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: NRS 453D.200 authorizes the Department to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D.

Section 1. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 35, inclusive, of this chapter.

Sec. 2. *As used in sections 2 to 35, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” defined. “Department” means the Department of Taxation.*

Sec. 4. *“Division” defined. “Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 5. *“Fair Market Value” defined. “Fair Market Value” is the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.*

Sec. 6. *“Marijuana Establishment” defined. A “Marijuana Establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*

Sec. 7. “Marijuana Establishment Agent” defined. A “Marijuana Establishment Agent” 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 licensed marijuana establishment, or an employee of such an independent contractor.

Sec. 8. “Excluded Felony Offense” defined. An “Excluded Felony Offense” has the meaning ascribed to it in NRS 453D.

Sec. 9. “Medical Marijuana Establishment Registration Certificate” defined. A “Medical Marijuana Establishment Registration Certificate” has the meaning ascribed to it in NRS 453A.119.

Sec. 10. “Marijuana” defined. “Marijuana” has the meaning ascribed to it in NRS 453D.030.

Sec. 11. “Medical Marijuana” defined. “Medical Marijuana” means the possession, delivery, production or use of marijuana pursuant to NRS 453A.

PRODUCTION AND DISTRIBUTION OF MARIJUANA

Temporary licensing of retail marijuana stores, marijuana testing facilities, marijuana product manufacturing facilities, and marijuana cultivation facilities

Sec. 12. Procedures for the issuance and revocation of a temporary license to operate a marijuana establishment.

1. A medical marijuana establishment that has received a medical marijuana establishment registration certificate and is operating and in good standing, as defined in subsections 7 and 8 of this section, under its medical marijuana establishment registration

certificate may apply for a marijuana establishment temporary license no later than May 31, 2017.

2. The application must be submitted by the same entity that holds the medical marijuana establishment certificate and must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must include, without limitation:

(a) A one-time, nonrefundable application fee of \$5,000 plus a license fee of:

(1) \$20,000 for a Retail Establishment;

(2) \$30,000 for a Cultivation Facility;

(3) \$10,000 for a Production/Manufacturing Facility; or

(4) \$15,000 for a Testing Facility

(5) \$15,000 for a Marijuana Distributor

(b) That the applicant is applying for a temporary marijuana establishment license;

(c) The type of temporary marijuana establishment license for which the applicant is applying;

(d) The name of the marijuana establishment, as reflected on the registration certificate issued pursuant to NRS 453A and in the articles of incorporation or other documents filed with the Secretary of State;

(e) The physical address where the marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

(i) Authorization for the Department to review the records of the Division necessary

to determine if the applicant is in good standing under its medical marijuana establishment registration certificate;

(j) Attestation that the applicant understands its location must be properly zoned in compliance with NRS 453D.210(5)(a)-(c) and NRS 453D.210(5)(e) prior to receiving a temporary marijuana establishment license;

(k) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana License;

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

(m) The signature of a natural person for the proposed marijuana establishment and the date on which the person signed the application; and

(n) Any other information that the Department may require.

3. The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the Department's website.

4. Upon receipt of the application by the Department, the Department shall approve the issuance of a temporary marijuana establishment license if:

(a) The applicant holds the same or similar license type under NRS 453A for which it is applying or is applying for a marijuana distributor license;

(b) The applicant is operating and in good standing under its medical marijuana establishment registration certificate; and

(c) The applicant is in compliance with NRS 453D.210 (5)(a)-(f). For purposes of determining compliance with 453D(5)(c) and (e), the Department will not issue the license until the Department receives written notice from the locality that the applicant is in compliance with the distance requirements and zoning and land use rules adopted by the locality.

5. If the proposed marijuana establishment will be located at a location different from the medical marijuana establishment, the Department will not issue a temporary marijuana establishment license until the Department completes an inspection of the proposed marijuana establishment. Such an inspection may require more than one visit to the proposed marijuana establishment.

6. If the temporary marijuana establishment license application is not approved, the license fee will be refunded to the applicant.

7. As used in this section, a medical marijuana establishment is in “good standing” if it is in compliance with NRS 453A and NAC 453A, including but not limited to the following:

(a) For all medical marijuana establishments:

(1) All licenses, certificates and fees are current and paid;

(2) No registration certificate suspension within 6 months of the effective date of the marijuana establishment temporary license for enforcement violations including but not limited to provisions NRS 453A.352, NRS 453A.362, NAC 453A.406, NAC 453A.414, NAC 453A.658, NAC 453A.668, and NAC 453A.672;

(3) The applicant is not delinquent in the payment of any tax administered by the Department or is not in default on a payment required pursuant to a written agreement with the Department, or is not otherwise liable to the Department for the payment of money;

(4) No citations for illegal activity or criminal conduct; and

(5) Plans of correction are in progress or are complete and on time as defined in NRS 453A.330.

(b) If a medical marijuana establishment registration certificate is provisional it is not in good standing pursuant to this section.

8. As used in this section, a medical marijuana establishment is “operating” if it filed a return and paid the tax imposed by NRS 372A.290 prior to or on May 31, 2017.

9. Any application or license fee paid for a temporary marijuana establishment license can be applied toward the fees required for a permanent license.

10. After the application period provided in subsection 1, the Department may accept additional applications for not more than a total of 5 business days. These regulations will apply to any subsequent application period determined by the Department except that the requirement to be operating as provided in subsection 8 will not apply to any subsequent application period.

Sec. 13. Temporary marijuana license except marijuana distributor: Grounds for denial, suspension or revocation.

1. The Department will deny an application for a temporary marijuana establishment license if:

(a) The applicant is not in compliance with NRS 453A, NAC 453A, NRS 453D or this chapter;

(b) The applicant is not in good standing as required by Section 12 of this chapter;

(c) The applicant is not in compliance with NRS 453D zoning requirements; and

(d) The applicant has not paid fees required by NRS 453D.

(e) The marijuana establishment has failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

2. The Department will revoke or suspend a temporary marijuana establishment license if:

(a) The marijuana establishment dispenses, delivers or otherwise transfers marijuana to a person under 21 years of age;

(b) The marijuana establishment acquires usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(c) An owner, officer or board member of the marijuana establishment has been convicted of an excluded felony offense;

(d) The Department receives formal notice from the applicable local government that the marijuana establishment has had its authorization to operate terminated;

(e) Any license issued pursuant to NRS 453A is suspended or revoked; or

(f) The marijuana establishment failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

Temporary licensing of marijuana distributors

Sec. 14. Applications to operate marijuana establishment – marijuana distributors:

Required provisions.

1. The Department will accept distributor applications from applicants meeting the following criteria:

(a) Persons holding a liquor wholesaler dealer license pursuant to NRS 369;

(1) Person has the meaning ascribed to it in NRS 0.039.

(2) The person holding the wholesaler liquor dealer license must be the person applying for the marijuana distributor license.

(b) Medical marijuana establishments that hold a registration certificate pursuant to NRS 453A.322(5) and are operating and in good standing as provided in Section 12 of this chapter; or

(c) Applicants who are currently in the business of transporting medical marijuana and whose employees hold valid agent cards pursuant to NRS 453A.332

(1) For the applicant and each person who is proposed to be an owner, officer or board member of the entity that is currently in the business of transporting medical marijuana, each must comply with the provisions set forth in NRS 453A.322 and NRS 453.332 regarding fingerprinting and background checks.

2. After the application deadline set forth in Section 15 the Department may determine pursuant to NRS 453D.210(3) that an insufficient number of distributor licenses would result from limiting licenses to persons holding a wholesale dealer license pursuant to chapter 369 of NRS. The determination will be based upon the liquor wholesale dealer applicants' responses to the following considerations:

(a) Whether the applicant has begun the process to secure local zoning and/or special use permits necessary to operate a marijuana establishment;

(b) Whether the applicant owns the building where it will operate its marijuana establishment, and if not, if it has received written permission from the property owner to operate the proposed marijuana establishment;

(c) Whether the applicant has consulted with a contractor about making physical security modifications to the building where it proposes to operate the marijuana establishment to comply with NRS 453D.300, and if so, whether those modifications would be complete by July 1, 2017, or whether the building which the applicant proposes to use complies with the security requirements for marijuana establishments;

(d) Whether the applicant acknowledges that there is a conflict between state and federal law regarding marijuana sales and that being a licensed marijuana establishment may jeopardize the applicant's status as a federally licensed liquor wholesaler and whether the applicant is prepared to enter the marijuana market despite the potential federal licensing issues;

(e) Explain whether the applicant currently serves a variety of geographic markets as a liquor wholesaler or explain how the applicant is prepared to serve different geographic markets in the state.;

(f) Explain what experience the applicant has in serving a variety of retailers as a liquor wholesaler;

(g) Other information included in the application described in Section 15; and

(h) Other information the applicant believes shows that it is prepared to serve the marijuana establishment market on July 1, 2017.

Sec. 15. Temporary marijuana establishment license for marijuana distributor. Procedures for the issuance of a temporary marijuana distributor license for an applicant who does not hold a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant who does not have a medical marijuana establishment registration certificate must

be submitted on or before May 31, 2017 on a form prescribed by the Department pursuant to NRS 453D.210 and must include:

(a) A one-time, nonrefundable application fee of \$5,000; plus a \$15,000 license fee; and

(b) The name of the proposed marijuana distributor, as reflected in the articles of incorporation or other documents filed with the Secretary of State;

(c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;

(d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;

(e) The physical address where the proposed marijuana distributor will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

(i) An attestation that the information provided to the Department to apply for the temporary marijuana distributor license is true and correct according to the information known by the affiant at the time of signing;

(j) The signature of a natural person for the proposed marijuana distributor and the date on which the person signed the application;

(k) Documentation from a financial institution in this State, or any other state or the District of Columbia, which demonstrates:

(1) That the applicant has liquid assets that demonstrate the applicant is in a financial condition to operate as a distributor. The funds should be unencumbered and able to be converted within 30 days after a request to liquidate such assets; and

(2) The source of those liquid assets.

(l) A description of the proposed organizational structure of the proposed marijuana distributor, including, without limitation:

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

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

(a) The title of the person;

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

(c) Whether the person has served or is currently serving as an owner, officer or board member of a medical marijuana establishment;

(d) Whether the person has served as an owner, officer or board member for a medical marijuana establishment that has had its medical marijuana establishment registration certificate revoked or suspended;

(e) Whether the person has previously had a medical marijuana establishment agent registration card revoked;

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

- (g) Whether the person is currently an employee or contractor of the Department;*
- (h) Whether the person has an ownership or financial investment interest in a medical marijuana establishment;*
- (i) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana Distributor License;*
- (j) A complete set of fingerprints and written permission of the owner, officer or board member authorizing either the Department or the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;*
- (1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.*
- (k) A signed copy of the Child Support Verification Form; and*
- (l) The completed Driver Verification Form*
- (m) For each owner, officer and board member of the proposed marijuana distributor:*
- (1) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense,*
- (2) An attestation signed and dated by the owner, officer or board member that he or she has not served as an owner, officer, or board member for a medical marijuana establishment that has had its registration certificate suspended or revoked;*
- (3) That the information provided to support the application for a temporary marijuana distributor license is true and correct;*

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

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

(b) Qualifications that are directly and demonstrably related to the operation of a marijuana establishment.

(5) A resume.

(n) A financial plan which includes, without limitation:

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

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

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

(o) Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana distributor on a daily basis, which must include, without limitation:

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

(2) An operations manual that demonstrates compliance with NRS 453D and this chapter;

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

(4) An indication from the proposed marijuana distributor that it is aware that it must comply with all local government enacted zoning restrictions and be in compliance with NRS 453D.210 prior to issuance of a temporary marijuana distributor license.

(p) Any other information the Department may require.

(1) The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the Department's website.

(2) The Department will not issue a temporary marijuana distributor license until the Department completes an inspection of the proposed marijuana distributor. Such an inspection may require more than one visit to the proposed marijuana distributor.

Sec. 16. Temporary distributor license: Suspension for operational deficiencies; plan of correction.

1. If the Department determines that there are any deficiencies in the operation of a marijuana distributor or in the provision of services by a marijuana distributor, the Department may suspend its temporary marijuana distributor license and request a written plan of correction from the marijuana distributor.

2. A marijuana distributor whose marijuana distributor license has been suspended pursuant to subsection 1 of this section shall develop a plan of correction for each deficiency and submit the plan to the Department for approval within 10 business days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.

3. If the plan submitted pursuant to subsection 2 of this section is not acceptable to the Department, the Department may direct the marijuana distributor to resubmit a plan of correction or the Department may develop a directed plan of correction with which the marijuana distributor must comply.

Sec. 17. Temporary distributor license: Grounds for denial, suspension or revocation of a temporary license to operate as a marijuana distributor to an applicant who does not hold a medical marijuana registration certificate.

1. The Department will deny an application for a temporary marijuana distributor license if:

(a) The applicant for the temporary marijuana distributor license is not in compliance with any provision of this chapter or NRS 453D; or

(b) An owner, officer or board member of the applicant for the temporary marijuana distributor license:

(1) Is an employee or contractor of the Department;

(2) Has an ownership or financial investment interest in an independent testing facility and also is an owner, officer or board member of a marijuana distributor; or

(3) Provides false or misleading information to the Department.

2. The Department will revoke a temporary marijuana distributor license if:

(a) The marijuana distributor engages in any of the following:

(1) Dispensing, delivering or otherwise transferring marijuana to a person under 21 years of age;

(2) Acquiring usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(b) An owner, officer or board member of the marijuana distributor has been convicted of an excluded felony offense; or

(c) The Department receives formal notice from the applicable local government that the marijuana distributor has had its authorization to operate terminated.

3. The Department may revoke or suspend any temporary marijuana distributor license issued or may deny any application under the provisions of this chapter and NRS 453D upon any of the following grounds:

(a) Violation by the marijuana distributor of any of the provisions of this chapter or NRS 453D;

(b) The failure or refusal of a marijuana distributor to comply with any of the provisions of this chapter or NRS 453D;

(c) The failure or refusal of a marijuana distributor to carry out the policies and procedures or comply with the statements provided to the Department in the application of the marijuana distributor;

(d) Operating as a marijuana distributor without a temporary marijuana distributor license;

(e) The failure or refusal to return an adequate plan of correction to the Department within 10 business days after receipt of a statement of deficiencies pursuant to Section 16 of this chapter;

(f) The failure or refusal to correct any deficiency specified by the Department within the period specified in a plan of correction developed pursuant to Section 16 of this chapter; or

(g) The failure or refusal to cooperate fully with an investigation or inspection by the Department;

4. If the Department revokes a temporary marijuana distributor license, the Department must provide notice to the marijuana distributor that includes, without limitation, the specific reasons for the revocation.

5. Before revoking a marijuana distributor license as a result of the actions of an owner, officer or board member of the marijuana distributor pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2 of this section, the Department may provide the marijuana distributor with an opportunity to correct the situation.

Sec. 18. Temporary licensing of a marijuana distributor with a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant that has a medical marijuana establishment registration certificate must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must:

(a) Include a one-time, nonrefundable application fee of \$5,000 plus a \$15,000 license fee;

(b) Comply with all provisions of Section 12 of this chapter; and

(c) The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the

Department's website.

Sec. 19. Agents of temporary licensed marijuana distributors required to register with the Department; requirements for registration; establishment required to notify Department if agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor.

1. Except as otherwise provided in this section, a person shall not volunteer or work at, contract to provide labor as, or be employed by a licensed marijuana distributor unless the person is registered with the Department pursuant to this section.

2. A licensed marijuana distributor that wishes to retain as a volunteer or employ a marijuana distributor agent shall submit to the Department an application on a form prescribed by the Department. The application must be accompanied by:

(a) The name, address and date of birth of the prospective marijuana distributor agent;

(b) A statement signed by the prospective marijuana distributor agent pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this chapter;

(c) A statement signed by the prospective marijuana distributor agent asserting that he or she has not previously had a medical marijuana establishment agent registration card revoked;

(d) A complete set of the fingerprints and written permission of the prospective marijuana distributor agent authorizing either the Department or the Division to forward the

fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.

(e) The application fee, as allowed by law; and

(f) Such other information as the Department may require.

3. A marijuana distributor shall notify the Department within 10 days after a marijuana distributor agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor agent to the marijuana distributor.

4. A person shall not serve as a marijuana distributor agent if he or she:

(a) Has been convicted of an excluded felony offense; or

(b) Is less than 21 years of age.

5. Either the Department or the Division shall submit the fingerprints of an applicant for registration as a marijuana distributor agent to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of the applicant.

6. If an applicant for registration as a marijuana distributor agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Department shall issue to the person and, for an independent contractor, to each person identified in the independent contractor's application for registration as an employee who will provide labor as a marijuana distributor agent, a marijuana distributor agent card. If the Department does not act upon an application for a

marijuana distributor agent card within 30 days after the date on which the application is received, the application shall be deemed conditionally approved until such time as the Department acts upon the application.

Sec. 20. Marijuana distributor duties and responsibilities.

1. A licensed marijuana distributor may transport marijuana and marijuana products between a marijuana establishment and:

(a) Another marijuana establishment;

(b) Between the buildings of the marijuana establishment.

2. A marijuana establishment may only transport marijuana and marijuana products to a retail marijuana store if they hold a marijuana distributor license.

3. A marijuana distributor may not purchase or sell marijuana or marijuana products unless they hold another license that allows for the purchase or sale of marijuana and marijuana products.

4. Before transporting marijuana or marijuana products pursuant to subsection 1 of this chapter, a licensed marijuana distributor must:

(a) Complete a trip plan that includes, without limitation:

(1) The name of the marijuana establishment agent in charge of the transportation;

(2) The date and start time of the trip;

(3) A description, including the amount, of the marijuana or marijuana products being transported along with the unique identification code for the product; and

(4) The anticipated route of transportation including the business names and phone numbers along with the license number of the shipping and receiving licensee.

(b) Provide a copy of the trip plan completed pursuant to paragraph (a) of this section to the marijuana establishment for which he or she is providing the transportation.

(c) Record the trip plan in the inventory control tracking system approved by the Department if such a system is available.

5. During the transportation of marijuana or marijuana products pursuant to subsection 1 of this section, the licensed distributor agent must:

(a) Carry a copy of the trip plan completed pursuant to paragraph (a) of subsection 2 of this section with him or her for the duration of the trip;

(b) Have his or her marijuana distributor agent card in his or her immediate possession;

(c) Use a vehicle without any identification relating to marijuana and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of marijuana or marijuana products;

(d) Have a means of communicating with the marijuana establishment for which he or she is providing the transportation; and

(e) Ensure that all marijuana or marijuana products are not visible.

(1) After transporting marijuana or marijuana products pursuant to subsection 1 of this section, a distributor agent must enter the end time of the trip and any changes to the trip plan that was completed pursuant to paragraph (a) of subsection 2 of this section.

6. Each distributor agent transporting marijuana or marijuana products pursuant to subsection 1 of this section, must:

(a) Report any vehicle accident that occurs during the transportation to a person designated by the marijuana distributor to receive such reports within 2 hours after the accident occurs;

(b) Report any loss or theft of marijuana or marijuana products that occurs during the transportation to a person designated by the marijuana distributor to receive such reports immediately after the marijuana distributor agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department as required by Section 23 of this chapter; and

(c) Report any unauthorized stop that lasts longer than 2 hours to the Department.

7. A marijuana distributor shall:

(a) Maintain the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section; and

(b) Provide a copy of the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section to the Department for review upon request.

8. Each marijuana distributor shall maintain a log of all reports received pursuant to subsection 2 and subsection 4 (a) and (b) of this section.

9. Unless extenuating circumstances exist, a marijuana distributor may not store marijuana or marijuana products overnight for any reason and must make direct delivery. If extenuating circumstances exist, the marijuana distributor must notify the Department of the extenuating circumstances as soon as possible.

Sec. 21. Transportation of marijuana and marijuana products by a marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility

and retail store.

1. A licensed marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store may transport marijuana and marijuana products without a marijuana distributor license as follows:

(a) A marijuana cultivation facility and a marijuana product manufacturing facility may transport marijuana and marijuana products to or from marijuana testing facility, a marijuana cultivation facility or a marijuana product manufacturing facility.

(b) A marijuana testing facility may transport marijuana and marijuana products to or from a testing facility for testing.

(c) A retail marijuana store may transport marijuana and marijuana products to or from a marijuana testing facility.

Sec. 22. Transportation of marijuana and marijuana products prohibited.

1. A marijuana establishment is prohibited from transporting marijuana and marijuana products to or from a retail marijuana store unless the establishment has a marijuana distributor license. This provision does not apply to:

(a) A medical marijuana establishment only transporting marijuana or marijuana product for sale to medical patients;

(b) A marijuana testing facility transporting samples for testing;

(c) A retail marijuana store transporting marijuana to or from a marijuana testing facility; or

(d) A retail marijuana store delivering not more than 10 ounces of marijuana or marijuana product to a consumer. Except that a retail marijuana store is prohibited from

delivering marijuana or marijuana product to a consumer at any location that has been issued a gaming license as defined in NRS 463.015.

(1) When transporting marijuana or marijuana products to a consumer pursuant to subsection 1 of this section, a retail marijuana store agent must:

(a) Before transportation, confirm verbally with the consumer by telephone that the consumer is 21 years of age or older and ordered the marijuana or marijuana products and verify the identity of the consumer;

(b) Enter the details of the confirmation obtained pursuant to paragraph (a) of this section in a log which must be available for inspection by the appropriate law enforcement agency and by the Department; and

(c) Review the government-issued identification to determine the consumer's age when the items are delivered and only leave the items with the consumer whose age and identity was confirmed.

(d) Comply with the requirements in Section 20, subsections 2 through 6 of this chapter.

2. Violation of this provision may result in denial, suspension, or revocation pursuant to Section 13 of this chapter.

Sec. 23. Reporting of loss or theft of marijuana and marijuana product; maintenance of documentation.

1. A marijuana distributor shall:

(a) Document and report any loss or theft of marijuana and marijuana product from the marijuana distributor to the appropriate law enforcement agency and to the Department; and

(b) Maintain copies of any documentation required pursuant Section 20 of this chapter for at least 5 years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Sec. 24. License Expiration and renewal

1. A marijuana establishment license issued pursuant to this chapter is valid for 90 days after January 1, 2018.

Sec. 25. Applicability of NRS 453A and NAC 453A to the regulations adopted pursuant to this chapter.

1. Relevant provisions in NRS 453A and related regulations adopted pursuant to NAC 453A are applicable herein, including but not limited to:

- (a) Requirements for the security of marijuana establishments;*
- (b) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;*
- (c) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;*
- (d) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;*
- (e) Requirements for record keeping by marijuana establishments;*
- (f) Reasonable restrictions on signage, marketing, display, and advertising;*

(g) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location; and

(h) Procedures and requirements for agent registration cards except those applying as agents of temporary licensed marijuana distributors pursuant to Section 19 of this chapter.

Sec. 26. Civil penalties.

1. The Department may:

(a) Impose a civil penalty of up to \$35,000 on any person who:

(1) Operates a marijuana establishment without a license

(b) Impose a civil penalty of up to \$10,000 on any person who:

(1) Omits, neglects or refuses to:

(a) Comply with any duty imposed up on him or her pursuant to the provisions of this chapter and NRS 453D;

(b) Do or cause to be done any of the things required pursuant to those provisions; or

(c) Does anything prohibited by the provisions of this chapter and NRS 453D

2. In determining the amount of any civil penalty assessed under this Chapter, the Department shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this Chapter and Chapter 453A, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

MARIJUANA TAX

Reporting and Transmittal of Marijuana Taxes

Sec. 27. Applicability of NRS 360.

1. The provisions of NRS 360 relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the excise and sales tax on marijuana.

Sec. 28. Sales and Use Tax Returns Required. Payment of tax; monthly return.

1. Marijuana sold pursuant to NRS 453D is subject to sales tax when it is sold at a retail store. Returns and payments must be submitted as provided in NRS 372.354 through NRS 372.395.

Sec. 29. Excise Tax Returns Required. Payment of tax: monthly return.

1. An excise tax must be collected by the State on the wholesale sales of marijuana at a rate of 15 percent of the fair market value at wholesale of the marijuana.

2. Each marijuana cultivator shall, on or before the last day of the month immediately following each month for which the marijuana is sold, file with the Department a return on a form prescribed by the Department and remit to the Department any tax due for the month covered by the return. A return must be filed whether or not a sale or purchase has occurred.

3. The marijuana cultivation facility shall pay the excise tax to the Department upon the first sale of marijuana to a marijuana retail store, a marijuana product manufacturing facility, or another marijuana cultivation facility.

(a) If a marijuana cultivation facility sells to another marijuana cultivation facility and pays the wholesale excise tax to the Department on the wholesale sale as required by NRS 453D.500, the wholesale excise tax will not be due on any subsequent sales of that product.

(b) A marijuana cultivation facility must keep all supporting documentation for verification that the excise tax was paid on the first sale of the product.

4. Calculation and Payment of Tax.

(a) Calculation of Fair Market Value at Wholesale.

(1) The Department will calculate the Fair Market Value at Wholesale using reported sales or transfer of each category.

(2) Detailed transaction reports shall be submitted by each marijuana cultivation facility to the Department by October 31, 2017. The reports shall be submitted on a form provided by the Department and must include transactions from April 2017 through September 2017.

(3) The Department will determine the best methodology to arrive at the Fair Market Value at Wholesale. The Department may, from time to time, change its method of calculating the Fair Market Value at Wholesale if, in the judgment of the Department, such change is necessary to arrive at the most accurate Fair Market Value at Wholesale given the market conditions.

(b) The tax shall be calculated based on the category of the Marijuana Product (i.e., Bud, Small/Popcorn Bud, Trim, Immature Plant, Wet Whole Plant, or Seeds) being sold.

(1) To set the initial Fair Market Value at Wholesale, the Department will use data collected from current medical marijuana cultivators as well as other data available related to the Fair Market Value at Wholesale

(2) The excise tax for Bud is computed on the total weight of all Bud that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale of Bud.

(3) The excise tax for Trim is calculated on the total weight of all Trim that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall be treated as the sale of Trim.

(4) The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold.

(5) The excise tax for Wet Whole Plants is calculated on the total weight of the entire Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Fair Market Value at Wholesale for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis.

(a) The Marijuana Wet Whole Plant must be weighed within 2 hours of the batch being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of the batch being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(b) The Marijuana Cultivation Facility must maintain records of the time each batch was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(6) The excise tax for seeds is calculated on the total number of seeds being sold

5. Both the marijuana cultivation facility and the first purchaser shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase invoice, so long as the invoice shows the name and license number of the marijuana cultivation facility, name and license number of first purchaser, the category of product being sold, the date of sale , and the weight of the product being sold.

Sec. 30. Designation of medical marijuana inventory and retail marijuana inventory.

1. Under the current tax provisions in NRS 453D, marijuana sold by a marijuana cultivation facility is subject to a 15% wholesale tax on the fair market value of the transaction. The tax is the responsibility of the cultivator.

2. Under the current tax provisions in NRS 372A, marijuana sold by medical marijuana establishments is subject to a 2% tax at cultivation, a 2% tax at production and 2% tax at the dispensary.

3. Inventory sold by medical marijuana establishments and inventory sold by marijuana establishments must be designated and separated based on the different taxation requirements.

4. Unless legislation is enacted and effective by July 1, 2017, to apply the tax treatment of marijuana sold by marijuana establishments to marijuana sold by medical marijuana establishments, each medical marijuana establishment, except Independent Testing Laboratories must, no later than June 16, 2017, designate a portion of its medical marijuana

inventory as inventory that may be sold as retail marijuana as provided in NRS 453D. The designation must be submitted to the Department and must contain the following:

(a) A list of all inventory within the medical marijuana establishments tracking control system by inventory and tracking control number;

(b) A list of all inventory that the medical marijuana establishment is designating as retail marijuana by inventory and tracking control number; and

(c) A list of all inventory that the marijuana establishment is designating as medical marijuana by inventory and tracking control number.

5. Once inventory is designated as retail marijuana it cannot be sold as medical marijuana. Once inventory is designated as medical marijuana it cannot be sold as retail marijuana.

Sec. 31. Tax treatment of designated inventory.

1. Once inventory is designated as retail marijuana inventory it must be taxed as provided in NRS 453D.500 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453D or this chapter.

2. Once inventory is designated as medical marijuana inventory it must be taxed as provided in NRS 372A.900 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453A or NAC 453A.

Sec. 32. Designation of inventory and tax treatment in the event of legislative change.

1. If legislation is enacted and effective by July 1, 2017 to apply the tax treatment of marijuana sold by marijuana establishments as provided by NRS 453D.500 to marijuana sold by medical marijuana establishments, then Sections 30 and 31 of this Chapter are not

applicable. If legislation changes the tax rate of medical marijuana to 15% of the wholesale price, that change becomes effective to all marijuana sold by the cultivator after the legislation's effective date.

Sec. 33. Maintenance and availability of records of taxpayer.

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of NRS 453D.500.

(b) Preserve those records for 4 years or until any litigation or prosecution pursuant to NRS 453D.500, inclusive, is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 34. Examination of records by Department.

1. To verify the accuracy of any return filed by a taxpayer or, if no return is filed, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the excise tax on marijuana.

Sec. 35. Miscellaneous tax provisions

1. The provisions of NRS 372A.300 through NRS 372A.380 shall be deemed to apply the administration of the tax under NRS 453D.

EXHIBIT E

EXHIBIT E



**STATE OF NEVADA
DEPARTMENT OF TAXATION**

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**Statement pursuant to NRS 233B.0613(1) to implement regulations pursuant to
The Regulation and Taxation of Marijuana Act under NRS 453D**

Voters approved the Regulation and Taxation of Marijuana Act at the 2016 General Election. The Act is codified in Chapter 453D and provides that the Department of Taxation ("Department") shall adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D. Temporary regulation Legislative Counsel Bureau ("LCB") File No. T002-17 was adopted on May 8, 2017 (the "temporary regulation"). Pursuant to NRS 233B.063, the temporary regulation will expire on November 1, 2017.

Marijuana establishments became licensed under the temporary regulation to sell adult-use marijuana starting July 1, 2017. The temporary regulation also provides operating requirements including provisions pertaining to licensing, security, inventory control, packaging, labeling, testing, transportation, taxes, fees, and penalties. Additionally, it addresses the prevention of the sale or diversion of marijuana or marijuana products to the black market or to persons under 21 years of age.

The Department drafted a permanent regulation and conducted public workshops from July 24 through July 27, 2017 on the proposed permanent regulation. The draft language was submitted to LCB on September 6, 2017 and was assigned LCB File No. R092-17. The Department has not yet received the approved text of LCB File No. R092-17 from LCB. Pursuant to NRS 233B.064, the Department cannot adopt LCB File No. R092-17 until it has received from LCB the approved or revised text of the regulation in the form to be adopted. The Department must also provide 30 days' notice of the public hearing before the Nevada Tax Commission to adopt the permanent regulation once it receives the approved text of the permanent regulation from LCB.

This emergency regulation is necessary to provide continued operating, regulatory and enforcement requirements for licensed marijuana establishments as well as licensing procedures to those seeking to apply for marijuana establishment licenses while the permanent regulation is pending. This regulation will ensure that the adult-use market continues to be tightly regulated under a strictly controlled regulatory system.

Dated this 26th day of October, 2017:

Deonne E. Contine

Deonne E. Contine, Executive Director
Nevada Department of Taxation

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Legal Division
Legislative Counsel Bureau

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J. Stokes

RA 079

Statement prepared pursuant to NRS 233B.0613(1)

October 26, 2017

Page 2

I hereby endorse this Statement prepared by the Executive Director of the Department of Taxation pursuant to NRS 233B.0613(1).

Dated this 26th day of October, 2017:

A handwritten signature in blue ink, appearing to read "Sandoval", is written over a horizontal line.

Brian Sandoval, Governor
State of Nevada

EMERGENCY REGULATION OF THE

NEVADA TAX COMMISSION

October __, 2017

Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

Filing of an Emergency Administrative Regulation

AUTHORITY: NRS 453D.200 authorizes the Department to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D.

Section 1. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 31, inclusive, of this Chapter.

Sec. 2. *As used in sections 2 to 31, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” defined. “Department” means the Department of Taxation.*

Sec. 4. *“Fair Market Value” defined. “Fair Market Value” is the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.*

Sec. 5. *“Marijuana Establishment” defined. A “Marijuana Establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*

Sec. 6. *“Marijuana Establishment Agent” defined. A “Marijuana Establishment Agent” 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 licensed marijuana establishment, or an employee of such an independent contractor.

Sec. 7. “Excluded Felony Offense” defined. An “Excluded Felony Offense” has the meaning ascribed to it in NRS 453D.

Sec. 8. “Medical Marijuana Establishment Registration Certificate” defined. A “Medical Marijuana Establishment Registration Certificate” has the meaning ascribed to it in NRS 453A.119.

Sec. 9. “Marijuana” defined. “Marijuana” has the meaning ascribed to it in NRS 453D.030.

Sec. 10. “Medical Marijuana” defined. “Medical Marijuana” means the possession, delivery, production or use of marijuana pursuant to NRS 453A.

PRODUCTION AND DISTRIBUTION OF MARIJUANA

Licensing of retail marijuana stores, marijuana testing facilities, marijuana product manufacturing facilities, and marijuana cultivation facilities

Sec. 11. Procedures for the issuance and revocation of a license to operate a marijuana establishment.

- 1. A medical marijuana establishment that has received a medical marijuana establishment registration certificate and is in good standing, as defined in subsection 7 of this section, under its medical marijuana establishment registration certificate may apply for a marijuana establishment license during any period of not more than 5 days that the Department issues a request for applications.**

2. The application must be submitted by the same entity that holds the medical marijuana establishment certificate and must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must include, without limitation:

(a) A one-time, nonrefundable application fee of \$5,000 plus a license fee of:

- (1) \$20,000 for a Retail Establishment;***
- (2) \$30,000 for a Cultivation Facility;***
- (3) \$10,000 for a Production/Manufacturing Facility; or***
- (4) \$15,000 for a Testing Facility***

(b) That the applicant is applying for a marijuana establishment license;

(c) The type of marijuana establishment license for which the applicant is applying;

(d) The name of the marijuana establishment, as reflected on the registration certificate issued pursuant to NRS 453A and in the articles of incorporation or other documents filed with the Secretary of State;

(e) The physical address where the marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

(i) Attestation that the applicant understands they must be properly zoned in compliance with NRS 453D.210(5)(a)-(c) and NRS 453D.210(5)(e) prior to receiving a marijuana establishment license;

- (j) A signed copy of the Request and Consent to Release Application Form for Marijuana License;*
 - (k) An attestation that the information provided to the Department to apply for the marijuana establishment license is true and correct according to the information known by the affiant at the time of signing;*
 - (l) The signature of a natural person for the proposed marijuana establishment and the date on which the person signed the application; and*
 - (m) Any other information that the Department may require.*
- 3. The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a marijuana establishment license. A list of the licensed entities will be posted on the Department's website.**
- 4. Upon receipt of the application by the Department, the Department shall approve the issuance of a marijuana establishment license if:**
- (a) The applicant holds the same or similar license type under NRS 453A for which it is applying;*
 - (b) The applicant is in good standing under its medical marijuana establishment registration certificate; and*
 - (c) The applicant is in compliance with NRS 453D.210 (5)(a)-(f). For purposes of determining compliance with 453D(5)(c) and (e), the Department will issue the license if the locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana*

establishment will be in violation of zoning or land use rules adopted by the locality.

5. If the proposed marijuana establishment will be located at a location different from the medical marijuana establishment, the Department will not issue a marijuana establishment license until the Department completes an inspection of the proposed marijuana establishment. Such an inspection may require more than one visit to the proposed marijuana establishment.

6. If the marijuana establishment license is not approved, the license fee will be refunded to the applicant.

7. As used in this section, a medical marijuana establishment is in "good standing" if it is in compliance with NRS 453A and NAC 453A, including but not limited to the following:

(a) For all medical marijuana establishments:

(1) All licenses, certificates and fees are current and paid;

(2) No registration certificate suspension within 6 months of the effective date of the marijuana establishment license for enforcement violations including but not limited to provisions NRS 453A.352, NRS 453A.362, NAC 453A.406, NAC 453A.414, NAC 453A.658, NAC 453A.668, and NAC 453A.672;

(3) The applicant is not delinquent in the payment of any tax administered by the Department or is not in default on a payment required pursuant to a written agreement with the Department; or is not otherwise liable to the Department for the payment of money;

(4) No citations for illegal activity or criminal conduct; and

(5) Plans of correction are in progress or are complete and on time as defined in NRS 453A.330.

(b) If a medical marijuana establishment registration certificate is provisional it is not in good standing pursuant to this section.

Sec. 12. Marijuana establishment licenses except marijuana distributor: Grounds for denial, suspension or revocation.

1. The Department will deny an application for a marijuana establishment license if:

(a) The applicant is not in compliance with NRS 453A, NAC 453A, NRS 453D or this Chapter;

(b) The applicant is not in good standing as required by Section 11 of this Chapter;

(c) The applicant is not in compliance with NRS 453D zoning requirements;

(d) The applicant has not paid fees required by NRS 453D; or

(e) The marijuana establishment has failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

2. The Department will revoke or suspend a marijuana establishment license if:

(a) The marijuana establishment dispenses, delivers or otherwise transfers marijuana to a person under 21 years of age;

(b) The marijuana establishment acquires usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

- (c) An owner, officer or board member of the marijuana establishment has been convicted of an excluded felony offense;*
- (d) The Department receives formal notice from the applicable local government that the marijuana establishment has had its authorization to operate terminated;*
- (e) Any license issued pursuant to NRS 453A is suspended or revoked; or*
- (f) The marijuana establishment failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.*

Licensing of marijuana distributors

Sec. 13. Applications to operate marijuana establishment – marijuana distributors:

Required provisions.

- 1. The Department will accept distributor applications from persons holding a liquor wholesaler dealer license pursuant to NRS 369.*

(a) Person has the meaning ascribed to it in NRS 0.039.

(1) The person holding the wholesaler liquor dealer license must be the person applying for the marijuana distributor license.

(2) The applicant and each person who is proposed to be an owner, officer or board member of the entity must comply with the provisions set forth in NRS 453A.322 and NRS 453A.332 regarding fingerprinting and background checks.

Sec. 14. Marijuana establishment license for marijuana distributor. Procedures for the issuance of a marijuana distributor license.

1. An application submitted for a marijuana distributor license from an applicant must be on a form prescribed by the Department pursuant to NRS 453D.210 and must include:

- (a) A one-time, nonrefundable application fee of \$5,000; plus a \$15,000 license fee;***
- (b) The name of the proposed marijuana distributor, as reflected in the articles of incorporation or other documents filed with the Secretary of State;***
- (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;***
- (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;***
- (e) The physical address where the proposed marijuana distributor will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;***
- (f) The mailing address of the applicant;***
- (g) The telephone number of the applicant;***
- (h) The electronic mail address of the applicant;***
- (i) An attestation that the information provided to the Department to apply for the marijuana distributor license is true and correct according to the information known by the affiant at the time of signing;***
- (j) The signature of a natural person for the proposed marijuana distributor and the date on which the person signed the application;***

(k) Documentation from a financial institution in this State, or any other state or the District of Columbia, which demonstrates:

(1) That the applicant has liquid assets that demonstrate the applicant is in a financial condition to operate as a distributor. The funds should be unencumbered and able to be converted within 30 days after a request to liquidate such assets; and

(2) The source of those liquid assets.

(l) A description of the proposed organizational structure of the proposed marijuana distributor, including, without limitation:

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

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

a. The title of the person;

b. A short description of the role the person will serve in for the organization and his or her responsibilities;

c. Whether the person has served or is currently serving as an owner, officer or board member of a medical marijuana establishment;

d. Whether the person has served as an owner, officer or board member for a medical marijuana establishment that has had its

medical marijuana establishment registration certificate revoked or suspended;

e. Whether the person has previously had a medical marijuana establishment agent registration card revoked;

f. Whether the person is a law enforcement officer;

g. Whether the person is currently an employee or contractor of the Department;

h. Whether the person has an ownership or financial investment interest in a medical marijuana establishment;

i. A signed copy of the Request and Consent to Release Application Form for Marijuana Distributor License;

j. A complete set of fingerprints and written permission of the owner, officer or board member authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

k. A signed copy of the Child Support Verification Form; and

l. The completed Driver Verification Form

m. For each owner, officer and board member of the proposed marijuana distributor:

1. An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense,

2. *An attestation signed and dated by the owner, officer or board member that he or she has not served as an owner, officer, or board member for a medical marijuana establishment that has had its registration certificate suspended or revoked;*
3. *That the information provided to support the application for a marijuana distributor license is true and correct;*
4. *A narrative description, not to exceed 750 words, demonstrating:*
 - a. *Any previous experience at operating other businesses or nonprofit organizations; and*
 - b. *Qualifications that are directly and demonstrably related to the operation of a marijuana establishment.*
5. *A resume.*
- n. *A financial plan which includes, without limitation:*
 1. *Financial statements showing the resources of the applicant;*
 2. *If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a distributor license to the applicant and the applicant obtains the necessary approvals from local governments to operate; and*
 3. *Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.*

- o. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana distributor on a daily basis, which must include, without limitation:*
- 1. A detailed budget for the proposed marijuana distributor, including preopening, construction and first year operating expenses;*
 - 2. An operations manual that demonstrates compliance with NRS 453D and this chapter;*
 - 3. An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana distributor; and*
 - 4. An indication from the proposed marijuana distributor that it is aware that it must comply with all local government enacted zoning restrictions and be in compliance with NRS 453D.210 prior to issuance of a marijuana distributor license.*
- p. Any other information the Department may require.*
- 1. The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a marijuana establishment license. A list of the licensed entities will be posted on the Department's website.*

- 2. The Department will not issue a marijuana distributor license until the Department completes an inspection of the proposed marijuana distributor. Such an inspection may require more than one visit to the proposed marijuana distributor.*

Sec. 15. Distributor license: Suspension for operational deficiencies; plan of correction.

- 1. If the Department determines that there are any deficiencies in the operation of a marijuana distributor or in the provision of services by a marijuana distributor, the Department may suspend its marijuana distributor license and request a written plan of correction from the marijuana distributor.*
- 2. A marijuana distributor whose marijuana distributor license has been suspended pursuant to subsection 1 of this section shall develop a plan of correction for each deficiency and submit the plan to the Department for approval within 10 business days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.*
- 3. If the plan submitted pursuant to subsection 2 of this section is not acceptable to the Department, the Department may direct the marijuana distributor to resubmit a plan of correction or the Department may develop a directed plan of correction with which the marijuana distributor must comply.*

Sec. 16. Distributor license: Grounds for denial, suspension or revocation of a license to operate as a marijuana distributor.

- 1. The Department will deny an application for a marijuana distributor license if:*

(a) The applicant for the marijuana distributor license is not in compliance with any provision of this chapter or NRS 453D; or

(b) An owner, officer or board member of the applicant for the marijuana distributor license:

(1) Is an employee or contractor of the Department;

(2) Has an ownership or financial investment interest in an independent testing facility and also is an owner, officer or board member of a marijuana distributor; or

(3) Provides false or misleading information to the Department.

2. The Department will revoke a marijuana distributor license if:

(a) The marijuana distributor engages in any of the following:

(1) Dispensing, delivering or otherwise transferring marijuana to a person under 21 years of age;

(2) Acquiring usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(b) An owner, officer or board member of the marijuana distributor has been convicted of an excluded felony offense; or

(c) The Department receives formal notice from the applicable local government that the marijuana distributor has had its authorization to operate terminated.

3. The Department may revoke or suspend any marijuana distributor license issued or may deny any application under the provisions of this Chapter and NRS 453D upon any of the following grounds:

- (a) Violation by the marijuana distributor of any of the provisions of this Chapter or NRS 453D;*
 - (b) The failure or refusal of a marijuana distributor to comply with any of the provisions of this Chapter or NRS 453D;*
 - (c) The failure or refusal of a marijuana distributor to carry out the policies and procedures or comply with the statements provided to the Department in the application of the marijuana distributor;*
 - (d) Operating as a marijuana distributor without a marijuana distributor license;*
 - (e) The failure or refusal to return an adequate plan of correction to the Department within 10 business days after receipt of a statement of deficiencies pursuant to Section 15 of this Chapter;*
 - (f) The failure or refusal to correct any deficiency specified by the Department within the period specified in a plan of correction developed pursuant to Section 15 of this Chapter; or*
 - (g) The failure or refusal to cooperate fully with an investigation or inspection by the Department.*
- 4. If the Department revokes a marijuana distributor license, the Department must provide notice to the marijuana distributor that includes, without limitation, the specific reasons for the revocation.*
- 5. Before revoking a marijuana distributor license as a result of the actions of an owner, officer or board member of the marijuana distributor pursuant to paragraph (b) of subsection 1 of this section, the Department may provide the marijuana distributor with an opportunity to correct the situation.*

Sec. 17. Agents of licensed marijuana distributors required to register with the Department; requirements for registration; establishment required to notify Department if agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor.

- 1. Except as otherwise provided in this section, a person shall not volunteer or work at, contract to provide labor as, or be employed by a licensed marijuana distributor unless the person is registered with the Department pursuant to this section.***
- 2. A licensed marijuana distributor that wishes to retain as a volunteer, employ, or contract with for labor a marijuana distributor agent shall submit or have the prospective agent submit to the Department an application on a form prescribed by the Department. The application must be accompanied by:***
 - (a) The name, address and date of birth of the prospective marijuana distributor agent;***
 - (b) A statement signed by the prospective marijuana distributor agent pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this Chapter;***
 - (c) A statement signed by the prospective marijuana distributor agent asserting that he or she has not previously had a medical marijuana establishment agent registration card revoked;***
 - (d) A complete set of the fingerprints and written permission of the prospective marijuana distributor agent authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;***
 - (e) The application fee, as allowed by law; and***

- (f) Such other information as the Department may require.*
- 3. A marijuana distributor shall notify the Department within 10 days after a marijuana distributor agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor agent to the marijuana distributor.*
- 4. A person shall not serve as a marijuana distributor agent if he or she:*
- (a) Has been convicted of an excluded felony offense; or*
 - (b) Is less than 21 years of age.*
- 5. The Department shall submit the fingerprints of an applicant for registration as a marijuana distributor agent to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of the applicant.*
- 6. If an applicant for registration as a marijuana distributor agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Department shall issue to the person and, for an independent contractor, to each person identified in the independent contractor's application for registration as an employee who will provide labor as a marijuana distributor agent, a marijuana distributor agent card. If the Department does not act upon an application for a marijuana distributor agent card within 30 days after the date on which the application is received, the application shall be deemed conditionally approved until such time as the Department acts upon the application.*

Sec. 18 Marijuana distributor duties and responsibilities.

- 1. A licensed marijuana distributor may transport marijuana and marijuana products*

between a marijuana establishment and:

(a) Another marijuana establishment;

(b) Between the buildings of the marijuana establishment.

- 2. A marijuana establishment that holds more than one type of establishment license may only transport marijuana and marijuana products to a retail marijuana store if they hold a marijuana distributor license.*
- 3. A marijuana distributor may not purchase or sell marijuana or marijuana products unless they hold another license that allows for the purchase or sale of marijuana and marijuana products.*
- 4. Before transporting marijuana or marijuana products pursuant to subsection 1 of this Chapter, a licensed marijuana distributor must:*
 - (a) Complete a trip plan that includes, without limitation:*
 - (1) The name of the marijuana establishment agent in charge of the transportation;*
 - (2) The date and start time of the trip;*
 - (3) A description, including the amount, of the marijuana or marijuana products being transported along with the unique identification code for the product; and*
 - (4) The anticipated route of transportation including the business names and phone numbers along with the license numbers of the shipping and receiving licensees.*

- (b) Provide a copy of the trip plan completed pursuant to paragraph (a) of this section to the marijuana establishment for which he or she is providing the transportation.*
 - (c) Record the trip plan in the inventory control tracking system approved by the Department if such a system is available.*
- 5. During the transportation of marijuana or marijuana products pursuant to subsection 1 of this section, the licensed distributor agent must:**
- (a) Carry a copy of the trip plan completed pursuant to paragraph (a) of subsection 4 of this section with him or her for the duration of the trip;*
 - (b) Have his or her marijuana distributor agent card in his or her immediate possession;*
 - (c) Use a vehicle without any identification relating to marijuana and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of marijuana or marijuana products;*
 - (d) Have a means of communicating with the marijuana establishment for which he or she is providing the transportation; and*
 - (e) Ensure that all marijuana or marijuana products are not visible.*
- (1) After transporting marijuana or marijuana products pursuant to subsection 1 of this section, a distributor agent must enter the end time of the trip and any changes to the trip plan that was completed pursuant to paragraph (a) of subsection 4 of this section.*

6. Each distributor agent transporting marijuana or marijuana products pursuant to subsection 1 of this section must:

- (a) Report any vehicle accident that occurs during the transportation to a person designated by the marijuana distributor to receive such reports within 2 hours after the accident occurs;**
- (b) Report any loss or theft of marijuana or marijuana products that occurs during the transportation to a person designated by the marijuana distributor to receive such reports immediately after the marijuana distributor agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department as required by Section 21 of this Chapter; and**
- (c) Report any unauthorized stop that lasts longer than 2 hours to the Department.**

7. A marijuana distributor shall:

- (a) Maintain the documents required in paragraph (a) of subsection 4 and subsections 6 (a) and (b) of this section; and**
- (b) Provide a copy of the documents required in paragraph (a) of subsection 4 and subsections 6 (a) and (b) of this section to the Department for review upon request.**

8. Each marijuana distributor shall maintain a log of all reports received pursuant to subsection 4 and subsection 6 (a) and (b) of this section.

9. Unless extenuating circumstances exist, a marijuana distributor may not store marijuana or marijuana products overnight for any reason and must make direct

delivery. If extenuating circumstances exist, the marijuana distributor must notify the Department of the extenuating circumstances as soon as possible.

Sec. 19. Transportation of marijuana and marijuana products by a marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility and retail store.

1. *A licensed marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store may transport marijuana and marijuana products without a marijuana distributor license as follows:*

(a) A marijuana cultivation facility and a marijuana product manufacturing facility may transport marijuana and marijuana products to or from marijuana testing facility, a marijuana cultivation facility or a marijuana product manufacturing facility.

(b) A marijuana testing facility may transport marijuana and marijuana products to or from a testing facility for testing.

(c) A retail marijuana store may transport marijuana and marijuana products to or from a marijuana testing facility.

Sec. 20. Transportation of marijuana and marijuana products prohibited

1. *A marijuana establishment is prohibited from transporting marijuana and marijuana products to a retail marijuana store unless the establishment has a marijuana distributor license. This provision does not apply to:*

- (a) A medical marijuana establishment only transporting marijuana or marijuana product for sale to medical patients;*
- (b) A marijuana testing facility transporting samples for lab testing;*
- (c) An independent contractor of a medical marijuana establishment transporting only medical marijuana; or*
- (d) A retail marijuana store delivering not more than 10 ounces of marijuana or marijuana product to a consumer. Except that a retail marijuana store is prohibited from delivering marijuana or marijuana product to a consumer at any location that has been issued a gaming license as defined in NRS 463.015.*
 - (1) When transporting marijuana or marijuana products to a consumer a marijuana distributor agent must:*
 - a. Before transportation, confirm verbally with the consumer by telephone that the consumer is 21 years of age or older and ordered the marijuana or marijuana products and verify the identity of the consumer;*
 - b. Enter the details of the confirmation obtained pursuant to paragraph (a) of this section in a log which must be available for inspection by the appropriate law enforcement agency and by the Department; and*
 - c. Review and document the government-issued identification to determine the consumer's age and secure a signature from the consumer when the items are delivered and may only leave the items with the consumer.*

d. Comply with the requirements in Section 18, subsections 2 through 9 of this Chapter.

2. Violation of this provision may result in denial, suspension, or revocation pursuant to Section 12 of this Chapter.

Sec. 21. Reporting of loss or theft of marijuana and marijuana product; maintenance of documentation.

1. A marijuana distributor shall:

(a) Document and report any loss or theft of marijuana and marijuana product from the marijuana distributor to the appropriate law enforcement agency and to the Department; and

(b) Maintain copies of any documentation required pursuant Section 18 of this Chapter for at least 5 years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Sec. 22. License Expiration and renewal

1. A marijuana establishment license issued pursuant to this Chapter will expire one year after the date of issue.

Sec. 23. Applicability of NRS 453A and NAC 453A to the regulations adopted pursuant to this Chapter.

1. Relevant provisions in NRS 453A and related regulations adopted pursuant to NAC 453A are applicable herein, including but not limited to:

(a) Requirements for the security of marijuana establishments;

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

- (c) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;*
- (d) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;*
- (e) Requirements for record keeping by marijuana establishments;*
- (f) Reasonable restrictions on signage, marketing, display, and advertising;*
- (g) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location; and*
- (h) Procedures and requirements for agent registration cards except those applying as agents of licensed marijuana distributors pursuant to Section 17 of this Chapter.*

Sec. 24. Civil penalties.

1. The Department may:

- (a) Impose a civil penalty of up to \$35,000 on any person who:*
 - (1) Operates a marijuana establishment without a license*
- (b) Impose a civil penalty of up to \$10,000 on any person who:*
 - (1) Omits, neglects or refuses to:*
 - a. Comply with any duty imposed up on him or her pursuant to the provisions of this Chapter and NRS 453D; or*

b. Do or cause to be done any of the things required pursuant to those provisions.

(2) Does anything prohibited by the provisions of this Chapter and NRS 453D.

- 2. In determining the amount of any civil penalty assessed under this Chapter, the Department shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this Chapter and Chapter 453A, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.*

Sec 25. Disposition of unauthorized marijuana or marijuana products and related materials.

- 1. The provisions of this section shall apply in addition to any civil penalties.*
- 2. The Department may specify that some or all of the person's or licensee's marijuana or marijuana product is not cultivated, sold, produced, tested or otherwise manufactured in accordance with state law and is deemed illegal marijuana.*
- 3. The Department may summarily seize or quarantine any such marijuana and marijuana products that it determines is illegal marijuana.*
- 4. The Department shall not be required to cultivate or otherwise care for any illegal marijuana or marijuana product quarantined or seized. The Department shall not be authorized to sell illegal marijuana or marijuana product.*
- 5. The Department may direct the destruction of any such marijuana and marijuana products that it determines is illegal marijuana. The authorized destruction may*

include the incidental destruction of any containers, equipment, supplies, and other property associated with the marijuana or marijuana product.

- 6. *If the Department orders destruction authorized by subsection 6 of this section, a person or licensee shall have fifteen days within which to request a hearing with a hearing officer for improper seizure.***

(a) The hearing officer shall promptly rule upon the request and determine whether the person or licensee has a substantial likelihood of success on appeal so as to warrant delay of the destruction authorized by subsection 6 of this section or whether other circumstances, including but not limited to the need for preservation of evidence, warrant delay of such destruction.

(b) If destruction is so delayed by the hearing officer, the hearing officer shall issue an order setting forth terms and conditions pursuant to which the person or licensee may maintain the marijuana and marijuana product pending review and prohibiting the person or licensee from using or distributing the retail marijuana or retail marijuana product pending the review.

(c) The Department shall not carry out the destruction authorized by subsection 5 of this section until fifteen days have passed without the filing of a request for hearing or until the hearing officer has issued an order denying the delay of destruction.

- 7. *If law enforcement begins a criminal investigation of a retail marijuana establishment and notifies the Department of such investigation, the Department shall not destroy***

any marijuana or marijuana products from the retail marijuana establishment until the destruction is approved by law enforcement.

MARIJUANA TAX

Reporting and Transmittal of Marijuana Taxes

Sec. 26. Applicability of NRS 360.

- 1. The provisions of NRS 360 relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the excise and sales tax on marijuana.*

Sec. 27. Sales and Use Tax Returns Required. Payment of tax; monthly return.

- 1. Marijuana sold pursuant to NRS 453D is subject to sales tax when it is sold at a retail store. Returns and payments must be submitted as provided in NRS 372.354 through NRS 372.395.*

Sec. 28. Excise Tax Returns Required. Payment of tax: monthly return.

- 1. An excise tax must be collected by the State on the wholesale sales of marijuana at a rate of 15 percent of the Fair Market Value at Wholesale of the marijuana.*
- 2. An excise tax must be collected by the State on marijuana or marijuana products by a retail marijuana store at the rate of 10 percent of the sales price of the marijuana or marijuana products pursuant to Senate Bill 487 (2017). The excise tax does not apply to non-marijuana products sold by the retail marijuana store. This tax is the obligation of the retail marijuana store and is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.*

3. Each marijuana cultivator and retail marijuana store shall, on or before the last day of the month immediately following each month for which the marijuana is sold, file with the Department a return on a form prescribed by the Department and remit to the Department any tax due for the month covered by the return. A return must be filed whether or not a sale or purchase has occurred.

4. The marijuana cultivation facility shall pay the excise tax to the Department upon the first sale of marijuana to a marijuana retail store, a marijuana product manufacturing facility, or another marijuana cultivation facility.

(a) If a marijuana cultivation facility sells to another marijuana cultivation facility and pays the wholesale excise tax to the Department on the sale as required by NRS 453D.500, the wholesale excise tax will not be due on any subsequent sales of that product.

5. A marijuana cultivation facility and a retail marijuana store must keep all supporting documentation for verification that the excise tax was paid on the first sale of the product.

6. Calculation and Payment of Tax.

(a) Calculation of Fair Market Value at Wholesale.

(1) The Department will calculate the Fair Market Value at Wholesale using reported sales of each category. The Department will determine the best methodology to arrive at the Fair Market Value at Wholesale. The Department may, from time to time, change its method of calculating the Fair Market Value at Wholesale if, in the judgment of

the Department, such change is necessary to arrive at the most accurate Fair Market Value at Wholesale given the market conditions.

(b) The tax shall be calculated based on the category of the Marijuana Product (i.e., Bud, Small/Popcorn Bud, Trim, Immature Plant, Wet Whole Plant, or Seeds) being sold.

(1) To set the initial Fair Market Value at Wholesale, the Department will use data collected from current medical marijuana cultivators as well as other data available related to the Fair Market Value at Wholesale

(2) The excise tax for Bud is computed on the total weight of all Bud that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale of Bud.

(3) The excise tax for Trim is calculated on the total weight of all Trim that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall be treated as the sale of Trim.

(4) The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold.

(5) The excise tax for Wet Whole Plants is calculated on the total weight of the entire Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Fair Market Value at Wholesale for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing

(i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis.

(a) The Marijuana Wet Whole Plant must be weighed within 2 hours of the batch being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of the batch being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(b) The Marijuana Cultivation Facility must maintain records of the time each plant was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(6) The excise tax for seeds is calculated on the total number of seeds being sold

7. Both the marijuana cultivation facility and the first purchaser shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase invoice, so long as the invoice shows the name and license number of the marijuana

cultivation facility, name and license number of first purchaser, the category of product being sold, the date of sale , and the weight of the product being sold.

Sec. 29. Maintenance and availability of records of taxpayer.

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of NRS 453D.500.

(b) Preserve those records for 4 years or until any litigation or prosecution pursuant to NRS 453D.500, inclusive, is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 30. Examination of records by Department.

1. To verify the accuracy of any return filed by a taxpayer or, if no return is filed, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the excise or sales tax on marijuana.

Sec. 31. Miscellaneous tax provisions

1. The provisions of NRS 372A.300 through NRS 372A.380 shall be deemed to apply the administration of the tax under NRS 453D.

EXHIBIT F

EXHIBIT F

MINUTES OF THE JUNE 20, 2018
MEETING OF THE
INTERIM FINANCE COMMITTEE
Carson City, Nevada

Chair Joyce Woodhouse called a regular meeting of the Interim Finance Committee (IFC) to order at 9:39 a.m. on June 20, 2018, in Room 4100 of the Nevada Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer Office Building, 555 East Washington Avenue, Las Vegas, Nevada.

COMMITTEE MEMBERS PRESENT:

Senator Joyce Woodhouse, Chair
Assemblywoman Maggie Carlton, Vice Chair
Senator Kelvin Atkinson for Senator Aaron Ford
Senator Moises Denis
Senator Heidi Gansert
Senator Pete Goicoechea
Senator Ben Kieckhefer
Senator David Parks
Assemblyman Nelson Araujo
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblywoman Olivia Diaz
Assemblyman Chris Edwards
Assemblyman Jason Frierson
Assemblyman John Hambrick
Assemblyman James Oscarson
Assemblywoman Ellen Spiegel
Assemblyman Michael Sprinkle
Assemblywoman Heidi Swank
Assemblywoman Robin Titus

COMMITTEE MEMBERS EXCUSED:

Senator Aaron Ford
Assemblywoman Jill Tolles

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rick Combs, Director, Legislative Counsel Bureau
Mark Krmpotic, Fiscal Analyst, Senate
Cindy Jones, Fiscal Analyst, Assembly
Alex Haartz, Principal Deputy Fiscal Analyst
Sarah Coffman, Principal Deputy Fiscal Analyst
Brenda Erdoes, Legislative Counsel
Eileen O'Grady, Chief Deputy Legislative Counsel
Cheryl Harvey, Fiscal Analysis Division Secretary
Carla Ulrych, Fiscal Analysis Division Secretary

EXHIBITS:

Exhibit A: Meeting Packet – Volume I

Exhibit B: Meeting Packet – Volume II

Exhibit C: Meeting Packet – Volume III

Exhibit D: Meeting Packet – Volume IV

Exhibit E: Public Testimony – American Federation of State, County and Municipal Employees (AFSCME)

Exhibit F: Public Testimony – Katherine Ryder, A Team Nevada

Exhibit G: Economic Forum Report to the Interim Finance Committee – June 2018

A. ROLL CALL.

Rick Combs, Director, Legislative Counsel Bureau and Secretary, Interim Finance Committee, called the roll; all members were present except Senator Ford and Assemblywoman Tolles who were excused.

B. PUBLIC COMMENT.

Amanda Lampe, resident and mother of a three-year-old boy with autism, said her son was receiving services from the Autism Treatment Assistance Program (ATAP) through the Department of Health and Human Services (DHHS), Aging and Disability Services Division (ADSD). Her son was being treated by a Board Certified Behavior Analyst (BCBA) employed by Sage Health Services, but that BCBA was no longer employed by the organization. Her son's new BCBA was located in Las Vegas, which made it difficult, because her son did not meet with the provider in person. Her son was currently on a waiting list for a BCBA with another organization. Ms. Lampe expressed concern that her son was not receiving the assistance he needed while waiting for a new BCBA. She appealed for any assistance the Committee could provide for people with autism.

Brian Patchett, Chief Executive Officer, Easter Seals Nevada, and chairman, Commission on Services for Persons with Disabilities, expressed his appreciation for Ms. Lampe's testimony; he agreed that the state was facing a crisis due to the shortage of autism services.

Mr. Patchett explained that Easter Seals was in support of the proposed 5 percent rate increase by the ADSD. He noted that studies indicated the rates should be increased to an amount closer to 30 percent.

Mr. Patchett explained that Easter Seals cared for people in the community with significant intellectual, developmental and behavioral disabilities. He explained it was difficult to maintain staff and provide the proper care if caregivers were not sufficiently compensated. The rate increase would allow Easter Seals to increase wages and provide clients with access to insurance and a wider range of providers.

Lisa Foster, representative, State of Nevada Association of Providers (SNAP), said SNAP was a consortium of organizations dedicated to individuals with intellectual disabilities.

She said SNAP had been working with providers of the Supported Living Arrangements (SLA) and Jobs and Day Training (JDT) programs. She said she supported Agenda Item 5a(2), which pertained to the 5 percent rate increase for services. Ms. Foster said individuals on the front line of those organizations provided a wide range of services for adults with cognitive disabilities, from residential services and transportation, to employment-related training.

Ms. Foster explained that because there was a lack of funding, agencies struggled to remain in business. She said many agencies had difficulty filling entry-level positions. She added that agencies competed with fast food companies for employees. A recent survey of SLA and JDT providers indicated that employee turnover rates were 80 percent, and many providers had 100 percent staff turnover. Employee turnover expenses included items like advertising, candidate testing and intensive new hire screenings to meet Medicaid and state requirements. Most employees had more than one job, and some employees worked for multiple providers.

Carter Bundy, representative, American Federation of State, County and Municipal Employees (AFSCME), said he supported the Department of Corrections (NDOC) request for \$3.2 million. He said AFSCME represented staff at correctional facilities where inadequate staffing levels had created significant life-and-death situations. He recalled a recent incident where an inmate was stabbed to death and a correctional officer narrowly avoid being attacked.

Mr. Bundy said AFSCME hoped NDOC would avoid requests for one-time funding in the future by presenting an adequate request for funding to the 2019 Legislature. Although AFSCME did not think the source of funds in the department's request was appropriate, the funds were critical to ensure the safety of correctional officers and inmates.

Mr. Bundy said AFSCME met with NDOC to discuss the benefits of 12-hour shifts. He said NDOC staff was in full support of implementing 12-hour shifts, because it would increase staff retention and provide an extra tool for recruiting officers.

Tracy Brown-May, Director of Advocacy, Board and Government Relations, Opportunity Village, stated that Opportunity Village was thrilled to support ADSD's proposed 5 percent rate increase for the JDT program. She also agreed and supported Mr. Patchett's testimony as well as the testimony provided by Ms. Foster. Ms. Brown-May introduced Katherine Ryder and Janine Klein.

Katherine Ryder, Treasurer, A Team Nevada, and guardian/caretaker of her 47-year-old sister, said she became the caretaker for her sister, Janine Klein, in 2008. She said Janine was developmentally and intellectually delayed from birth and had a cognitive level of a three to four year old. Ms. Ryder said she and Janine had been involved with Opportunity Village for about 26 years. Additionally, they were both charter members of A Team Nevada. She was providing her family's story to stress the positive impact the proposed rate increase would have on caregivers, services and clients.

Ms. Ryder explained that A Team Nevada endured staff changes every other month due to the low wages provided to caregivers. The staff turnover caused a delay in her sister's care, because new staff had to be hired and trained and then the new staff member had to accommodate the client's schedule. She said Janine's unique way of communicating created an additional training process for new staff, which added to the frustration. She said Janine had difficulty coping with the changes. Ms. Ryder said by the time a new caregiver was trained and assigned, the caregiver was already looking for a new job with higher wages.

Ms. Ryder said she and her sister were both supportive and grateful for the proposed rate increase, but wished it was a higher amount.

Sheri Van Horsen, representative, AFSCME, said she represented correctional officers, support staff and members of the mental health and medical staff within the correctional facilities. She said she agreed with Mr. Bundy that 12-hour shifts would be a beneficial change to the schedules of correctional officers. She said the majority of correctional officers that Ms. Van Horsen represented supported the addition of 12-hour shifts.

Ms. Van Horsen said she supported the NDOC's request for additional funding. She said staffing levels were low, which left correctional officers concerned that tensions could intensify and put them in a dangerous situation. She echoed Mr. Bundy's comment that the funding should be included in the NDOC budget request.

Ms. Van Horsen noted that correctional facilities experienced a decrease in the number of correctional officers, because staff transitioned to other sectors. She said AFSCME would like the corrections system to be a career choice for job candidates.

Dave Doyle, chair and president of the Nevada chapter of the Family Focused Treatment Association (FFTA), said his organization was the only national nonprofit agency that advocated for children in specialized foster care (SFC), commonly referred to as "therapeutic foster care."

Mr. Doyle said children in SFC were the most vulnerable children in Clark County. His organization worked with severely emotionally-disturbed children who may have lived in 10 to 30 homes before being placed in SFC for stability. He said he had been a SFC parent for 15 years, and five of those children currently resided in his home.

Mr. Doyle said there was a looming crisis for children in SFC. He explained that SFC was funded through room and board tax and Medicaid state dollars. He said in April of 2017, children in SFC were promised by the Division of Health Care Financing and Policy (DHCFP) and the Division of Child and Family Services (DCFS) that a sustainable model called the State Plan Amendment (SPA) would be implemented prior to any funding cuts for basic skills training. The SPA would extrapolate the billable components of an evidence-based model to continue providing resources for children.

Mr. Doyle reported that in June 2018, FFTA was informed that the SPA was on hold, and the organization may have to close its doors in July. He noted that FFTA represented every therapeutic foster care agency in Nevada, which included 350 Clark County Department of Family Services foster children and 100 juvenile justice children, 70 of whom were juvenile sex offenders.

Mr. Doyle explained that FFTA had been operating under a federal mandate through the Family First Preservation Services Act, which intended to eliminate congregate care facilities, such as Child Haven. If the proposed cuts were made without a sustainable model in place, hundreds of children would be placed at Child Haven or a detention center.

Mr. Doyle asked the IFC to intervene to keep Medicaid and DCFS on track in the pursuit of the SPA before implementing the proposed changes.

Cody Hufford, licensed special education teacher and Registered Behavior Technician (RBT), said he was studying for certification as a Board Certified Behavior Analyst (BCBA). Mr. Hufford said he had been working with children and adults with autism in school and community settings for ten years. He witnessed firsthand the difference that sufficient availability of services and access to adequately trained staff could make in the lives of families. He also witnessed the challenges faced by families who did not have access to immediate and quality Applied Behavior Analysis services for their children.

Mr. Hufford said families were often forced to wait for services for a variety of reasons, including securing funding to pay for the help they needed. Extended wait times for services meant families lost valuable time that could have been spent working on important skills, and the opportunity to train parents to implement proven strategies. He said additional funding could be used to expand ATAP, which would potentially provide services to more families and reduce wait times.

Mr. Hufford said families and providers also had difficulty finding RBTs to work directly with children and their families. There were about 700 RBTs in the state and approximately 8,500 students in Nevada with Individual Education Programs (IEP) eligible for autism services. Developing and funding a system for recruiting, training and retaining RBTs would allow families increased access to an RBT, and give them the opportunity to select which RBT they wanted to work with.

Mr. Hufford said adequate funding to expand services to families, and to recruit, train and retain RBTs was essential. There was no logical reason not to expand funding and use any resources available to address those issues. He said ABA services could help children in the community acquire important skills that could lead them to fuller and more independent lives, which would also mean a smaller long-term investment by taxpayers due to the potential for fewer services being needed later in life. More importantly, access to adequate services and well-trained, certified professionals could ultimately lead to a better life for the families.

Dr. Marc Tedoff, PhD, said he was a BCBA as well as the owner of the Applied Behavior Analysis Institute (ABAI) in Las Vegas. He said ABAI provided services to 65 families, and most of those cases were funded by Medicaid or ATAP. Recent budgetary changes in ATAP threatened the delivery of Medicaid-funded services to children with autism. He said ATAP was a third-party biller for children whose services were funded by Medicaid. He explained that small providers were unable to successfully bill Medicaid directly due to the inefficiency with which claims were processed. ATAP was no longer going to function in this role, but Medicaid had not established a streamlined function for processing claims. Dr. Tedoff noted that state law required employers to pay employees every 15 business days. He said small providers such as ABAI would not have the capital to continue operating without efficient cash flow.

Dr. Tedoff said Families for Effective Autism Treatment (FEAT) reported there were 8,500 children in Nevada with an IEP for autism, but there were only 704 RBTs in the state to serve them. Services of an RBT were required to successfully bill a funding agency. Historically, ATAP supported the development of an RBT workforce by allowing RBT trainees to work while earning credentials. He said ATAP even subsidized the cost of the required 40-hour course, which cost \$100 on average.

Dr. Tedoff said without ATAP's role in covering the cost of certifications for RBTs, there would be even fewer RBTs available to serve clients. He said it would be very difficult to convince somebody to invest \$100, take a 40-hour class, pass an onsite competency assessment, and sit for a national exam, before they could be credentialed with an insurance company and work for a low wage due to the Medicaid reimbursement rate of \$31.30 per hour. His agency experienced a decrease in the number of RBTs it employed due to low wages. Many RBTs left ABAI to work for other companies that served children funded by private insurance, which paid much more.

Dr. Tedoff said treatment for children with autism was threatened by a precarious cash flow, the elimination of a mechanism to develop an RBT workforce for the state, and non-competitive reimbursement rates. He suggested one solution would be to adequately fund ATAP to better support the agencies and RBTs.

Vicki Van Beveren said she would like to address a discrepancy in pay between Nevada Highway Patrol (NHP) officers and officers employed by other local law enforcement entities. She recalled a news article in May 2017 about a rally by state workers who argued that their wages were 30 percent below what they would have been had it not been for cuts made during the Great Recession (Whaley, Sean. "Nevada State Workers Push for Better Pay," Las Vegas Review-Journal, May 5, 2017, accessed July 31, 2018, <https://www.reviewjournal.com/news/2017-legislature/nevada-state-workers-push-for-better-pay/>). She said the article indicated some state workers qualified for public assistance and low wages created issues with retention. She noted Senate Majority Leader Aaron Ford was quoted in the article acknowledging the loss of pay by state employees.

Ms. Van Beveren said a family member had been an NHP officer for over ten years; seven of those years there were no pay increases, because wages for state employees had been frozen. She believed that created a 30 to 40 percent discrepancy in pay between the NHP officer base pay and the pay of other entities' law enforcement officers. She said her relative's base pay as an NHP officer was \$55,000. She researched the website *Transparent Nevada* where she found that the base pay for officers at the Clark County School District was \$72,000. She said NHP positions were more demanding and dangerous than school district positions. She said NHP officers saw things that nobody should have to see. In addition, she said NHP officers contributed to their own retirement benefits, whereas other agencies fully paid their employees' retirement funds.

Ms. Van Beveren was also concerned that NHP was unable to fill vacancies that resulted when officers left NHP for other agencies that offered a higher base salary. She said in the past year, 20 NHP officers transferred to the Las Vegas Metropolitan Police Department, North Las Vegas Police Department or Clark County School District. The state was investing hundreds of thousands of dollars to train new officers who then moved on to higher paying positions with other agencies. She said the highways were not as safe as they could be, because experienced officers were going to other agencies. Ms. Van Beveren said officers that remained with NHP were asked to train new hires without receiving additional pay. She said the state balanced the budget on the backs of state employees, because year after year they were asked to take furloughs and budget cuts.

Ms. Van Beveren said NHP officers should receive an increase higher than 5 percent to close the wage gap. She suggested that the increase come from the State Highway Fund. Ms. Van Beveren said she would appreciate the Committee's consideration of this gap in wages between NHP officers and officers employed by other agencies.

C. WORK PROGRAM REVISIONS IN ACCORDANCE WITH NRS 353.220(5)(a). INFORMATIONAL ONLY – APPROVED BY THE GOVERNOR BECAUSE OF AN EMERGENCY AS DEFINED IN NRS 353.263 OR FOR THE PROTECTION OF LIFE OR PROPERTY.

The Committee expressed interest in hearing testimony on the following items: Agenda Items C-1, Department of Health and Human Services (DHHS), Director's Office, and C-2, Department of Public Safety (DPS), Division of Investigations.

1. Department of Health and Human Services - Director's Office - Grants Management Unit - FY 2018 Transfer of \$81,980 from Tobacco Wellness Grants category to SafeVoice Program category to support the Department of Public Safety Division of Investigations SafeVoice (Safe-to-Tell) anonymous tip line program. **RELATES TO AGENDA ITEM C.2. Work Program #C43342**

Agenda Items C-1, C-2, E-51 and E-135 were discussed together. Refer to testimony and motion for approval under Agenda Item E-135.

2. **Department of Public Safety - Investigations Division - FY 2018** - Addition of \$81,980 in Funds for a Healthy Nevada - Tobacco settlement funds through a transfer from the Department of Health and Human Services to fund the addition of four contract staff positions to support expanded operational capacity of the SafeVoice (Safe-to-Tell) Program. **RELATES TO AGENDA ITEM C.1. Work Program #C43327**

Agenda Items C-1, C-2, E-51 and E-135 were discussed together. Refer to testimony and motion for approval under Agenda Item E-135.

D. WORK PROGRAM REVISIONS IN ACCORDANCE WITH NRS 353.220(5)(b) – INFORMATIONAL ONLY – REQUIRED EXPEDITIOUS ACTION WITHIN 15 DAYS.

Agenda Item D included work programs submitted under the expeditious action item provision in NRS 353.220(5)(b). The Committee expressed interest in hearing testimony on Agenda Items D-2 through D-4, Nevada Department of Corrections (NDOC).

1. **Department of Business and Industry - Nevada Transportation Authority - FY 2018** - Addition of \$28,439 in Noticing Fees revenue to fund increased public notice costs. Requires Interim Finance approval since the cumulative amount added to the Noticing and Refunds category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42894**

There was no discussion on this item.

2. **Department of Corrections - Prison Medical Care - FY 2018** - Addition of \$2,622,782 in the Transfer from Prison Store to fund paid inmate medical claims as defined in NRS 209.221 and NRS 209.246. Requires Interim Finance approval since the amount added to the Inmate Drivens category exceeds \$75,000. **RELATES TO ITEMS D. 3 and 4. Work Program #C42722**

Agenda Items D-2 through D-4 were discussed jointly. Refer to testimony under Agenda Item D-4.

3. **Department of Corrections - Offenders' Store Fund - FY 2018** - Transfer of \$2,622,782 from the Retained Earnings category to the Transfer to Inmate Welfare category to fund paid inmate medical claims as defined in NRS 209.221 and NRS 209.246. Requires Interim Finance approval since the amount added to the Transfer to Inmate Welfare category exceeds \$75,000. **RELATES TO ITEMS D. 2 and 4. Work Program #C42763**

Agenda Items D-2 through D-4 were discussed jointly. Refer to testimony under Agenda Item D-4.

4. **Department of Corrections - Inmate Welfare Account - FY 2018** - Addition of \$2,622,782 in Transfer from Offenders Store to fund paid inmate medical claims as defined in NRS 209.221 and NRS 209.246. Requires Interim Finance approval since the amount added to the Transfer to Medical Co-Pays category exceeds \$75,000. **RELATES TO ITEMS D. 2 and 3. Work Program #C42754**

Agenda Items D-2 through D-4 were discussed jointly.

James Dzurenda, Director, Nevada Department of Corrections (NDOC), introduced Scott Ewart, Administrative Services Officer, NDOC; John Borrowman, Deputy Director, NDOC; and Robin Hager, Medical Administrator, NDOC.

John Borrowman, Deputy Director, NDOC, thanked the Committee, LCB staff and the Governor's Finance Office for assistance in finding a solution to the shortfall in the Prison Medical Inmate Drivens' category. He said many operational adjustments were implemented due to the projected shortfall for FY 2018. During the April 11, 2018, IFC meeting, the Committee had concerns about using the Prisoners' Personal Property Fund to correct the shortfall; therefore, NDOC worked with LCB Fiscal Division staff and LCB legal counsel to find a lawful and workable solution to address the financial matter. He said funds would be transferred from the Offenders' Store Fund to the Inmate Welfare category, and then to the Prison Medical Inmate Drivens' category to provide additional funding for outside medical expenditures. Mr. Borrowman said the work programs were submitted as expeditious items and had already passed the 15-day time period.

Assemblywoman Carlton remarked that medical costs would only continue to increase. She noted that the number of inmate surgeries had increased by 722, or 543 percent. She said it was important for the Committee to understand the reason for such a substantial increase as well as the ongoing issue pertaining to outside medical costs. She expressed concern about the ongoing issue of inmates being refused treatment by hospitals and doctors.

Assemblywoman Carlton asked the status of the Utilization Review Coordinator position. She said the Committee wanted a better understanding of the department's utilization. The Committee also wanted to know about the department's pharmacy utilization and whether NDOC had a Pharmacy Benefits Manager (PBM).

Assemblywoman Carlton said she still had concerns about how the medical shortfall was being managed. If an inmate did not have funds to pay for medical costs, she hoped it would not impact them after parole, ultimately causing them to return to prison, because they could not afford their medical costs.

Mr. Borrowman said, with regard to the department's policy concerning medical costs for inmates, NDOC worked closely with LCB legal staff to find a lawful and viable solution. He said inmates with sufficient income and resources were

responsible for paying a portion of their medical expenses; however, the majority of inmates did not have sufficient resources or income to cover their medical costs. Mr. Borrowman said NDOC would still receive funds from the Inmate Welfare Fund, but the debt for medical care would not be posted against inmates who lacked the means to pay for their own medical care. He said medical debt would not follow the inmate if it was determined that the inmate did not have the resources at the time the charge was posted.

Robin Hager, Medical Administrator, NDOC, said surgeries included all types of procedures, both minor and major. The increase in surgeries included procedures performed inside and outside of the prison system. She said increased medical care among inmates was similar to the growing need for medical care nationwide. Ms. Hager said the department's medical costs increased as medical inflation increased. She said she would provide the Committee with specific details regarding the various types of surgeries that were required by inmates, as well as which procedures were managed internally and externally. She noted that medical care within the institutions was limited to basic health concerns. More complex issues, such as magnetic resonance imaging (MRI) and cancer treatment, required outside medical care.

Ms. Hager said, with regard to pharmacy, the department's PBM was the Minnesota Multistate Contracting Alliance for Pharmacy, which provided services to every state in the nation. Although the department's pharmacy costs were good, she requested a comparison of NDOC pharmacy rates and Public Employees' Benefit Program (PEBP) pharmacy rates. Ms. Hager noted that the department regularly sought efficiencies to save money. She said the department used the 340B Program through Renown Hospital, especially for HIV and Hepatitis C medications, because the savings exceeded 50 percent. Ms. Hager said NDOC would be issuing a request for proposal (RFP) for preferred provider network and third-party administrator (TPA) services. She said pharmacy may also be included in the RFP, especially if the department could link in with PEBP and Medicaid. She said the three agencies were working together to identify a statewide benefit.

Ms. Hager said providers refusing to treat inmates was a nationwide issue. She said providers' contracts were with the network, not NDOC; therefore, the department did not have a say if a provider refused to treat inmates. She said some providers were not comfortable serving the inmate population, and others preferred to treat inmates after hours and via an alternate entrance to ensure that inmates were not seen by patients. Ms. Hager said in-house clinics at the institutions were a good solution. She said the department hosted in-house clinics as often as possible at Northern Nevada Correctional Center (NNCC) and High Desert State Prison (HDSP). Physicians treated as many inmates as possible during the in-house clinics, which allowed inmates to receive medical care while reducing the cost of transportation and security. Ms. Hager noted that a dermatologist recently agreed to provide a clinic at NNCC, which would afford a savings for the department. She said in-house clinics were good business and beneficial for everyone.

Ms. Hager said in-house clinic doctors treated as many conditions as possible, and a referral for outside care was written for any conditions they could not treat. The referrals were reviewed by the Utilization Review Panel (URP), which was a panel comprised of four doctors. The URP met weekly basis to review consults. Ms. Hager said each week there were typically about 40 new consults; 15 to 30 deferred consults, which were referrals from a prior meeting that required additional information; 0 to 5 dental consults, typically for oral surgery; and approximately 80 approved consults for inmates with a pending transfer from one institution to another. She explained that approved consults were referrals to an in-house clinic, which required transferring an inmate to the institution where the clinic was scheduled.

Ms. Hager said the doctors on the URP reviewed the medical records of inmates and determined if the issue could continue to be treated internally, or if the matter required outside medical care. She said all four doctors had to be in agreement before NDOC could assign an authorization code and make an appointment for the inmate. Ms. Hager said having an in-house URP saved the department money.

Assemblyman Sprinkle recalled that the department indicated the increasing age of the NDOC inmate population was driving the amount of medical liability. He asked if the department had determined which inmates over a specific age were incarcerated for violent and non-violent offenses. He also asked if there was the potential for early release for some of those inmates so NDOC would no longer be responsible for the cost of their medical care.

Mr. Dzurenda replied that the most recent census indicated that the department's elderly inmate population had decreased compared to two years ago. He thought the inmate population was becoming sicker overall. He said he was unsure if prior illegal drug use was causing inmates to deteriorate faster or something else, but the department continued to experience increased medical care costs.

Mr. Dzurenda said NDOC considered three inmates for potential early release due to significant health issues; however, those inmates did not meet the qualifications, because they were incarcerated for violent crimes and determined to be a public safety risk. He said one inmate was hospitalized due to severe brain damage and another was on life support. He noted that the third inmate had spinal damage from a police chase and died while in NDOC custody.

Assemblyman Sprinkle said there were advancements in technology related to telemedicine services. He asked if NDOC was building an infrastructure for telemedicine within the institutions. Assemblyman Sprinkle thought telemedicine would increase accessibility to medical care for inmates as well as all Nevadans, which offered potential cost savings.

Mr. Dzurenda replied that NDOC received confirmation from Enterprise Information Technology Services (EITS) on June 19, 2018, that the department's microwave services would be temporarily increased to improve access to broadband coverage. He said NDOC institutions in the rural areas would have access to broadband by June 22, 2018; however, it was a short-term solution. As a long-term solution, the department was working on a contract with local networks to expand the department's broadband coverage by installing fiber optics in the local areas. Mr. Dzurenda anticipated installation would be complete by the end of August 2018. Additionally, the department was scheduled to meet with the vice president of Renown Hospital to discuss the expansion of telemedicine to the rural institutions, which included HDSP, Lovelock Correctional Center, Ely State Prison and Southern Desert Correctional Center. He said Renown Hospital had a grant that would allow the facility to order telemedicine carts for the department; therefore, NDOC would meet with hospital staff to discuss the order now that it was confirmed that broadband would be available for the rural institutions. Mr. Dzurenda said the next step would be expanding telemedicine to the conservation camps throughout the state. He thought all 18 facilities would have broadband coverage by the end of 2018, which would also increase broadband coverage for the surrounding communities, not just the prison system. Mr. Dzurenda said the department would provide the Committee with an update when the project was close to being finalized. Assemblyman Sprinkle thought that was exciting news.

Assemblyman Sprinkle noted that NDOC was only auditing 10 percent of its medical claims. He asked why such a small number of claims were being audited when medical costs had been an issue since at least 2013. He said cost reductions could be realized for some of the medical claims by utilizing preferred provider organization (PPO) programs; however, the PPO discount had not been applied to more than \$1.9 million in claims. He thought auditing a greater percentage of claims may explain what was driving the department's medical costs.

Ms. Hager said inmates generated between 60,000 and 80,000 medical claims per year, which was a significant workflow. She said provider claims were sent directly to the TPA for adjudication. The TPA watched for claims that were covered by Medicaid, because the department was not responsible for medical costs if an inmate became eligible for Medicaid while in the hospital. Additionally, the TPA watched for workers' compensation claims, because NDOC was also not responsible for those medical costs. Overall, the TPA watched for anything unusual and compared each claim to the weekly authorization list provided by NDOC.

Ms. Hager said after the TPA review, claims were sent to NDOC. She said she did not have an adequate number of staff to review 60,000 to 80,000 claims per year; therefore, approximately 10 percent of the claims were audited. The department performed an audit by exception to look for items that appeared unusual. For example, if a claim for an eye exam was more than the standard \$45, further review was required. Additionally, if the department was charged \$85,000 instead of the standard \$30,000 for a care flight out of Elko, an inquiry needed to be made about

the cost to determine whether the provider was new or not under contract. Ms. Hager said NDOC had the ability to review the explanation of benefits (EOB) in the TPA system. The EOB provided details on the services that were billed and the cost charged by the provider for those services. If necessary, the department could also contact the provider for further explanation. Ms. Hager said after her staff finished performing a second-level review of the claims, the NDOC accounting department performed the third and final review to double check for items such as workers' compensation claims, and then the claim was paid. She said an auditor recently asked how the department ensured it was billed for the appropriate service, and she replied that regular checks and balances helped to avoid those types of billing errors. Ms. Hager said funding was not available for an outside auditor.

Assemblyman Sprinkle asked if the department was confident that the \$1.9 million in claims that had not received a PPO discount had been thoroughly reviewed and the charges were determined to be legitimate.

Ms. Hager said she requested a report from the TPA on June 19, 2018, comparing in-network and out-of-network costs. As of May 31, 2018, the department incurred out-of-network medical expenses totaling \$1.5 million and in-network medical expenses totaling \$9.6 million. She stated that 50 percent of the out-of-network costs were for air transportation and ambulances, which were historically out-of-network services nationwide. She said during a critical situation there was not enough time to seek an in-network provider for air transportation or an ambulance. Ms. Hager said there were other instances when an in-network provider was not an option. For example, a current inmate had a rare form of bone cancer and the only doctor in Nevada that could treat it was out-of-network.

Assemblywoman Benitez-Thompson asked the department to explain the reimbursement process as indicated in Administrative Regulation (AR) 245.

Mr. Borrowman replied that AR 245 defined which inmates were exempt from medical care costs based on income and resources. Specifically, insufficient income was a measure of income set forth annually by the Department of Health and Human Services, defined as income that is at or below 138 percent of the federal poverty level for the Medicaid, childless, adult population. He said income was defined by a Medicaid eligibility standard that was consistent with the community. Insufficient resources were those defined as assets, both real and personal, which an individual owns and can apply, either directly or by sale, to meet the basic needs of food, clothing, shelter and medical costs. Insufficient resources for inmate medical charges was \$2,000, which followed the resource limits for home-based waivers and institutional groups included in the Division of Welfare and Supportive Services *Medical Assistance Manual*. Again, the resources were based on Medicaid eligibility.

Assemblywoman Benitez-Thompson said it appeared that 20 to 40 percent of the inmate population would be charged a percentage of their medical costs. She asked if the department used a sliding scale, or if the formula was published in AR 245.

Mr. Borrowman replied that the number of inmates with sufficient income and resources to participate in their medical costs was very limited. Approximately 112 current inmates, less than 10 percent of the inmate population, met those qualifications, and only 2 to 4 inmates had outside medical services provided to them for which they would be charged. He noted that one of the inmates had already been released and would not be billed retroactively. Mr. Borrowman said the current projected shortfall for NDOC was approximately 20 to 40 percent. The 2 to 4 inmates mentioned previously would be required to pay between 20 and 40 percent of the outside expenditures that were incurred for their medical care. He said the highest charge was about \$300, but most charges were under \$100. Mr. Borrowman reiterated that the total impact of charges to inmates with sufficient funds was a very limited number and so far, with very limited expenditures. He said it was possible that a more expensive medical issue could occur, but currently there were no high-level charges for any inmate.

Assemblywoman Spiegel asked if the TPA utilized billing review software, and if so, what percentage of billing errors were discovered on the front end. Ms. Hager said she was unsure what software the TPA used or the percentage of billing errors; however, she would provide that information to the Committee.

In answer to a question from Assemblywoman Spiegel, Ms. Hager replied that workers' compensation claims were filed when an inmate incurred a work-related injury during incarceration. For example, an inmate may sustain an injury while performing forestry duties or working at the prison ranch.

Assemblywoman Spiegel asked if NDOC pursued subrogation opportunities. Mr. Borrowman replied that the department had a safety and security audit team that investigated all incidents within the prison system. He said the safety and security audit team investigated incidents such as fires, vehicle accidents and work-related injuries. The investigation process included analyzing the site of the incident, events that occurred, risks, procedures and outcome. The team also identified whether funds could be recovered. For example, delivery trucks had been known to damage NDOC fences and buildings. When such an incident occurred, the department tried to recover funds for damages for which the vendor was liable. Mr. Borrowman noted that Alexander Archie, Compliance Investigator, NDOC, was typically responsible for investigations. He said Mr. Archie held many certifications for various agency-level abilities necessary to perform investigations.

There was no further discussion on these items.

- 5. Department of Health and Human Services - Health Care Financing and Policy - Intergovernmental Transfer Program - FY 2018** - Addition of \$2,119,975 in School District Reimbursements funds and deletion of \$274,078 in Receipts County Inpatient Upper Payment Limit funds to cover projected program expenditures. Requires Interim Finance approval since the amount added to the Transfer to Medicaid category exceeds \$75,000. **RELATES TO ITEM D. 6. Work Program #C43251**

There was no discussion on this item.

E. APPROVAL OF GIFTS, GRANTS, WORK PROGRAM REVISIONS AND POSITION CHANGES IN ACCORDANCE WITH CHAPTER 353 OF NRS.

The Committee expressed interest in hearing testimony on the following items: Agenda Items E-14, Department of Administration, Enterprise Information Technology Services (EITS); E-17, Department of Administration, Nevada State Library, Archives and Public Records; E-23 through E-26, Department of Taxation; E-51, Department of Health and Human Services (DHHS), Director's Office; E-68, DHHS, Division of Public and Behavioral Health (DPBH); E-80, DHHS, DPBH; E-127, Department of Motor Vehicles (DMV); E-129, DMV; E-134, Department of Public Safety (DPS), Division of Investigations; E-135, DPS, Division of Investigations; E-153, Nevada Department of Transportation (NDOT); E-161, Silver State Health Insurance Exchange (SSHIX); E-162, SSHIX; and E-164, Office of the Secretary of State.

Agenda Item E-11, Department of Administration, EITS, was withdrawn.

The following items involved the allocation of block grant funds, which required a public hearing: Agenda Items E-91, DHHS, Division of Welfare and Supportive Services (DWSS), and E-98, DHHS, Division of Child and Family Services (DCFS).

Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, LCB, stated that Agenda Items E-113, NDOC, and E-120, NDOC, required a revision by the agency.

Assemblywoman Swank requested further testimony on Agenda Items E-145 and E-146, Department of Conservation and Natural Resources (DCNR), Division of Environmental Protection.

Assemblywoman Titus requested further testimony on Agenda Item E-149, Department of Wildlife.

Assemblyman Edwards requested further testimony on Agenda Items E-131, DPS, Nevada Highway Patrol (NHP); E-136, DPS, Division of Emergency Management; and E-139, DPS, Division of Traffic Safety.

Assemblywoman Benitez-Thompson requested further testimony on Agenda Items E-44 through E-48; Governor's Office of Economic Development.

SENATOR PARKS MOVED TO APPROVE THE
REMAINING WORK PROGRAM REVISIONS AND
POSITION RECLASSIFICATIONS.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

1. **Office of the Governor - State Energy Office - Office of Energy - FY 2019** - Deletion of \$100,629 in Transfer from the Renewable Energy Fund to eliminate one full-time equivalent position due to a reduction in position specific workload and the position being vacant for more than a year. Requires Interim Finance approval since the amount deleted from the Personnel Services category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 2. Work Program #C43321**

Refer to motion for approval under Agenda Item E.

2. **Office of the Governor - State Energy Office - Renewable Energy Account - FY 2019** - Transfer of \$100,629 from the Transfer to Office of Energy category to the Reserve category due to a reduction in required administrative funds as a result of one position elimination. Requires Interim Finance approval since the amount transferred from the Transfer to Office of Energy category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 1. Work Program #C43322**

Refer to motion for approval under Agenda Item E.

3. **Office of the Governor - Office of Science, Innovation and Technology – FY 2018** - Deletion of \$907,900 in General Fund appropriations to continue funding for planning broadband development and improvements for schools and libraries. Requires Interim Finance approval pursuant to Section 35 of Assembly Bill 518 (2017 Legislative Session). **RELATES TO AGENDA ITEM E.4. Work Program #C43247**

Refer to motion for approval under Agenda Item E.

4. **Office of the Governor - Office of Science, Innovation and Technology - FY 2019** - Addition of \$907,900 in General Fund appropriations to continue funding for planning broadband development and improvements for schools and libraries. Requires Interim Finance approval pursuant to Section 35 of Assembly Bill 518 (2017 Legislative Session). **RELATES TO AGENDA ITEM E. 3. Work Program #C43216**

Refer to motion for approval under Agenda Item E.

5. **Office of the Secretary of State - FY 2018** - Transfer of \$319,112 from the Personnel category to the Credit Card Discount Fees category to cover projected credit card discount fees for the remainder of the fiscal year. Requires Interim Finance approval since the amount transferred to the Credit Card Discount Fees category exceeds \$75,000. **Work Program #C42961**

Refer to motion for approval under Agenda Item E.

6. **Office of the Secretary of State - FY 2019** - Addition of \$4,754,071 in Balance Forward from Previous Year to fund expenses related to the replacement of the existing Electronic Secretary of State software and hardware. Requires Interim Finance approval since the amount added to the technology investment request category exceeds \$75,000. **Work Program #C42998**

Refer to motion for approval under Agenda Item E.

7. **Office of the Secretary of State - Help America Vote Act (HAVA) Election Reform - FY 2019** - Addition of \$4,277,723 in federal Title I Help America Vote Act (HAVA) funds to add two new positions to support the Elections Division, ***provide subgrants to counties for reimbursement of an Intrusion Detection System and netflow monitoring system***, with unallocated funds placed in reserve, and transfer of \$760,000 from the Voting Machine Replacement category to the Reserve for Reversion category. Requires Interim Finance approval since the amount added to the Personnel category exceeds \$75,000. **Work Program #C43486. REVISED 6-7-18.**

Refer to motion for approval under Agenda Item E.

8. **Office of the Treasurer - Higher Education Tuition Administration - FY 2019** - Addition of \$40,780 in Transfer from Treasurer revenue in order to fund FY 2019 costs for service on the Prepaid Tuition database. Requires Interim Finance approval since the amount added to the Information Services category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42839**

Refer to motion for approval under Agenda Item E.

9. **Office of the Treasurer - Unclaimed Property - FY 2018** - Addition of \$135,058 in Transfer reimbursements for verification of unclaimed property and securities custodial fees. Requires Interim Finance approval since the amount added to the Audit Services category exceeds \$75,000. **Work Program #C42984**

Refer to motion for approval under Agenda Item E.

10. **Department of Administration - Deferred Compensation Committee - FY 2018** - Transfer of \$950 from the Personnel category to the Operating category to fund a temporary employee for the balance of the fiscal year. Requires Interim Finance approval since the amount added to the Operating category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42803**

Refer to motion for approval under Agenda Item E.

11. **Department of Administration - Enterprise Information Technology Services - Agency IT Services - FY 2019** - Transfer of \$85,824 from the Reserves category to the Operating category and \$74,611 from the Reserves category to the Information Services category to fund the office colocation initiative. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C43311**

This item was withdrawn.

12. **Department of Administration - Enterprise Information Technology Services - Computer Facility - FY 2018** - Transfer of \$560,953 from the Reserves category to the Information Services category to fund a projected shortfall for the remainder of the fiscal year due to a need for additional Microsoft Client Access Licenses and higher than anticipated virtual server and print management costs in server support renewal, virtual server and print management costs. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C42799**

Refer to motion for approval under Agenda Item E.

13. **Department of Administration - Enterprise Information Technology Services - Computer Facility - FY 2018** - Transfer of \$32,709 from the Reserves category to the Utilities category to fund a projected shortfall for the remainder of the fiscal year in utility costs. Requires Interim Finance approval since the amount transferred to the Utilities category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43096**

Refer to motion for approval under Agenda Item E.

14. **Department of Administration - Enterprise Information Technology Services - Network Transport Services - FY 2019** - Addition of \$1,734,952 in User Charges to fund construction for the remainder of the microwave project. Requires Interim Finance approval since the amount added to the Digital Microwave category exceeds \$75,000. **Work Program #C43326**

Agenda Items E-14 and E-153 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-153.

15. **Department of Administration - Enterprise Information Technology Services - Security - FY 2018** - Transfer of \$220,000 from the Reserves category to the Information Services category and \$100,000 from the Personnel Services category to the Information Services category to fund security architecture for the cloud computing environment. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C42992**

Refer to motion for approval under Agenda Item E.

16. **Department of Administration - Nevada State Library, Archives and Public Records - State Library - FY 2018** - Transfer of \$2,000 from the Bookmobile Services category to the Statewide Databases category to fund the Emerging Technology Early Adopter Program which helps librarians develop basic skills and knowledge to create virtual reality programs. Requires Interim Finance approval since the cumulative amount transferred to the Statewide Databases category exceeds \$75,000. **Work Program #C43284**

Refer to motion for approval under Agenda Item E.

17. **Department of Administration - Nevada State Library, Archives and Public Records - State Library - FY 2019** - Addition of \$1,726 in U.S. Institute of Museum and Library Services grant funds and transfer of \$243,749 from the Library Development Title I category to the Personnel Services category to fund two new positions to provide continuing education support for library development and two new positions converted from existing temporary staff to provide customer assistance. Requires Interim Finance approval since the amount added to the Personnel Services category exceeds \$75,000. **Work Program #C43023**

Patrick Cates, Director, Department of Administration, introduced Jeff Kintop, Division Administrator, Nevada State Library, Archives and Public Records (NSLA), and Jennifer Cartwright, Administrator, Administrative Services Division, Department of Administration.

Mr. Cates said the purpose of the work program was for approval to accept a grant from the U.S. Institute of Museum and Library Services (IMLS) to create two new positions to provide continuing education support for library development. Additionally, two positions would be converted from existing temporary staff to provide customer assistance.

Assemblywoman Swank noted the positions were grant funded. She asked why the department was requesting permanent positions, and how the positions would be funded beyond FY 2019.

Jeff Kintop, Division Administrator, NSLA, Department of Administration, explained that the grant funding for the positions was received every year from the federal

government. The grant was distributed to all of the states, and the amount was based on population. He said the amount of the grant would not decrease unless the federal government failed to pass a budget. He noted that the department was currently paying for existing positions from the same grant. For example, the assistants and technicians for the Talking Books program were funded by the IMLS grant.

In response to a question from Assemblywoman Swank, Mr. Kintop said the positions would continue to be funded by the federal government in the future.

Senator Denis asked if the positions were currently funded as temporary positions, and whether there would be any savings to the state by making the positions permanent. Mr. Kintop replied that the positions had been in place for about ten years under the Manpower temporary employment contract. He said the positions were entirely federally funded, so no state funds were involved.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEM E-17.

ASSEMBLYWOMAN SWANK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Araujo and Assemblyman Frierson were not present for the vote.)

- 18. Department of Administration - Purchasing - FY 2018** - Transfer \$439,807 from the Reserve category to the Information Services category in order to pay scheduled invoices for the state's e-Procurement system development. Requires Interim Finance approval since the amount added to the Information Services category exceeds \$75,000. **Work Program #C43003**

Refer to motion for approval under Agenda Item E.

- 19. Department of Administration - Purchasing - FY 2019** - Transfer of \$688,000 from the Reserve category to the Information Services category in order to pay scheduled invoices for the state's e-Procurement system development. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C43016**

Refer to motion for approval under Agenda Item E.

- 20. Department of Administration - Purchasing - FY 2019** - Transfer \$91,557 from the Reserve category to the Information Services category in order to fund the development of an online contract certification course for state contract managers. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C43004**

Refer to motion for approval under Agenda Item E.

21. **Department of Administration - Purchasing - FY 2019** - Transfer of \$45,798 from the Reserve category to the Operating category to fund upgrades to the Las Vegas Purchasing warehouse. Requires Interim Finance approval since the cumulative amount transferred to the Operating category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43020**

Refer to motion for approval under Agenda Item E.

22. **Department of Administration - State Public Works - Buildings and Grounds - FY 2018** - Transfer of \$279,797 from the Reserve category to the Maintenance of Buildings and Grounds category to fund emergency maintenance and janitorial services for the Grant Sawyer building and extended janitorial services for the office building and the Belrose, Decatur and Henderson Department of Motor Vehicles buildings. Requires Interim Finance approval since the amount transferred to the Maintenance of Buildings and Grounds category exceeds \$75,000. **Work Program #C43149**

Refer to motion for approval under Agenda Item E.

23. **Department of Taxation - Marijuana Regulation and Control Account – FY 2019** - Transfer of \$210,000 from the Reserve category to the Building Security category to provide contracted armed security at the offices in Reno, Henderson and Carson City. Requires Interim Finance approval since the amount added to the Building Security category exceeds \$75,000. **Work Program #C42893**

Agenda Items E-23 through E-26 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-26.

24. **Department of Taxation - Marijuana Regulation and Control Account – FY 2019** - Transfer of \$597,649 from the Dispensaries and Establishments category to the Personnel Services category, transfer of \$789 from the Dispensaries and Establishment category to the Operating category, and transfer of \$2,722 from the Dispensaries and Establishments category to the Information Services category in order to continue funding for eight state positions approved by the Interim Finance Committee for FY 2018 for the Marijuana Program. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43062**

Agenda Items E-23 through E-26 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-26.

25. **Department of Taxation - Marijuana Regulation and Control Account – FY 2019** - Transfer of \$208,000 from the Reserve category to the Operating category, transfer of \$224,100 from the Reserve category to the Dispensaries and Establishments category, and transfer of \$433,096 from the Reserve to the

Information Services category in order to fund contract staff for marijuana establishment application reviews, equipment replacement, public service announcements, contracted regulation review, and a new case management system for the Marijuana Program. Requires Interim Finance approval since the amount added to the Operating category exceeds \$75,000. **Work Program #C43237**

Agenda Items E-23 through E-26 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-26.

- 26. Department of Taxation - Marijuana Regulation and Control Account - FY 2019 -** Transfer of \$402,360 from the Reserve category to the Personnel Services category, transfer of \$23,890 from the Reserve category to the Operating category, transfer of \$35,920 from the Reserve category to the Equipment category and transfer of \$27,028 from the Reserve category to the Information Services category in order to fund eight new state positions for the Marijuana Program. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43239**

Agenda Items E-23 through E-26 were discussed jointly.

Bill Anderson, Executive Director, Department of Taxation, introduced Steve Gilbert, Health Program Manager, Department of Taxation; Melanie Young, Administrative Services Officer, Department of Taxation; and Jorge Pupo, Deputy Director, Marijuana Enforcement Division, Department of Taxation.

Mr. Anderson said the department wanted the marijuana industry in Nevada to be well regulated, responsible, restricted, and respected inside and outside of the state. He described those as the department's "four R" approach to the regulation of the sale of marijuana in Nevada.

Mr. Anderson reported that one year into the legalization of adult-use marijuana in Nevada, about 116 cultivator licenses had been issued. There were currently about 80 producers and 61 dispensaries. For medical marijuana, those numbers were more than double. Together, there were about 554 marijuana licensees in Nevada. For comparison, the Gaming Control Board had about 450 non-restricted gaming licenses in place as of the end of FY 2017.

Mr. Anderson said the best way to measure the growth of Nevada's marijuana industry in its infancy was to perform an analysis of tax collections, which revealed stronger growth than anticipated. He said complete information was available through the first three quarters of FY 2018. During that time, almost \$49 million was collected from the two main taxes: the 15 percent wholesale excise tax and the 10 percent retail excise tax. Revenue was originally anticipated to be just above \$50 million for the entire fiscal year, meaning collections during the first three

quarters of the fiscal year represented 97 percent of what was originally projected for the entire year.

Mr. Anderson said the rapid growth during the industry's infancy had led to the four work program requests. He said the activity had strained the resources of the department, and the department was taking proactive steps to meet those challenges. He noted that the marijuana industry was almost solely a cash industry. As a result, the safety and security of employees and the public have been discussed with the Department of Public Safety and the State Public Works Division. He reported that a non-IFC work program was submitted to fund security guards during FY 2018. Work Program #C42893 proposed to use \$210,000 to extend the presence of security for the department into FY 2019.

Mr. Anderson said when the department absorbed the marijuana program from the Division of Public and Behavioral Health (DPBH), 12 contracted positions were transferred with the budget. At the December 2017 IFC meeting, approval was given to convert those positions into 8 regular state positions. Work Program #C43062 requested to extend the funding into FY 2019 at a cost of about \$600,000 from the Contractual Services category.

Mr. Anderson said the department was trying to accomplish several things through Work Program #C43237. The department was requesting \$108,000 to continue working with QuantumMark, the vendor responsible for developing the permanent adult-use regulations that were approved by the Legislative Commission in February 2018. He said the department would like the vendor to align the medical marijuana regulations with the adult-use regulations.

Mr. Anderson noted \$100,000 was requested for public service announcements (PSA). He said the number one mission of the Marijuana Enforcement Division was to protect the health and safety of Nevadans. The PSAs would be geared toward pregnant women about the dangers of using marijuana products during pregnancy.

Mr. Anderson said \$224,000 was requested to fund temporary staff. The department was currently reviewing applications for existing medical marijuana license holders that had not yet applied for an identical license on the adult-use side. He said existing staff could handle that activity. However, later in the summer of 2018 there would be a licensing period in which any medical marijuana license holder could apply for any adult-use type license. For example, a cultivator could apply for a dispensary license. In terms of volume, the workload would be quite sizable. He estimated that 150 to 170 license applications might be received during that period. The department was requesting authority to hire 15 temporary staff to include support staff, accountants and human resource staff.

Mr. Anderson said \$13,000 was requested for equipment to print agent cards. He explained that the existing printers were failing and needed to be replaced. Funding was also being requested for a new videoconferencing system. He said the

videoconferencing system the department received from DPBH was incompatible with the department's system. Department staff in Northern Nevada had a difficult time communicating with staff in Southern Nevada. He said auditors and inspectors needed to interface with each other, but that had proven to be very difficult. The cost associated with the new videoconferencing system was about \$34,000.

Mr. Anderson said the Marijuana Enforcement Division had been maintaining its records on spreadsheets. The department would like to acquire a case management system to more efficiently manage the interactions between the department and the license holders. The cost associated with that request was about \$386,000. He explained that the funding would come from reserves.

Mr. Anderson said in light of the rapid growth of the industry, the department was asking for authority to hire eight individuals, including an Administrative Services Officer 2; a Management Analyst 1 to help with fiscal issues; five Administrative Assistant 2 positions to help process agent cards, change of ownership forms, advertising and packaging; and a Health Program Manager to assist the Deputy Director in overseeing day-to-day operations (Work Program #C43239). The department was requesting \$490,000 to cover the new positions.

Mr. Anderson said he compared the department's staffing ratio to other states. He learned that Washington, Oregon and Colorado were most like Nevada in terms of their marijuana programs. He noted Nevada had 12 employees per million population; Washington had about 11 employees per million; Oregon had about 17 employees per million; and Colorado had about 19 employees per million. Based on that comparison, he believed the department's request was reasonable.

Assemblyman Sprinkle said in January 2017, the IFC allocated over \$800,000 in Contingency Account funds to develop the initial regulations for recreational marijuana. At no time during that meeting was it brought to the attention of the Committee that the department would need to hire outside contractors, such as QuantumMark, to develop the regulations. Assemblyman Sprinkle said the department was requesting mid-level and upper-level positions that should be able to perform those tasks.

Mr. Anderson said QuantumMark worked with the department to develop the permanent regulations for adult-use/recreational marijuana. The department had a contract with QuantumMark, which developed an extensive set of knowledge about Nevada's marijuana market during that process. He noted that the permanent regulations were approved by the Legislative Commission at its February 2018 meeting. He said the department thought the most efficient way to ensure that medical marijuana regulations were consistent with the adult-use regulations was to use QuantumMark's services, which cost about \$108,000.

Assemblyman Sprinkle suggested that department staff had developed an expertise of the topic during the process of developing the regulations for adult-use marijuana with the contractor.

Jorge Pupo, Deputy Director, Marijuana Enforcement Division, Department of Taxation, recalled that the initial \$108,000 Contingency Account request was for funding to get the program started. He said three positions were requested at that time. The QuantumMark contract to coordinate the regulations was roughly \$100,000. He said QuantumMark had experience developing regulations for the initial medical marijuana program in 2014.

Mr. Pupo said the Administrative Assistant 2 positions would work on the backlog of agent cards and change of ownership forms. He explained that division staff participated in developing the regulations, but QuantumMark did most of the work. He added that division staff was stretched thin, and staff from other divisions were working overtime to assist the Marijuana Enforcement Division.

Mr. Pupo said there was a problem with NAC 453A not being consistent with NAC 453D, which was adopted in February 2018. He said it was difficult to enforce two different sets of regulations. He noted that QuantumMark had the foundation to help coordinate hearings and public workshops.

Assemblyman Sprinkle said he appreciated that perspective; however, he thought division staff had gained enough experience in the past two years to avoid the need for an outside contractor. He recalled that during the 2013 Legislative Session, an appropriation was made for a Chief Deputy specifically designated to manage regulations.

Assemblyman Hambrick noted there was a request for funding for a PSA directed at pregnant women. He asked about the effect of marijuana use on the fetus during pregnancy and while nursing.

Steve Gilbert, Health Program Manager, Department of Taxation, said the Marijuana Enforcement Division partnered with DPBH and the Department of Public Safety on topics such as driving while intoxicated. The department relied on the studies of those other agencies, and communicated those messages.

Senator Denis noted the department was using spreadsheets to track licensee data and seeking funding for a case management system. He asked how the estimate of \$386,000 was determined and whether a technology investment notification (TIN) had been submitted to EITS.

Melanie Young, Administrative Services Officer, Department of Taxation, said the department reached out to various vendors in the industry to request quotes for a case management system. The dollar amount in the work program was based on a quote received from one of those vendors. Ms. Young said the division would submit

a TIN to EITS and work with the Purchasing Division to prepare a request for proposal.

In response to a question from Senator Denis, Ms. Young said the off-the-shelf program being requested was specifically designed for the cannabis industry. The department's IT staff developed the TIN, which would be submitted to EITS upon approval of the work program.

Senator Kieckhefer asked if the department had an estimate of the additional expense being incurred by using a bifurcated method to separate the medical and recreational marijuana systems. He noted the two systems had different tax structures, and different cards were issued for each system. He was curious as to whether maintaining two systems was still necessary.

Mr. Anderson said the department handled the vast majority of the regulatory responsibility over the marijuana industry in Nevada, both medical and adult-use. The DPBH was responsible for issuing medical marijuana cards. The department and DPBH collaborated with regard to the public health aspect of the program.

In response to a question from Senator Kieckhefer, Mr. Gilbert explained that the department was responsible for issuing agent cards for all owners, officers and board members, as well as employees and contractors of all the establishments licensed in the state. He said there were approximately 10,200 registered agents that were allowed to work in any one of the marijuana establishments in the state. He explained that there was a requirement under NAC 453A and 453D for the department to issue cards for each type of worker, for each establishment. For example, an employee who worked in an establishment that sold both medical and recreational marijuana must have both types of cards.

Assemblyman Oscarson asked when the Marijuana Enforcement Division would become self-supporting. Mr. Anderson clarified that the law was written in such a way that the department's operation with respect to the Marijuana Enforcement Division was fully funded by the 15 percent wholesale tax levied on cultivators. The statute required the department to provide \$5 million per year to counties and other jurisdictions to assist them with marijuana enforcement activities. The statute also required the department to pay for operating expenses for the Marijuana Enforcement Division with revenue from the 15 percent wholesale tax. At the end of the fiscal year, the remaining revenue was transferred to the Distributive School Account (DSA). Mr. Anderson said the Marijuana Enforcement Division was not funded by General Funds; rather, it was completely funded by marijuana taxes and licensing fees.

Assemblyman Oscarson asked if the money being requested had already been collected as revenue. Mr. Anderson confirmed that was correct.

Assemblywoman Carlton said the Committee understood the division needed personnel, and the Committee wanted the division to be the “gold standard” for marijuana enforcement. However, she said it should be clear that whatever revenue the division did not use would go to the DSA.

Senator Gansert noted the scope of the contract for QuantumMark was to align the regulations for medical and recreational marijuana. She asked if that scope should be changed from aligning the regulations, to streamlining and consolidating the regulations. Regarding the PSAs, she noted that the division was going to purchase 33 advertising slots for \$3,000 each. She asked if the division had pursued federal matching grants that could be used to leverage that messaging. She noted there may be private nonprofit organizations that would be interested in getting those types of messages across as well.

Assemblyman Sprinkle said the request was sensible. He agreed that Nevada’s marijuana program could be an ideal for other states. In fact, there was talk about the good work happening in Nevada at a conference in Colorado that he attended recently. He agreed that additional security and support staff would make the program even better. However, he believed the division’s internal staff should be able to finalize the regulations for medical marijuana.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA ITEMS E-23, E-24, E-25 AND E-26, WITH THE EXCEPTION OF THE REQUEST FOR \$108,000 TO HIRE AN OUTSIDE CONTRACTOR TO PERFORM A REVIEW OF REGULATIONS.

SENATOR PARKS SECONDED THE MOTION.

Senator Gansert wanted assurance that the department was using the EITS TIN process to determine whether the scope was appropriate, and that the contract would be awarded through the RFP process.

Assemblyman Edwards asked if the reserve funding to be used for the requests was from marijuana tax revenue, as opposed to General Fund reserve. He noted that revenue collections were about 30 percent above projections.

Mr. Anderson reiterated that there were no General Fund monies associated with the marijuana program. The vast majority of marijuana revenue came from the 15 percent wholesale tax, and a smaller amount of revenue was collected from license and application fees.

THE MOTION PASSED UNANIMOUSLY.

- 27. Department of Taxation - Marijuana Regulation and Control Account – FY 2018** - Addition of \$92,765 in Excise Tax Medical, \$3,000,000 in Excise Tax Wholesale, \$1,200,000 in Establishment Application Fees, \$77,499 in

Establishment License Fees, \$4,850 in Agent Card Registration fees, \$475 in Administration Fees Returned Checks, \$85,500 in Time and Effort Assessments, \$125,250 in Civil Penalties, and deletion of \$5,375 in Treasurers Interest Distribution in order to provide sufficient authority to allow for the transfer of unused marijuana revenue to the Distributive School Account at the close of FY 2018. Requires Interim Finance approval since the amount added to Transfer to DSA category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 28. Work Program #C43260**

Refer to motion for approval under Agenda Item E.

- 28. Department of Education - Distributive School Account - FY 2018** - Addition of \$8,443,443 in Marijuana funds transferred from the Department of Taxation for the operation of school districts and charter schools. Requires Interim Finance approval since the amount added to the Basic Support Aid to Schools category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 27. Work Program #C42689**

Refer to motion for approval under Agenda Item E.

- 29. Department of Education - Distributive School Account - FY 2018** - Transfer of \$299,997 from the Students with Disabilities Exceeding 13 Percent category to the Special Education category to distribute all special education funds in the current fiscal year. Requires Interim Finance approval since the amount transferred to the Special Education category exceeds \$75,000. **Work Program #C43141**

Refer to motion for approval under Agenda Item E.

- 30. Department of Education - Assessments and Accountability - FY 2019** - Transfer of \$92,053 from the State Assessments Contracts category to the S.B. 303, External Audit category to fund the development and implementation of a plan to audit the assessment tools and examinations used to monitor the performance of students and schools in the public education system. Requires Interim Finance approval since the amount transferred to the S.B. 303, External Audit category exceeds \$75,000. **Work Program #C43299**

Refer to motion for approval under Agenda Item E.

- 31. Department of Education - Achievement School District - FY 2019** - Addition of \$196,288 in Charter School Authorizer fees to fund ongoing operations for FY 2019. Requires Interim Finance approval since the amount added to the Indirect Costs category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43288. WITHDRAWN 5-24-18.**

- 32. State Public Charter School Authority - FY 2018** - Addition of \$793,528 in federal Individuals with Disabilities Education Act funds to align state and federal authority to provide funding for Special Education programs. Requires Interim Finance

approval since the amount added to the Special Education category exceeds \$75,000. **Work Program #C43324**

Refer to motion for approval under Agenda Item E.

- 33. State Public Charter School Authority - FY 2018** - Addition of \$181,117 in state English Language Learner Program funds to align authority to continue to support English Language Learner (ELL) programs. Requires Interim Finance approval since the amount added to the State ELL category exceeds \$75,000. **Work Program #C43337**

Refer to motion for approval under Agenda Item E.

- 34. State Public Charter School Authority - FY 2018** - Addition of \$320,886 in federal Title II High Quality Teachers and Principals grant funds to align state and federal authority to continue programs to increase academic achievement by improving teacher and principal quality. Requires Interim Finance approval since the amount added to the Federal Teacher Quality Aid to Schools category exceeds \$75,000. **Work Program #C43347**

Refer to motion for approval under Agenda Item E.

- 35. Department of Agriculture - Registration and Enforcement - FY 2018** - Transfer of \$11,657 from the Reserve category to the Environmental Protection Agency (EPA) Pesticide Enforcement category to provide ongoing pesticide inspections and controls. Requires Interim Finance approval since the cumulative amount transferred to the EPA Pesticide Enforcement category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43170**

Refer to motion for approval under Agenda Item E.

- 36. Department of Agriculture - Pest, Plant Disease, and Noxious Weed Control - FY 2018** - Addition of \$107,894 in federal Food Produce Safety Program grant funds to continue Produce Safety Program activities. Requires Interim Finance approval since the amount added to the Food and Drug Administration Produce Safety category exceeds \$75,000. **Work Program #C42884**

Refer to motion for approval under Agenda Item E.

- 37. Department of Agriculture - Pest, Plant Disease, and Noxious Weed Control - FY 2019** - Addition of \$252,367 in U.S. Department of Agriculture (USDA) Forest Service grant funds to support ongoing sage grouse habitat restoration activities. Requires Interim Finance approval since the amount added to the USDA Forest Service category exceeds \$75,000. **Work Program #C43144**

Refer to motion for approval under Agenda Item E.

- 38. Department of Agriculture - Veterinary Medical Services - FY 2018** - Addition of \$5,122 in federal Animal and Plant Health Inspection Services grant funds and transfer of \$4,751 from the Department Cost Allocations category to the Personnel Services category, \$39,091 from the Department Cost Allocations category to the U.S. Department of Agriculture (USDA) Animal Disease Traceability category, and \$141 from the Department Cost Allocations category to the Reserve category to support ongoing animal and plant health inspection service activities. Requires Interim Finance approval since the amount transferred to the USDA Animal Disease Traceability category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42935**

Refer to motion for approval under Agenda Item E.

- 39. Department of Agriculture - Livestock Inspection - FY 2018** - Transfer of \$61,614 from the Reserve category to the Personnel Services category to fund a projected shortfall for the remainder of the fiscal year in staff salaries. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42885**

Refer to motion for approval under Agenda Item E.

- 40. Department of Agriculture - Nutrition Education Programs - FY 2018** - Addition of \$99,307 in National School Lunch Program School Equipment grant funds to support equipment purchases for eligible school food authorities. Requires Interim Finance approval since the amount added to the National School Lunch Program School Equipment Grant category exceeds \$75,000. **Work Program #C43085**

Refer to motion for approval under Agenda Item E.

- 41. Department of Agriculture - Commodity Foods Distribution Program - FY 2018** - Addition of \$144,403 in federal Commodity Supplemental Food Program grant funds to provide ongoing commodity food subgrants for schools and other eligible entities. Requires Interim Finance approval since the amount added to the Commodity Supplemental Food Program category exceeds \$75,000. **Work Program #C43349**

Refer to motion for approval under Agenda Item E.

- 42. Department of Business and Industry - Housing Division - Account for Low-Income Housing - FY 2018** - Transfer of \$735,736 from the Encumbered Reserve category to the Loan Disbursements category to make payments to local entities for the balance of the fiscal year. Requires Interim Finance approval since the amount added to the Loan Disbursements category exceeds \$75,000. **Work Program #C43036**

Refer to motion for approval under Agenda Item E.

- 43. Department of Business and Industry - Housing Division - FY 2018** - Addition of \$1,344,075 in federal Home Grant revenue in order to align revenue to authority and make subgrantee reimbursements. Requires Interim Finance approval since the amount added to the Home Program Administration category exceeds \$75,000. **Work Program #C43133**

Refer to motion for approval under Agenda Item E.

- 44. Governor's Office of Economic Development - Nevada Catalyst Fund – FY 2019** - Transfer of \$822,500 from the Reserve category to the Business Assistance and Development category in order to make scheduled grant payments to companies. Requires Interim Finance approval since the amount added to the Business Assistance and Development category exceeds \$75,000. **Work Program #C43156**

Agenda Items E-44 through E-48 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-48.

- 45. Governor's Office of Economic Development – Nevada State Small Business Credit Initiative (SSBCI) Program - FY 2018** - Deletion of \$2,315,880 in Balance Forward to New Year, deletion of \$1,003,628 in Federal Funds to New Year, addition of \$86,104 in Treasurer's Interest Distribution, addition of \$500,000 in Collateral Repayments, and transfer of \$77,375 from the Reserve category to the Collateral Support Program (CSP) Loans category in order to partially balance forward funds to begin project funding in FY 2019 and align revenue and expenditure authority to expected project activity for the remainder of FY 2018. Requires Interim Finance approval since the amount added to the CSP Loans category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 46. Work Program #C42693**

Agenda Items E-44 through E-48 were discussed jointly. Refer to motion for approval under Agenda Item E-48.

- 46. Governor's Office of Economic Development - Nevada State Small Business Credit Initiative (SSBCI) Program - FY 2019** - Addition of \$2,315,880 in Balance Forward from Previous Year, addition of \$1,003,628 in Federal Funds from Previous Year, transfer of \$334,454 from the Reserve category to the Collateral Support Program Loans category, and transfer of \$194,627 from the Reserve category to the Battle Born Venture Capital Program category. Requires Interim Finance approval since the amount added to the Battle Born Venture Capital Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 45. Work Program #C43116**

Agenda Items E-44 through E-48 were discussed jointly. Refer to motion for approval under Agenda Item E-48.

- 47. Governor's Office of Economic Development - Nevada Knowledge Fund - FY 2018** - Addition of \$54,219 in Treasurer's Interest Distribution and transfer of \$1,091,512 from the Reserve category to the Knowledge Fund category in order to

make projected expenditures for the balance of the fiscal year. Requires Interim Finance approval since the amount added to the Knowledge Fund category exceeds \$75,000. **Work Program #C43105**

Agenda Items E-44 through E-48 were discussed jointly. Refer to motion for approval under Agenda Item E-48.

- 48. Governor's Office of Economic Development - Small Business Enterprise Loan - FY 2019** - Addition of \$500,000 in partial balance forward of S.B. 126 appropriations in order to establish this budget account in FY 2019. Requires Interim Finance approval since the amount added to the SBE/WBE/MBE/DBE Loans category exceeds \$75,000. **Work Program #C43147**

Agenda Items E-44 through E-48 were discussed jointly.

Assemblywoman Benitez-Thompson noted that Work Program #C43156, which involved transferrable tax credits, requested \$822,500, but the categorical authority was \$257,000. She asked why the Governor's Office of Economic Development (GOED) Board approved an amount exceeding the authorization.

Matt Moore, Deputy Director, GOED, introduced Bonnie Long, Director of Administration, GOED.

Ms. Long said the Board was not aware of GOED's categorical authority each fiscal year. The Board knew the amount of available cash, and GOED's Manager of Business Development worked with the companies to get the deals in place for the Board to approve. Ms. Long said it was her job to ensure GOED had what it needed based on contracts that were already approved.

Assemblywoman Benitez-Thompson said the transferrable tax credits came out of the General Fund's bottom line. She said the Committee would be receiving a report on revenue projections later in the meeting today indicating revenue collections were increasing. However, the transferrable tax credits would need to be subtracted from those increases. She said the Board should have an understanding of the amount of authorization, and not exceed the amount authorized.

Assemblywoman Benitez-Thompson noted the dates of the Board approval were for multiple years. She noted that when the tax credits were set up by the Legislature, the economy was down. The tax credits were intended to be one-shots to encourage companies to expand and move to the state, which would boost revenue and provide high-paying jobs. The economy had improved since the tax credits were established. She noted companies were getting multi-year grants. She asked whether the companies had multi-year expansions to qualify for those grants.

Ms. Long said the transferrable tax credits program was managed by the Department of Taxation. The Nevada Catalyst Fund was used to train employees

and create new jobs. State General Funds were provided in prior years, and those funds continued to balance forward. Once the funds were gone, the program would be discontinued.

Mr. Moore said each company entered into a contract, which was then approved by the Board. The company's business plan, which was part of the application, included projected job growth, which could span over a period of more than one year.

Assemblywoman Benitez-Thompson noted the work program referenced transferrable tax credits. She said the companies might use that for training, but the actual exchange mechanism was transferrable tax credits.

Assemblywoman Carlton noted that on the schedule of Nevada Catalyst Fund grant payments as of April 2, 2018 (page 345, [Exhibit A](#)), Starbucks would be given \$85,000 in FY 2018, \$82,500 in FY 2019 and \$82,500 in FY 2020.

Mr. Moore said he did not have the details of that deal with him. He noted Starbucks recently expanded its regional distribution center in Douglas County. He offered to provide Assemblywoman Carlton with those details.

Assemblywoman Carlton said the purpose of the Nevada Catalyst Fund was not to include restaurants and businesses that were already established in the state. Rather, the goal was to bring new businesses to Nevada that would diversify the workforce. She was curious why a company such as Starbucks, that had locations everywhere, needed that funding to expand. She asked for a follow up. Mr. Moore said he would get those details to the Committee.

Assemblywoman Benitez-Thompson noted that Work Programs #C42693 and #C43116 were requesting amounts higher than the legislatively approved amounts.

Mr. Moore said the State Small Business Credit Initiative (SSBCI) provided funds from the U.S. Department of Treasury that passed through the state to GOED for the purpose of administering several programs for small business growth and development. GOED was asking for authority to execute that funding. For example, the SSBCI Nevada State Collateral Support Program provided up to 35 percent collateral for growing small businesses with positive cash flow. At the end of that term, GOED received the collateral back, with additional fees and a small interest rate. GOED was requesting authority to redeploy those funds and continue the program based on the returns from first generation investments.

Assemblywoman Benitez-Thompson reiterated that the legislatively approved amount was much smaller than the requested amount. She asked about the Board process, and whether it understood the amount the Legislature had authorized.

Assemblywoman Benitez-Thompson asked for an explanation of Work Program #C43116, which requested to expand the authority.

Mr. Moore reassured Assemblywoman Benitez-Thompson that the program was not spending more money than it had on hand, because he personally oversaw the program. Before a grant was approved, the bottom line was checked so that the program was not over obligating any amount of money. The Board's approval process considered the bottom line, but also considered funds returned to the program that were not included in the forecast. He said 17 loans had been executed with a zero percent default rate on those transactions. The businesses repaid the loans, including the fee and interest. Mr. Moore said the program was unable to accurately estimate when those returns would be received. The program was asking for authority to redeploy that money. The program could restructure a deal based on the cash on hand and the authority on hand. The work programs requested authority to execute the deals with the funds on hand that might not have been forecasted earlier.

Ms. Long said since there was only about \$350,000 in authority. If a deal came early in the year, the program would have to wait until October 2018 to execute, and would miss the opportunity. Approval of the work programs would give the program the opportunity to execute a deal quickly.

Mr. Moore reiterated that the request was for authority to execute funds that were returned from the first generation programs.

Assemblywoman Benitez-Thompson noted that the information in the meeting packet referred to "shortfalls," which she interpreted as the program not having enough money, but she understood from the agency that the term shortfall meant something else in this context (page 351, [Exhibit A](#)).

Assemblywoman Benitez-Thompson said Work Program #C43105 requested to transfer money from reserves into the Knowledge Fund to meet projected needs for prior commitments (page 359, [Exhibit A](#)). She noted quite a number of higher education institutions had not used the funds, and the total paid to date was lower than budgeted. She noted there were reversions of about \$75,000 and remaining grant authority of about \$2.9 million. She asked why additional authority was needed.

Ms. Long said, with the Knowledge Fund, GOED executed new two-year agreements with the universities for FY 2018 and FY 2019. When the current budget was built, it was unknown how much would be needed. The request covered projections based on the quarterly budgets for each of the projects in place.

Regarding the year-to-date actuals for higher education, Ms. Long explained that there was a significant delay in receiving invoices from the universities due to issues with the new system called "Workday." She was now processing most of the higher education invoices for the whole year.

Assemblywoman Benitez-Thompson asked for an updated spreadsheet so the Committee had a document that supported the request for the record, and Mr. Moore said he would provide that to the Committee.

Assemblywoman Benitez-Thompson noted with regard to Work Program #C43177 (withdrawn 5-24-18) that \$175,100 was authorized for the Nevada Main Street Program, but the amount provided to businesses was about \$68,000. That meant about \$100,000 was used for travel, training and conferences. She asked the agency to think about ways to provide more of those grant dollars to the grant recipients, rather than using the funds for administration expenses.

Mr. Moore said GOED was entering its second year of the Nevada Main Street Program. The total appropriation of \$350,000 was split in half between two years. Since his start in February 2018, GOED had been trying to increase interest in program membership. At that time, Gardnerville was the only member of the Nevada Main Street Program. Since then, other communities had either filed or would file letters of intent to join the program. He said there was a lot of recruiting efforts in 2018. GOED entered into a contract with National Main Street for consulting and recruiting to establish the program at the state level.

Mr. Moore said GOED was holding a daylong seminar in Northern Nevada on Nevada Main Street training for new communities, and would also hold another round of training in Southern Nevada. He said the program was gaining momentum; the request was to carry forward funds to maintain that momentum.

Assemblywoman Benitez-Thompson said she understood that the amounts granted would increase in year two, so she should not be too concerned about the year-one expenditures that were heavy on training contracts.

Mr. Moore said that was correct. He added that once the program was able to help communities become eligible for those grants, he expected more grant money to go out as part of the Nevada Main Street Program.

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO
APPROVE AGENDA ITEMS E-44, E-45, E-46, E-47 AND
E-48.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Titus opposed
the motion. Assemblyman Edwards was not present for the
vote.)

- 49. Governor's Office of Economic Development - Nevada Main Street Program - FY 2019** - Addition of \$175,100 in Partial Balance Forward funds to establish this budget account in FY 2019. Requires Interim Finance approval since the amount

added to the Nevada Main Street Program category exceeds \$75,000. **Work Program #C43177. WITHDRAWN 5-24-18**

This item was referenced in the discussion of Agenda Items E-44 through E-48.

- 50. Department of Tourism and Cultural Affairs - Nevada Arts Council - FY 2019 -** Addition of \$39,500 in federal National Endowment for the Arts grant funds to ensure arts activities are available and accessible for large and small communities in rural and urban localities. Requires Interim Finance approval since the amount added to the Grants Program category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43069**

Refer to motion for approval under Agenda Item E.

- 51. Department of Health and Human Services - Director's Office - Grants Management Unit - FY 2019 -** Addition of \$609,346 in tobacco settlement income funds transferred from the Treasurer's Office to support ongoing operations of the Department of Public Safety, Division of Investigations SafeVoice (Safe-to-Tell) Support center Program. Requires Interim Finance approval since the amount added to the SafeVoice Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 135. Work Program #C43174**

Agenda Items C-1, C-2, E-51 and E-135 were discussed together. Refer to testimony and motion for approval under Agenda Item E-135.

- 52. Department of Health and Human Services - Aging and Disability Services - Senior RX and Disability RX - FY 2018 -** Deletion of \$320,000 in tobacco settlement income transferred from the Treasurer's Office due to membership decreases. Requires Interim Finance approval since the amount deducted from the Senior Prescription Program category exceeds \$75,000. **Work Program #C43390**

Refer to motion for approval under Agenda Item E.

- 53. Department of Health and Human Services - Aging and Disability Services - Federal Programs and Administration - FY 2018 -** Transfer of \$75,802 from the Personnel Services category to the Operating category to cover unbudgeted rent space for Information Technology staff and additional National Core Indicator memberships. Requires Interim Finance approval since the amount added to the Operating category exceeds \$75,000. **Work Program #C43250**

Refer to motion for approval under Agenda Item E.

- 54. Department of Health and Human Services - Aging and Disability Services - Federal Programs and Administration - FY 2018 -** Addition of \$389,388 in federal Nutrition Services Incentive Program grant funds to continue to provide meals to senior citizens. Requires Interim Finance approval since the amount added to the

Nutrition Services Incentive Program category exceeds \$75,000. **Work Program #C43410**

Refer to motion for approval under Agenda Item E.

- 55. Department of Health and Human Services - Aging and Disability Services - Federal Programs and Administration - FY 2018** - Addition of \$66,395 in federal Title VII Ombudsman grant funds to continue to provide advocacy services to seniors. Requires Interim Finance approval since the cumulative amount added to the Title VII Ombudsmen category exceeds \$75,000. **Work Program #C43412**

Refer to motion for approval under Agenda Item E.

- 56. Department of Health and Human Services - Aging and Disability Services - Home and Community-Based Services - FY 2018** - Addition of \$320,000 in tobacco settlement funds transferred from the Treasurer's Office to continue to provide services through the Personal Assistance Services program. Requires Interim Finance approval since the amount added to the Personal Assistance category exceeds \$75,000. **Work Program #C43401**

Refer to motion for approval under Agenda Item E.

- 57. Department of Health and Human Services - Health Care Financing and Policy - Administration - FY 2018** - Transfer of \$195,182 from the Reserve For Resident Protection category to the Civil Monetary Penalty Payment category to fund three projects within the Division of Public and Behavioral Health for skilled nursing facilities authorized by the Centers for Medicare and Medicaid Services. Requires Interim Finance approval since the amount transferred to the Civil Monetary Penalty Payment category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 65. Work Program #C42932**

Refer to motion for approval under Agenda Item E.

- 58. Department of Health and Human Services - Health Care Financing and Policy - Administration - FY 2019** - Transfer of \$257,650 from the Reserve For Resident Protection category to the Civil Monetary Penalty Payment category to fund three projects within the Division of Public and Behavioral Health for skilled nursing facilities authorized by the Centers for Medicare and Medicaid Services. Requires Interim Finance approval since the amount transferred to the Civil Monetary Penalty Payment category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 66. Work Program #C43423**

Refer to motion for approval under Agenda Item E.

- 59. Department of Health and Human Services - Health Care Financing and Policy - Administration - FY 2018** - Addition of \$428,867 in federal Title XXI funds,

\$11,369,325 in federal Title XIX funds and \$753,138 in federal Medicaid Survey and Certification Program funds to cover Medicaid reimbursable activities in other divisions within the Department of Health and Human Services. Requires Interim Finance approval since the amount added to the Payments to State Agencies category exceeds \$75,000. **Work Program #C43314**

Refer to motion for approval under Agenda Item E.

- 60. Department of Health and Human Services - Health Care Financing and Policy - Increased Quality of Nursing Care - FY 2018** - Addition of \$2,871,597 in Long Term Care Provider Tax funds and \$47,948 in Treasurer's Interest Distribution funds to allow the receipt of revenues for the non-federal share of nursing facility supplemental payments and administrative costs. Requires Interim Finance approval since the amount added to the Transfer to Medicaid category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 61. Work Program #C42946**

Refer to motion for approval under Agenda Item E.

- 61. Department of Health and Human Services - Health Care Financing and Policy - Nevada Medicaid, Title XIX - FY 2018** - Addition of \$5,483,531 in federal Title XIX grant funds and \$2,890,829 in Long Term Care Provider Tax funds transferred from the Increased Quality of Nursing Care account to support nursing facility supplemental payments. Requires Interim Finance approval since the amount added to the Offline category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 60. Work Program #C42960**

Refer to motion for approval under Agenda Item E.

- 62. Department of Health and Human Services - Public and Behavioral Health - Health Statistics and Planning - FY 2018** - Transfer of \$70,827 from the Reserve category to the Information Services category to provide an upgrade to the Electronic Death Registration System. Requires Interim Finance approval since the cumulative amount transferred to the Information Services category exceeds \$75,000. **Work Program #C42740**

Refer to motion for approval under Agenda Item E.

- 63. Department of Health and Human Services - Public and Behavioral Health - Health - Statistics and Planning - FY 2019** - Transfer of \$135,000 from the Reserves category to the National Center for Health Statistics (NCHS) category to assist in the purchase of an X-ray scanning machine for Washoe County Regional Examiner's Office. Requires Interim Finance approval since the amount transferred to the NCHS Contract category exceeds \$75,000. **Work Program #C42848**

Refer to motion for approval under Agenda Item E.

64. **Department of Health and Human Services - Public and Behavioral Health - Women, Infants, and Children Food Supplement - FY 2019** - Addition of \$379,338 in federal Demonstration Projects to End Childhood Hunger, Healthy Hunger-Free Kids grant funds to continue to work with Supplemental Nutrition Assistance Program staff to reduce food insecurity rates for children birth to five years of age. Requires Interim Finance approval since the added amount Hunger-Free Kids category exceeds \$75,000. **Work Program #C42910**

Refer to motion for approval under Agenda Item E.

65. **Department of Health and Human Services - Public and Behavioral Health - Health Care Facilities Regulation - FY 2018** - Addition of \$195,182 in Civil Monetary Penalty funds transferred from the Division of Health Care Financing and Policy to continue the Comprehensive Resident Safety and Prevention program, the Music and Memory project and the Antimicrobial Resistance Intelligence System for residents in skilled nursing facilities. Requires Interim Finance approval since the amount added to the Civil Monetary Penalty category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 57. Work Program #C42807**

Refer to motion for approval under Agenda Item E.

66. **Department of Health and Human Services - Public and Behavioral Health - Health Care Facilities Regulation - FY 2019** - Addition of \$257,650 in Civil Monetary Penalty funds transferred from the Division of Health Care Financing and Policy to continue the Comprehensive Resident Safety and Prevention program, the Music and Memory project and the Antimicrobial Resistance Intelligence System for residents in skilled nursing facilities. Requires Interim Finance approval since amount added to the Civil Monetary Penalty category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 58. Work Program #C43419**

Refer to motion for approval under Agenda Item E.

67. **Department of Health and Human Services - Public and Behavioral Health - Health Care Facilities Regulation - FY 2018** - Addition of \$942,309 in Licenses and Fees to continue to contract with health care facility inspectors to assist in reducing the backlog of inspections. Requires Interim Finance approval since the amount added to the Federal Inspections Surveys category exceeds \$75,000. **Work Program #C42919**

Refer to motion for approval under Agenda Item E.

68. **Department of Health and Human Services - Public and Behavioral Health - Public Health Preparedness Program - FY 2019** - Addition of \$44,234 in Medicaid Administrative funds transferred from the Division of Health Care Financing and Policy, \$25,305 in Health Facility Licenses/Fees transferred from the Health Care Facility Regulation account, \$173,571 in tobacco settlement funds transferred from the Treasurer's Office, deletion of \$47,975 in Health Care Quality Compliance fees transferred from the Health Care Facility Regulation account, and transfer of

\$47,975 from the Health Care Quality Compliance category to the Primary Care Workforce Development (PCWD) category to continue funding for a PCWD Manager and a Management Analyst position within the PCWD program. Requires Interim Finance approval since the amount added to the Personnel category exceeds \$75,000. **Work Program #C43089**

Julie Kotchevar, Administrator, Division of Public and Behavioral Health (DPBH), said the division was requesting the addition of funding for the Primary Care Workforce Development Program (PCWD). The division performed a cost allocation plan, and time and effort study to properly allocate the positions. The division requested the transfer of Health Care Quality and Compliance fee funding to earn Medicaid administrative dollars as well as funding from the Fund for a Healthy Nevada. She explained that the request was a follow up to the report to the IFC at its April 11, 2018, meeting.

Assemblywoman Carlton said it appeared that the division was looking to fund a little over 71 percent of the positions with tobacco settlement funds. She noted the tobacco settlement funds would not always be available. She asked how the positions would be funded if the tobacco settlement funds were not available in the future.

Ms. Kotchevar explained that with the Medicaid expansion, the division was considering moving programs that were reimbursable. She said that would help the division maximize Medicaid funding by providing some of the match. The PCWD office had been working very hard to expand access to providers, particularly in areas with a shortage of health professionals, so there were enough providers available to Medicaid recipients. She noted that a few years ago there were 2 J1 visa doctors in the entire state, but the state could have up to 30. In 2018, the state had 15 J1 visa doctors. She explained that J1 visa doctors worked in areas with a shortage of health professionals for three years. Most of them were in rural areas, or areas where there was a significant shortage of doctors. She said this was a good use of the tobacco settlement funds, because it would improve access to health care for people who really needed it.

In answer to a question from Assemblywoman Carlton, Ms. Kotchevar explained that the program received approval from Medicaid to include the funding in the cost allocation plan. The division used a national consultant that frequently worked with the Centers for Medicare and Medicaid Services (CMS); therefore, it would be highly unusual for CMS to disagree.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE
AGENDA ITEM E-68.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Frierson
was not present for the vote.)

69. **Department of Health and Human Services - Public and Behavioral Health - Public Health Preparedness Program - FY 2018** - Addition of \$68,823 in federal Health and Health Care Preparedness grant funds and transfer of \$150,000 from the Personnel Services category to the Hospital and Health Care Preparedness Grant category to enhance public health, hospital and emergency response system capacities. Requires Interim Finance approval since the amount transferred to the Hospital and Health Care Preparedness Grant category exceeds \$75,000. **Work Program #C43266**

Refer to motion for approval under Agenda Item E.

70. **Department of Health and Human Services - Public and Behavioral Health - Public Health Preparedness Program - FY 2018** - Addition of \$826,136 in federal Public Health Emergency Preparedness grant funds to continue preparation and management of the response to public health emergencies caused by naturally-occurring disasters or terrorism. Requires Interim Finance approval since amount added to the Public Health Emergency Preparedness category exceeds \$75,000. **Work Program #C43229**

Refer to motion for approval under Agenda Item E.

71. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$736,998 in federal Epidemiology and Laboratory Capacity (ELC) grant funds to continue building and strengthening epidemiology, laboratory and health information systems capacity in state and local health departments. Requires Interim Finance approval since the amount added to the ELC category exceeds \$75,000. **Work Program #C42209**

Refer to motion for approval under Agenda Item E.

72. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$43,236 in federal Women, Infant and Children (WIC) grant funds transferred from the WIC Food Supplement account to continue data and reporting services for the WIC program and realign revenue for personnel costs. Requires Interim Finance approval since the amount added to the State System Development Initiative category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42591**

Refer to motion for approval under Agenda Item E.

73. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$62,163 in federal Viral Hepatitis and Improving Hepatitis B and C Cascades grant funds to continue to provide adult viral hepatitis prevention and control. Requires Interim Finance approval since the cumulative amount added to the Adult Viral Hepatitis Prevention and Control category exceeds \$75,000. **Work Program #C43270**

Refer to motion for approval under Agenda Item E.

74. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$111,674 in federal HIV/AIDS Surveillance grant funds to continue data collection and surveillance efforts. Requires Interim Finance approval since the amount added to the HIV/AIDS Surveillance category exceeds \$75,000. **Work Program #C42590**

Refer to motion for approval under Agenda Item E.

75. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$94,878 in federal Sexually Transmitted Disease (STD) Prevention and Control grant funds to continue activities related to STD prevention and surveillance. Requires Interim Finance approval since the amount added to the STD Prevention/Control category exceeds \$75,000. **Work Program #C42589**

Refer to motion for approval under Agenda Item E.

76. **Department of Health and Human Services - Public and Behavioral Health - Chronic Disease - FY 2018** - Addition of \$76,540 in Tobacco Control grant funds and transfer of \$7,500 from the Personnel Services category to the Tobacco Control category to promote tobacco control activities. Requires Interim Finance approval since amount added to the Tobacco Control category exceeds \$75,000. **Work Program #C42810**

Refer to motion for approval under Agenda Item E.

77. **Department of Health and Human Services - Public and Behavioral Health - Chronic Disease - FY 2018** - Transfer of \$4,229 from the Personnel Services category to the Tobacco Control and Prevention category to continue tobacco prevention programs. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services exceeds \$75,000. **Work Program #C42975**

Refer to motion for approval under Agenda Item E.

78. **Department of Health and Human Services - Public and Behavioral Health - Office of Health Administration - FY 2019** - Transfer of \$200,000 from the Reserve category to the Operating category to support the division's efforts toward Public Health Accreditation Board accreditation. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C42858. WITHDRAWN 5-31-18.**

79. **Department of Health and Human Services - Public and Behavioral Health - Community Health Services - FY 2018** - Addition of \$69,820 in federal Title X Family Planning Services grant funds, transfer of \$7,392 from the

Operating category to the Family Planning category and \$249 from the Information Services category to the Family Planning category to continue support for the rural community health clinics. Requires Interim Finance approval since the amount added to Family Planning category exceeds \$75,000. **Work Program #C42972**

Refer to motion for approval under Agenda Item E.

- 80. Department of Health and Human Services - Public and Behavioral Health - Emergency Medical Services - FY 2019** - Addition of \$11,613 in Vital Records fees transferred from the Health Statistics and Planning account, \$104,513 in federal Health Information Technology grant funds transferred from the Division of Health Care Financing and Policy Administration account, \$116,000 in federal Opioid Enhanced Surveillance grant funds transferred from the Biostatistics and Epidemiology account, \$250,000 in federal Highway Safety Improvement Program grant funds transferred from the Department of Public Safety, and \$204,000 in federal Opioid and Strategic Prevention Framework-Partnership For Success grant funds transferred from the Behavioral Health Prevention and Treatment account to implement a new emergency medical services (EMS) data management system. Requires Interim Finance approval since the amount added to the EMS Data System category exceeds \$75,000. **Work Program #C42502**

Julie Kotchevar, Administrator, DPBH, said the division was requesting a transfer of grant funding from the Department of Public Safety, Division of Health Care Financing and Policy and DPBH to fund the purchase of a new emergency medical services data management system. She explained that the division was required by statute to collect certain data related to emergency medical services, so it procured grant funding to purchase the computer system.

Assemblywoman Titus asked what kind of information would be recorded in the new emergency medical services data management system. Ms. Kotchevar replied that the data management system would track many things pertaining to emergency medical services, such as opioid overdoses, state call volume and surveillance data, to provide better emergency planning and capacity building for the community. She added that NRS required that the information be collected.

Assemblywoman Titus asked who would input the data, and who would have access to the system. Ms. Kotchevar explained that the new system would replace the existing system. She said there was already a process through which EMS agencies submitted data to the system.

Assemblyman Sprinkle noted that system maintenance would be built into the next budget request. He asked what would happen if General Funds were not available to maintain the system. Ms. Kotchevar replied that the division was seeking grant funding for maintenance, and the General Fund request was a backup plan. The division felt it needed to submit a budget request to ensure the system was

maintained if grant funding was not available. The division did not want the maintenance expense to be passed on to first responders.

Assemblyman Sprinkle understood there was a mandate to track the data, but no funding was provided for maintenance. He asked if it was possible to defer the purchase until the 2019 Legislative Session to be sure funding was in place.

Ms. Kotchevar explained that almost \$700,000 of the grant funding being used to purchase the system would end in FY 2019. The grant funding would not be available for the system implementation if the purchase was deferred. It was the division's preference to use federal dollars to implement the system, and then continue to seek funding for system maintenance.

Senator Kieckhefer noted the cost of the system was \$700,000. He said \$350,000 per year for maintenance seemed expensive. Ms. Kotchevar replied that the maintenance costs included ongoing licensing and security patching. Senator Kieckhefer asked if the \$350,000 for maintenance would be an ongoing annual expense.

Ms. Kotchevar said the maintenance cost was not atypical. She added that the system was already configured to support EMS, so the division would not incur excessive implementation costs. Part of the reason the cost for the system was low was that the division had been thrifty in purchasing a system that did not have a high implementation cost.

Senator Kieckhefer asked if the division had any current budget authority for the system. Debi Reynolds, Deputy Administrator, DHHS, DPBH, said the EMS program paid approximately \$32,000 for the existing system; however, the vendor indicated that the system would no longer be supported. She said the existing system experienced significant issues with capturing and reporting data.

Assemblywoman Benitez-Thompson said she had expressed concern in a meeting of the Legislative Commission's Subcommittee to Review Regulations about the type of personal information being collected, such as names and social security numbers. She said that information should be unidentified.

Ms. Kotchevar said she would need to research whether the collected data was unidentified or identified. She said all of the vendors agreed to meet certain security standards. The division was a HIPPA agency, which meant it had to meet certain standards in order to be able to collect and store that information.

Assemblywoman Benitez-Thompson said it was important that personal information concerning a suspected overdose that was maintained by the state did not contain personal identifying information. If the state was maintaining that information, the data should be very secure.

Assemblyman Oscarson said he hoped the new system would protect personal information. Ms. Kotchevar noted that aging systems were more vulnerable to breaches or system failures that could lead to a breach. One reason to upgrade the system was to ensure the information was secure.

In response to a question from Assemblyman Oscarson, Ms. Reynolds said she was unsure how old the system was, but in 2010, EMS contracted with Med-Media to provide the existing database.

Assemblyman Oscarson noted seven or eight years was a lifetime for a computer system.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE
AGENDA ITEM E-80.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

- 81. Department of Health and Human Services - Public and Behavioral Health - Behavioral Health Prevention and Treatment - FY 2019** - Transfer of \$107,015 from the Cooperative Agreements to Benefit Homeless Individuals (CABHI) Grant category to the Personnel Services category, \$99 from the CABHI Grant category to the Operating category and \$341 from the CABHI Grant category to the Information Services category, to continue to fund a Health Program Manager 1 position to oversee all mental health planning and housing projects for the program. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C42793**

Refer to motion for approval under Agenda Item E.

- 82. Department of Health and Human Services - Public and Behavioral Health - Behavioral Health Prevention and Treatment - FY 2019** - Addition of \$5,017,561 in federal Opioid Strategic Response grant funds to support the prevention, treatment and recovery activities for opioid use. Requires Interim Finance approval since amount added to the Opioid Strategic Response category exceeds \$75,000. **Work Program #C43430**

Refer to motion for approval under Agenda Item E.

- 83. Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$2,000 from the Personnel Services category to the Training category to provide crisis prevention and intervention training for in-patient staff. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C42974**

Refer to motion for approval under Agenda Item E.

84. **Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$115,000 from the Personnel Services category to the Professional Services category to cover projected contracted services for psychiatric services due to the inability to find and hire state staff. Requires Interim Finance approval since the amount transferred to the Professional Services category exceeds \$75,000. **Work Program #C43027**

Refer to motion for approval under Agenda Item E.

85. **Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$10,000 from the Personnel Services category to the Information Services category to cover higher than anticipated software and computer hardware costs. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C42918**

Refer to motion for approval under Agenda Item E.

86. **Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$10,000 from the Personnel Services category to the Food Services category to cover projected food services costs for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C43026**

Refer to motion for approval under Agenda Item E.

87. **Department of Health and Human Services - Public and Behavioral Health - Facility for the Mental Offender - FY 2018** - Transfer of \$83,107 from the Personnel Services category to the Professional Services category to continue to contract with physicians and clinical staff due to the inability to find and hire state staff. Requires Interim Finance approval since the amount transferred the Professional Services category exceeds \$75,000. **Work Program #C43046**

Refer to motion for approval under Agenda Item E.

88. **Department of Health and Human Services - Welfare and Supportive Services - Assistance to Aged and Blind - FY 2018** - Addition of \$75,000 in Budgetary Transfers from the Field Services account to fund a projected shortfall in supplemental payments to low-income, aged and blind individuals and to adult group care facilities receiving Supplemental Security Income to assist recipients with avoiding or delaying institutionalization for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 54 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 89. Work Program #C43188**

Refer to motion for approval under Agenda Item E.

- 89. Department of Health and Human Services - Welfare and Supportive Services - Welfare Field Services - FY 2018** - Deletion of \$75,000 in Budgetary Transfers to the Assistance to Aged and Blind account to fund a projected shortfall in supplemental payments to low-income, aged and blind individuals and adult group care facilities receiving Supplemental Security Income to assist recipients for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 54 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 88. Work Program #C43225**

Refer to motion for approval under Agenda Item E.

- 90. Department of Health and Human Services - Welfare and Supportive Services - Welfare Field Services - FY 2018** - Addition of \$158,924 in federal Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) funds to provide vocational training to SNAP participants. Requires Interim Finance approval since the amount added to the Federal SNAP E&T Expansion category exceeds \$75,000. **Work Program #C42844**

Refer to motion for approval under Agenda Item E.

- 91. Department of Health and Human Services - Welfare and Supportive Services - Energy Assistance Program - FY 2018** - Addition of \$7,057,503 in federal Low Income Home Energy Assistance (LIHEA) grant funds to provide energy assistance benefits for needy households. **Requires Interim Finance approval since the work program involves the allocation of block grant funds and the agency is choosing to use the IFC meeting for the required public hearing and the amount added to the LIHEA Payments category exceeds \$75,000. Work Program #C42827**

Robert Thompson, Deputy Administrator, Division of Welfare and Supportive Services (DWSS), introduced Naomi Lewis, Deputy Administrator, DWSS.

Mr. Thompson said DWSS was requesting authorization to receive funds of approximately \$7.1 million to continue funding the Energy Assistance Program which served needy Nevadans.

Agenda Item E-91 involved the allocation of block grant funds, which required a public hearing. Chair Woodhouse opened the public hearing. There being no requests to testify, Chair Woodhouse closed the public hearing.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA
ITEM E-91.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

- 92. Department of Health and Human Services - Child and Family Services - Children, Youth and Family Administration - FY 2018** - Deletion of \$103,011 in Budgetary Transfers to the Summit View Youth Center account to fund a projected shortfall in personnel services for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 100. Work Program #C43157**

Refer to motion for approval under Agenda Item E.

- 93. Department of Health and Human Services - Child and Family Services - UNITY/SACWIS - FY 2018** - Deletion of \$100,000 in Budgetary Transfers to the Summit View Youth Center account to fund a projected shortfall in personnel services for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 100. Work Program #C43158**

Refer to motion for approval under Agenda Item E.

- 94. Department of Health and Human Services - Child and Family Services - Children, Youth and Family Administration - FY 2018** - Addition of \$2,272,941 in federal Victims of Crime Assistance (VOCA) grant funds to provide assistance and services to victims. Requires Interim Finance approval since the amount added to the U. S. Crime Victims - VOCA category exceeds \$75,000. **Work Program #C43233**

Refer to motion for approval under Agenda Item E.

- 95. Department of Health and Human Services - Child and Family Services - Washoe County Child Welfare - FY 2018** - Addition of \$1,412,904 in federal Title IV-E grant funds to continue support of child welfare services and adoption subsidies for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Child Welfare category exceeds \$75,000. **Work Program #C43100**

Refer to motion for approval under Agenda Item E.

- 96. Department of Health and Human Services - Child and Family Services - Clark County Child Welfare - FY 2018** - Addition of \$4,785,758 in federal Title IV-E grant funds to continue support of adoption and foster care activities for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Subsidized Adoptions category exceeds \$75,000. **Work Program #C43117**

Refer to motion for approval under Agenda Item E.

97. **Department of Health and Human Services - Child and Family Services - Rural Child Welfare - FY 2019** - Transfer of \$257,348 from the Personnel Services category to the Temporary Contract Staffing category to cover vacancies for hard-to-fill positions and meet statutory demands. Requires Interim Finance approval since the amount transferred to the Temporary Contract Staffing category exceeds \$75,000. **Work Program #C42718**

Refer to motion for approval under Agenda Item E.

98. **Department of Health and Human Services - Child and Family Services - Rural Child Welfare - FY 2019** - Addition of \$1,840,056 in federal Title XX grant funds transferred from the Director's Office and deletion of \$1,693,756 in federal Title XX grant funds to support child welfare services. **Requires Interim Finance approval since the work program involves the allocation of block grant funds and the agency is choosing to use the IFC meeting for the required public hearing and the amount added to the Title XX category exceeds \$75,000. Work Program #C43269**

Reesha Powell, Deputy Administrator, Division of Child and Family Services (DCFS), said the division was requesting authority to balance forward the remaining Title XX funds from FY 2018 to FY 2019 to continue supporting child welfare activities. The funds would be used for early identification or timely intervention to support families and prevent the consequences of abuse and neglect.

Agenda Item E-98 involved the allocation of block grant funds, which required a public hearing. Chair Woodhouse opened the public hearing. There being no requests to testify, Chair Woodhouse closed the public hearing.

ASSEMBLYWOMAN SPIEGEL MOVED TO APPROVE
AGENDA ITEM E-98.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

99. **Department of Health and Human Services - Child and Family Services - Transition from Foster Care - FY 2018** - Transfer of \$142,751 from the Reserve category to the Transition from Foster Care category to assist persons who turn 18 years of age while in foster care in Nevada to transition from foster care to economic self-sufficiency. Requires Interim Finance approval since the amount transferred to the Transition from Foster Care category exceeds \$75,000. **Work Program #C43093**

Refer to motion for approval under Agenda Item E.

- 100. Department of Health and Human Services - Child and Family Services - Summit View Youth Center - FY 2018** - Addition of \$203,011 in Budgetary Transfers from the Child, Youth and Family Administration account and the UNITY/SACWIS account to fund a projected shortfall in personnel services for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEMS E. 92 and 93. Work Program #C42664**

Refer to motion for approval under Agenda Item E.

- 101. Department of Health and Human Services - Child and Family Services - Caliente Youth Center - FY 2018** - Deletion of \$199,013 in Budgetary Transfers to the Nevada Youth Training Center account to fund a projected shortfall in personnel costs for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 102. Work Program #C43161**

Refer to motion for approval under Agenda Item E.

- 102. Department of Health and Human Services - Child and Family Services - Nevada Youth Training Center - FY 2018** - Addition of \$199,013 in Budgetary Transfers from the Nevada Caliente Youth Center account to fund a projected shortfall in personnel costs for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 101. Work Program #C42665**

Refer to motion for approval under Agenda Item E.

- 103. Department of Employment, Training and Rehabilitation - Employment Security - Workforce Development - FY 2018** - Transfer of \$104,500 from the Reserve category to the Operating category to fund projected operating expenditures through the end of the fiscal year. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C43289**

Refer to motion for approval under Agenda Item E.

- 104. Department of Employment, Training and Rehabilitation - Employment Security - Workforce Development - FY 2018** - Addition of \$1,430,000 in federal Workforce Innovation Opportunity Act (WIOA) of 2014 funds to support the Local Workforce Investment Boards through year end. Requires Interim Finance approval since the amount added to the WIOA Program category exceeds \$75,000. **Work Program #C43315**

Refer to motion for approval under Agenda Item E.

- 105. Department of Employment, Training and Rehabilitation - Employment Security - Special Fund - FY 2019** - Transfer of \$94,300 from the Reserve category to the 2017 Senate Bill (S.B.) 137 Unemployment Insurance (UI) Modification category to support the technical modifications for data collection related to veterans pursuant to S.B. 137 of the 2017 Legislative Session. Requires Interim Finance approval since the amount added to the 2017 S.B. 137 UI Modification category exceeds \$75,000. **Work Program #C43119. RELATES TO AGENDA ITEM E. 163.**

Refer to motion for approval under Agenda Item E.

- 106. Department of Corrections - Director's Office - FY 2019** - Addition of \$830,115 in Sexual Assault Kit Initiative funds transferred from the Attorney General to align state authority with the federal Sexual Assault Kit Initiative (SAKI) subgrant award and continue the program implementation. Requires Interim Finance approval since the amount added to the SAKI Grant category exceeds \$75,000. **Work Program #C42822**

Refer to motion for approval under Agenda Item E.

- 107. Department of Corrections - Director's Office - FY 2018** - Addition of \$22,349 in Budgetary Transfers, and transfer of \$27,937 from the Employee Physicals category to the Inmate Transportation category, \$38,567 from the Employee Physicals category to the Personnel Services category, \$20,000 from the Extraordinary Maintenance category to the Personnel Services category, \$20,365 from the Information Services category to the Personnel Services category, \$11,475 from the Uniform Allowance category to the Personnel Services category, \$6,430 from the Inmate Drug Testing category to the Personnel Services category and \$4,480 from the Beds/Mattresses/Footlockers category to Personnel Services category to fund total projected shortfall for the remainder the fiscal year. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43182**

Refer to motion for approval under Agenda Item E.

- 108. Department of Corrections - Prison Medical Care - FY 2018** - Addition of \$800,000 in Offender revenues transferred from the Offenders' Store Fund account to fund qualifying paid inmate medical claims. Requires Interim Finance approval since the amount added to the Inmate Drivens category exceeds \$75,000. **RELATES TO AGENDA ITEMS E. 122 and 125. Work Program #C42566**

Refer to motion for approval under Agenda Item E.

- 109. Department of Corrections - Correctional Programs - FY 2018** - Transfer of \$2,639 from the Youthful Offender Grant category to the Reserve for Reversion category and the transfer of \$200,778 from the Statewide Recidivism Reduction category to the Reserve for Reversion category to repay General Fund appropriation

used for program expenditures paid in FY 2017. Requires Interim Finance approval since the amount transferred from the Statewide Recidivism Reduction category exceeds \$75,000. **Work Program #C41726**

Refer to motion for approval under Agenda Item E.

- 110. Department of Corrections - Ely State Prison - FY 2018** - Addition of \$75,741 in Budgetary Transfers, deletion of \$1,047 in Employee Service revenue, \$2,795 in Reimbursement of Expenses revenue, \$1,174 in Transfer from Prison Store revenue and transfer of \$67,245 from the Uniform Allowance category to the Utilities category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Utilities category exceeds \$75,000. **Work Program #C43194**

Refer to motion for approval under Agenda Item E.

- 111. Department of Corrections - High Desert State Prison - FY 2018** - Addition of \$115,885 in Budgetary Transfers, addition of \$20,968 in Transfer from Prison Store and transfer of \$40 from the Operating category to the Inmate Drivens category, \$9,961 from the Maintenance Building and Grounds category to the Inmate Drivens category, \$14,365 from the Maintenance Contracts category to the Inmate Drivens category, and \$22,674 from the Uniform Allowance category to the Inmate Drivens category to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount transferred to the Inmate Drivens category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43223**

Refer to motion for approval under Agenda Item E.

- 112. Department of Corrections - Northern Nevada Correctional Center - FY 2018** - Addition of \$57,738 in Budgetary Transfers, deletion of \$8,000 in Room, Board, Transportation charges, and transfer of \$19,054 from the Operating category to the Personnel Services category, and \$911 from the Operating category to the Maintenance Contracts category to fund projected shortfall for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Personnel Service category exceeds \$75,000. **Work Program #C43189**

Refer to motion for approval under Agenda Item E.

- 113. Department of Corrections - Lovelock Correctional Center - FY 2018** - Addition of \$40,000 in Room, Board, Transportation Charge funds, deletion of \$256,731 in Budgetary Transfers, and transfer of \$55,226 from the Inmate Drivens category to the Utilities category to fund a projected shortfall for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Utilities category exceeds \$75,000. **Work Program #C43012**

Agenda Items E-113 and E-120 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-120.

- 114. Department of Corrections - Southern Desert Correctional Center - FY 2018 -** Deletion of \$54,980 from Budgetary Transfers to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Uniform Allowance category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43222**

Refer to motion for approval under Agenda Item E.

- 115. Department of Corrections - Warm Springs Correctional Center – FY 2018 -** Deletion of \$7,349 in Budgetary Transfers, and transfer of \$39,918 from the Inmate Drivens category to the Utilities category, \$7,216 from the Uniform Allowance category to the Utilities category, \$3,792 from the Equipment category to the Operating category and \$1,705 from the Equipment category to the Utilities category to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount added to the Utilities category exceeds the \$75,000. **Work Program #C43185**

Refer to motion for approval under Agenda Item E.

- 116. Department of Corrections - Florence McClure Women's Correctional Center - FY 2018 -** Addition of \$415,330 in Budgetary Transfers, and transfer of \$1,313 from the Maintenance Contracts category to the Operating category, \$6,454 from the Uniform Allowance category to the Operating category, and \$17,000 from the Inmate Drivens category to the Operating category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Personnel Services category exceeds \$75,000. **Work Program #C43014**

Refer to motion for approval under Agenda Item E.

- 117. Department of Corrections - Casa Grande Transitional Housing - FY 2018 -** Deletion of \$64,328 in Budgetary Transfers to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Inmate Drivens category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43200**

Refer to motion for approval under Agenda Item E.

- 118. Department of Corrections - Pioche Conservation Camp - FY 2018 -** Addition of \$5,258 in Budgetary Transfers and transfer of \$10,516 from the Personnel Services category to the Inmate Drivens category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C43191**

Refer to motion for approval under Agenda Item E.

- 119. Department of Corrections - Three Lakes Valley Conservation Camp – FY 2018** - Deletion of \$43,157 in Budgetary Transfers, and transfer of \$48,704 from the Personnel Services category to the Utilities category, \$201 from the Personnel Services category to the Maintenance Contracts category, and \$780 from the Boot Camp category to the Utility category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount transferred to the Utilities category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43221**

Refer to motion for approval under Agenda Item E.

- 120. Department of Corrections - Ely Conservation Camp - FY 2018** - Addition of \$9,244 in Room, Board, Transportation charge and the deletion of \$77,761 in Budgetary Transfers to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Personnel Services category exceeds \$75,000. **Work Program #C43193**

Agenda Items E-113 and E-120 were discussed jointly.

Scott Ewart, Administrative Services Officer, Nevada Department of Corrections, noted the following revisions to Work Program #C43012: a decrease in the amount of \$40,000 to the Room, Board, Transportation Charge funds; an increase in the amount of \$30,000 to the Inmate Drivens category for a revised total deficit of \$161,301; and a decrease of \$19,244 in the Utility category for a revised amount of \$51,092. The revised budgetary transfer amount was a deficit of \$282,437.

Mr. Ewart noted the following revision for Work Program #C43193: deletion of Room, Board, Transportation Charge funds in the amount of \$9,244. The revised budgetary transfer amount was a deficit of \$68,507.

SENATOR DENIS MOVED TO APPROVE AGENDA
ITEMS E-113 AND E-120.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

- 121. Department of Corrections - Carlin Conservation Camp - FY 2018** - Deletion of \$128,034 in Budgetary Transfers to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Personnel Services category exceeds \$75,000. **Work Program #C42753**

Refer to motion for approval under Agenda Item E.

- 122. Department of Corrections - Offenders' Store Fund - FY 2018** - Transfer of \$800,000 from the Retained Earnings category to the Transfer to Inmate Welfare Account (IWA) category to fund projected shortfalls in Medical Co-Pays. Requires Interim Finance approval since the amount transferred to the IWA category exceeds \$75,000. **RELATES TO AGENDA ITEMS E. 108 and 125. Work Program #C42748**

Refer to motion for approval under Agenda Item E.

- 123. Department of Corrections - Offenders' Store Fund - FY 2018** - Transfer of \$143,306 from the Retained Earnings category to the Transfer to Inmate Welfare Account (IWA) category to fund medical co-pays and indigent inmate co-pays as legislatively approved for qualifying claims. Requires Interim Finance approval since the amount transferred to the Transfer to IWA category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 124. Work Program #C43409**

Refer to motion for approval under Agenda Item E.

- 124. Department of Corrections - Inmate Welfare Account - FY 2018** - Addition of \$143,306 in funds transferred from Offenders' Store Fund to fund medical co-pays and indigent inmate co-pays as legislatively approved for qualifying claims. Requires Interim Finance approval since the amount added to the Transfer Medical Co-Pays category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 123. Work Program #C42595**

Refer to motion for approval under Agenda Item E.

- 125. Department of Corrections - Inmate Welfare Account - FY 2018** - Addition of \$800,000 in revenue transferred from Offenders' Store Fund account to fund medical co-pays for qualifying paid inmate medical claims. Requires Interim Finance approval since the amount added to Transfer to Medical Co-Pays category exceeds \$75,000. **RELATES TO AGENDA ITEMS E. 108 and 122. Work Program #C42728**

Refer to motion for approval under Agenda Item E.

- 126. Department of Corrections - Inmate Welfare Account - FY 2018** - Transfer of \$30,567 from the Retained Earnings category to the Indigent Inmate Postage category to fund a projected shortfall through fiscal year end. Requires Interim Finance approval since the amount transferred to the Indigent Inmate Postage category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43355**

Refer to motion for approval under Agenda Item E.

- 127. Department of Motor Vehicles - System Modernization - FY 2019** - Transfer of \$307,952 from the Master Service Agreement Programmer Charges category to the Personnel Services category to fund one new Organizational Change Manager position and one new Director, Office of Project Management position to provide effective project management for the department's System Modernization Project, ***and transfer of \$28,048 from the Master Service Agreement Programmer Charges category to the Reserve for Reversion category.*** Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43146. REVISED 6-4-18.**

Terri Albertson, Director, Department of Motor Vehicles (DMV), said the agency was requesting a transfer of funds from the Master Service Agreement Contract category to the Personnel Services category to fund two new state positions for the System Technology Application Redesign (STAR) modernization project. She said the department continued to work with Gartner Consulting to review, revise and update previous business and technical requirements. As identified in the state audit report and Gartner's health assessment, the DMV was restructuring the Office of Project Management (OPM) to provide more effective project management. Similar to the OPM for the Silver State Modernization Approach for Resources and Technology in the 21st Century (SMART 21) program, the DMV was requesting funds to hire a Director of OPM and an Organizational Change Manager. She said the two positions could be funded for less than the cost of one full-time contract manager. Ms. Albertson said the DMV was requesting approval of the Director position now so that leadership would be available to oversee the development and issuance of a request for proposal (RFP). The Organizational Change Manager position was also being requested at the current time to ensure employees and stakeholders were fully informed and aware of impending changes from the beginning. She said the positions were needed to participate in the planning, organization and decision-making related to the STAR project from the onset. In addition, establishing the OPM now would allow the department to come before the 2019 Legislature with a completed RFP process for approval and funding. Ms. Albertson said once the OPM Director position was filled, the department anticipated requesting the Committee's approval of OPM support staff consisting of a Management Analyst and a Project Manager. She said the remaining positions would be onboarded in conjunction with project approval and timelines. Ms. Albertson indicated that DMV staff continued to work on the technology investment notification (TIN) process, which would be ready for approval and submittal to EITS by August 2018. Upon approval, the RFP process would commence.

In answer to a question from Senator Denis, Ms. Albertson replied that the department expended \$28 million toward the system modernization project. At the recommendation of Gartner Consulting, the department's primary focus was to take a pause period and reorganize the project management team. She said the agency's Business Process Analysts were refining the business requirements, which had been reduced from approximately 8,000 to 4,000 items. Ms. Albertson

said the department was also working on business capability models and other items that were consistent with best practices in the industry for project management.

Ms. Albertson stated that the majority of the \$28 million expended toward the system modernization project was used for Oracle hardware and software. She said the DMV was currently in negotiations with another state agency that was interested in purchasing some of the hardware. Additionally, the department was engaged in conversations with a third-party vendor about selling the databases that would not be used in the project going forward. Ms. Albertson said, as a result of discussions with Gartner Consulting, the decision was made to use either a hosted or cloud solution instead of the Oracle equipment. She said the department would still utilize a vast majority of the network and security equipment purchased during the procurement phase. She indicated that the network and security equipment would be of great benefit regardless of the department's future efforts. Ms. Albertson said it was imperative for the department to maintain a robust system to protect the personally identifiable information of Nevadans. She thought the system that was currently in place would ensure the gold standard for protecting that information.

Senator Denis said the networking equipment was not for the system modernization project specifically, and Ms. Albertson said that was correct. She added that a portion of the \$28 million was used to secure the facility on College Parkway in Carson City, which would be retained for the STAR project.

In response to a question from Senator Denis, Ms. Albertson replied that approximately \$16 million was expended for the hardware and licensing of the Oracle equipment. She said the resale cost estimate was pennies on the dollar, which equated to approximately \$285,000. She reiterated that another state agency was interested in purchasing the storage as well as a number of switches; therefore, it was a win-win for the state. Ms. Albertson said the two agencies would have to work out the functionality as far as transferring funds, because the requesting agency was a General Fund agency. She indicated that the requesting agency would probably request an allocation from the IFC Contingency Account to purchase the equipment.

Senator Denis said although it was a financial loss for the DMV, the agency that was acquiring the equipment would save money.

In answer to a question from Senator Denis, Ms. Albertson said the department's intent was to utilize the OPM Director over the next few months to get the STAR project operational and establish the TIN. Subsequently, the DMV would complete the RFP process and present the project for approval by the 2019 Legislature.

Senator Denis asked if the department anticipated a cost savings for hardware if a cloud solution was selected for the STAR project. Ms. Albertson replied that the department was currently leaning toward a hosted rather than a cloud solution, but

the RFP would require the prospective vendor to provide the services as cloud-ready for when the state was in a better position to transition to a cloud solution. She said the cloud solution must be secure due to the sensitive information maintained by the DMV.

Senator Denis asked how the project would be impacted if the two positions were not approved. Ms. Albertson replied that it was unlikely the department would have adequate resources available to complete the RFP and begin the organizational change management activities; therefore, the DMV was hopeful the positions would be approved by the Committee.

Senator Denis said he hoped the DMV would present information to the 2019 Legislature that would allow the state to move forward with the STAR project without expending and losing funds. Ms. Albertson agreed.

Senator Gansert stated that \$28 million was a significant amount of money for a small amount of deliverables. She asked if the agency used the TIN process for the RFP to select the original vendor. She also asked what type of recourse was included in the contract with the previous vendor to recoup some of the funds.

Ms. Albertson replied that the department had finalized its business with the previous vendor, and no additional payments would be made. She said approximately \$35,000 was paid to the previous vendor for work that was completed on a communication plan. All of the remaining funds were associated with the Oracle hardware and software. Of the \$28 million, approximately \$11 million was for resources on the state side, such as the facility, Master Service Agreement contractors, furnishings, equipment and all of the support that went in to the project. Ms. Albertson said the DMV used the previous technology investment request process, which was more extensive than the TIN. She said the department went through the formal procurement process with State Purchasing to select the vendor.

Senator Gansert said the Oracle equipment could no longer be used by the DMV, and only \$285,000 could be recouped from the cost. She said it was a huge loss for the state, and it was important to ensure it did not happen again. She recalled similar circumstances with other agencies, and it was often related to information technology. Senator Gansert thought systematic changes may be necessary to avoid those types of situations in the future.

Ms. Albertson replied that as part of the process, the department requested an internal audit. The findings of that audit indicated that the department needed to improve project management. Subsequently, Gartner Consulting completed a health assessment of the project, which confirmed the audit findings, especially for a job the size and magnitude of the system modernization project. Therefore, the DMV was before the Committee today in an attempt to take the necessary steps to improve project management by asking for the OPM Director and Organizational

Change Manager positions. Both of the positions would have specific knowledge about the department and would be state positions rather than outside contractors.

Assemblywoman Diaz said the state's main priority was to serve Nevadans to the best of its ability. She asked how constituents would benefit from the significant investment in system modernization. Ms. Albertson replied that one of the primary goals of the STAR project was to increase service delivery and self-service capabilities. She said the current system was antiquated and diverse, and there were systems within the department that were not integrated. Although the department could perform its duties, those duties were not being handled in the most efficient manner. Ms. Albertson said it was the goal of the DMV to make services more convenient for customers and reduce the number of visits to a DMV office by becoming more automated.

Assemblywoman Diaz recalled a recent visit to a DMV office. She noted that it was important for DMV staff to remember that some customers visiting a DMV office may not have been there in a while. She explained that during her visit, she checked in at the information desk and then proceeded to the lobby area; however, after waiting 90 minutes, she became concerned. She said she inquired with customers around her who were checking their phones regularly, and they explained that they were watching for status updates in the queue. Assemblywoman Diaz said she returned to the information desk only to learn that she had not been placed in the queue. She proceeded to wait another two hours before being called to a customer service window, only to find out that her business had to be handled via correspondence. She was frustrated about the amount of time that was wasted on a Saturday due to an oversight by DMV staff. Assemblywoman Diaz said it was imperative that DMV personnel ensure that each customer was successfully placed in the queue before leaving the information desk. Additionally, she recommended that staff ask questions to avoid wasting the customer's time. She said her experience at the DMV was probably happening to others, and it should not continue. Assemblywoman Diaz said it was important to provide the best possible service to all Nevadans.

In answer to a question from Senator Denis, Ms. Albertson replied that the system modernization project was funded by the \$1 Technology Fee as well as Highway Funds.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEM E-127.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson was not present for the vote.)

- 128. Department of Motor Vehicles – Motor Vehicle Pollution Control - FY 2018 -** Transfer of \$101,062 from the Reserve category to the City/County Air Quality category to fund an increase in payments to Clark County and Washoe County for

the remainder of FY 2018. Requires Interim Finance approval since the amount transferred to the City/County Air Quality category exceeds \$75,000. **Work Program #C43159**

Refer to motion for approval under Agenda Item E.

- 129. Department of Motor Vehicles - Field Services - FY 2019** - Transfer of ~~\$678,160~~ **\$564,149** from the Personnel Services category to the Operating category to continue funding of a Uniformed Security Guard at the Pahrump Office and additional uniformed security guards at the Carson City, Decatur, Donovan, Flamingo, Henderson, Reno and Sahara field offices. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C43205. REVISED 6-5-18.**

Terri Albertson, Director, DMV, introduced Tonya Laney, Division Administrator, Field Services, DMV.

Assemblywoman Carlton said she understood the importance of security guards, because frustration levels were often elevated at DMV offices; however, she had questions regarding the need for security guards at the Donovan and Carson City DMV offices. She said the Donovan office was primarily dedicated to commercial driver's licenses (CDL). It was a small office with limited clientele; therefore, she asked why it was necessary for the Donovan office to have two security guards. Likewise, the Carson City office was also small, and it was located next to DPS. She asked why it was necessary to have two security guards at that DMV location.

Tonya Laney, Division Administrator, Field Services, DMV, replied that the lobby of the Carson City office was fairly small, but the Carson City office was actually the largest DMV building. The security guards were responsible for patrolling the interior and exterior of the building. She said it took considerable time for the security guards to patrol the building as well as the customer/employee parking areas, which were located in the front and rear of the building, and across the street.

Ms. Laney said the Donovan office had fewer customers, but the clientele was different than the clientele at other locations. She said the Donovan office was located between the railroad tracks and Interstate 215, and customers were primarily CDL holders and truck drivers needing to pay taxes at the Motor Carrier Division. She said the security guards monitored the interior of the building as well as the CDL parking lots to ensure that staff was safe.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA
ITEM E-129.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman
Benitez-Thompson was not present for the vote.)

- 130. Department of Public Safety - Nevada Highway Patrol Division - FY 2018 -** Transfer of \$7,500 from the Utilities category to the Lab Services category and transfer of \$82,000 from the Communication High Band System category to the Forensic Services Contracts category to fund projected shortfalls within the respective categories. Requires Interim Finance approval since the amount transferred to the Forensic Services Contracts category exceeds \$75,000. **Work Program #C43092**

Refer to motion for approval under Agenda Item E.

- 131. Department of Public Safety - Nevada Highway Patrol Division - FY 2018 -** Addition of \$1,349,921 in Contract Services Reimbursement revenue to continue to provide escort services for wide-load customers, and traffic control for construction projects and special events. Requires Interim Finance approval since the amount added to the Operating category exceeds \$75,000. **Work Program #C43178**

Agenda Items E-131, E-136 and E-139 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-139.

- 132. Department of Public Safety - Division of Parole and Probation - FY 2019 -** Transfer of \$418,157 from the Personnel Services category to the Offender Tracking Information System (OTIS) Replacement category to support the completion of the OTIS update project. Requires Interim Finance approval since the amount transferred to the OTIS Replacement category exceeds \$75,000. **Work Program #C43052**

Refer to motion for approval under Agenda Item E.

- 133. Department of Public Safety - Investigation Division - FY 2018 -** Transfer of \$37,884 from the Uniform category to the Personnel Services category and transfer of \$73,800 from the Uniform category to the Equipment category to fund compensatory time liabilities and purchase narcotic forensic analysis equipment. Requires Interim Finance approval since the cumulative amount transferred to the Equipment category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42928**

Refer to motion for approval under Agenda Item E.

- 134. Department of Public Safety - Investigation Division - FY 2018 -** Transfer of \$7,976 from the Uniform category to the Personnel Services category to fund a projected shortfall for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred from the Uniform category exceeds \$75,000. **Work Program #C43137. RELATES TO AGENDA ITEM I.**

Agenda Item E-134 and Agenda Item I were discussed together.

Patrick Conmay, Chief, Division of Investigations (NDI), DPS, said the division was requesting an allocation of Highway Funds from the IFC Contingency Account in the

amount of \$8,691 to cover a projected shortfall in the Personnel Services category. He said NDI was comprised of 50 positions, 32 sworn and 18 civilian. Of the 32 sworn positions, 29 were funded with General Fund appropriations and 3 were funded with Highway Fund authorization. All 3 Highway Funded positions were filled during FY 2018. He explained that the total projected shortfall was \$25,279; however, on June 19, 2018, the Board of Examiners approved an allocation from the Highway Fund Salary Adjustment Fund in the amount of \$8,612. Additionally, the division identified budgetary savings in the amount of \$7,976 in other categories, which may be transferred to the Personnel Services category as identified in Work Program #C43137. The remaining balance of \$8,691 in Highway Fund authorization was necessary to cover expenditures related to the 3 Highway Funded positions. Mr. Conmay said the projections included in Work Program #C43422 were still accurate to the best of the agency's knowledge, and no modification was necessary (page 46, [Exhibit D](#)).

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA ITEM E-134 AND AGENDA ITEM I.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson was not present for the vote.)

- 135. Department of Public Safety - Investigation Division - FY 2019** - Addition of \$609,346 in Tobacco Settlement Income transferred from the Department of Health and Human Services to support ongoing operations of the SafeVoice (Safe-to-Tell) Support center Program. Requires Interim Finance approval since the amount added to the SafeVoice (Safe-to-Tell) Support center Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 51. Work Program #C42850**

Agenda Items C-1, C-2, E-51 and E-135 were discussed together.

Jim Wright, Director, Department of Public Safety (DPS), introduced Patrick Conmay, Chief, NDI, DPS. Mr. Wright said Work Program #C42850 requested the transfer of \$609,346 in tobacco settlement income from DHHS to support ongoing operations of the SafeVoice support center.

Patrick Conmay, Chief, NDI, DPS, said Nevada's SafeVoice Program was the result of legislative action from the 2015 and 2017 Legislative Sessions. The program was established to provide Nevadans with a simple mechanism to anonymously report violent, unlawful or threatening activities on school buses or property, or at activities sponsored by a school. Consistent with Senate Bill 212 (2017) and NRS 388, as well as a grant from the Pacific Institute for Research and Evaluation (PIRE), NDI, in collaboration with the Nevada Department of Education (NDE), established a SafeVoice support center which operated 24 hours a day, 7 days per week, 365 days per year (24/7/365).

Mr. Conmay said support center staff used P3 Campus software to monitor and track incoming tips. It also ensured information was processed appropriately and in a timely manner. He said the SafeVoice support center was initially staffed with four contract personnel funded by the PIRE grant. In addition, NDI assigned a sergeant to oversee and supervise the program. In order to meet the legislative mandate that the support center be available and staffed at all times including holidays and other non-school days, DPS Dispatch was initially used to cover graveyard and weekend hours. Following the April 11, 2018, IFC meeting and a subsequent emergency work program, eight additional staff were added to the SafeVoice support center. He said the additional positions were funded using Fund for a Healthy Nevada tobacco settlement funds. He noted that all positions had been filled and trained. Mr. Conmay said the support center was fully operational and available 24/7/365 as of June 11, 2018, and the additional demands on DPS Dispatch had been removed. He said NDI was requesting continued funding for FY 2019 using tobacco settlement funds to support the four additional contract personnel and associated costs approved at the April 11, 2018, IFC meeting, as well as the four additional contract personnel and associated costs approved through the emergency work program.

Mr. Conmay introduced Nicole Mendoza, SafeVoice Program Supervisor, who had been with the program since its inception.

Nicole Mendoza, SafeVoice Program Supervisor, NDI, DPS, said she was the support center supervisor for the swing shift. Ms. Mendoza and two other staff members received anonymous tips via telephone, web and mobile application from students at public and charter schools throughout Nevada. She noted that most tips were grave in nature.

Ms. Mendoza said when a tip such as a suicide threat was received, SafeVoice staff moved quickly to address the matter. She said it was important for staff to build a rapport with the individual reporting the tip so they would feel comfortable providing critical information such as the name of the student of concern and the address and telephone number of that student. Subsequently, SafeVoice staff notified law enforcement and/or the school district so that a welfare check could be done. Ms. Mendoza said a team of people were involved in each response to simultaneously communicate with the individual reporting the tip as well as the school district superintendent to obtain information on the student's whereabouts after school. She said SafeVoice staff had relationships with law enforcement agencies throughout the state that were responsible for performing welfare checks.

Ms. Mendoza said the SafeVoice Program had 58 success stories to date. By definition, a success story was an instance where a youth was admitted to a hospital or mental health institution before they could take their life. Although she may never know the true impact of the SafeVoice Program, she sensed the program's impact in the 30 to 40 kudos she had received since January 2018. She said tipsters told

her personally that they did not know what they would have done without the SafeVoice Program. Ms. Mendoza recalled an incident where a student called the SafeVoice support center after ingesting pills, because she did not feel that anyone in her life cared about her, and she wanted someone to be there while she was dying. She said the SafeVoice Program was instrumental and needed to be available all times of day. She said it was inconceivable how many lives would have been lost without the program.

Assemblyman Edwards said he was unsure of the correlation between tobacco settlement funds and the SafeVoice Program. He asked how the SafeVoice Program would be funded if tobacco settlement funds were discontinued. Buddy Milazzo, Administrative Services Officer, DHHS Director's Office, said NRS 439.631g stated that tobacco settlement funds could be used for the wellbeing of state residents. He said the Fund for a Healthy Nevada currently funded other crisis lines, such as 2-1-1; therefore, the DHHS Director thought the SafeVoice Program was an appropriate expenditure of tobacco settlement funds. Mr. Milazzo said he did not foresee an end to the tobacco settlement funds. He said the funding had been ongoing for a number of years; however, if the funds were discontinued, the matter would be addressed at that time.

Assemblyman Edwards said one of the problems conveyed by constituents was that it was difficult to track the students involved in the incident being reported, because the process was anonymous. He asked how often that happened, and if the website had been updated to require individuals to provide contact information.

Mr. Conmay replied that statute specifically designated that reporting parties could remain anonymous. As Ms. Mendoza described, SafeVoice staff attempted to extract the necessary information to address emergency situations.

Steve Canavero, Superintendent, Department of Education (NDE), said the balancing act between the conditions of anonymity and apparent emergencies needed to be addressed. He said NDE was working on regulations that should strike the right balance. Additionally, NDE recently drafted a recommendation to find balance and determine a mechanism by which DPS would have access to necessary information to identify and locate a student in an emergency situation. Mr. Canavero said the recommendation would be presented to the Governor's School Safety Taskforce followed by the 2019 Legislature.

Assemblyman Sprinkle asked why the number of tips was declining. He also asked how the SafeVoice Program would be marketed to increase public awareness. Mr. Conmay replied that the declining number of tips that occurred at the end of the 2017-2018 school year was anticipated by DPS. He said the number of tips was expected to increase when the 2018-2019 school year commenced.

Mr. Conmay said the SafeVoice Program was still in the initial phase and had not been rolled out to all the schools. He said the program statistics were from

January 2018 through the end of the traditional 2017-2018 school year for Cohort 1 only. He said the program was still receiving tips from the year-round schools and summer schools. Mr. Conmay said SafeVoice support center staff was responsible for front loading the database with the upcoming Cohort 2 schools, which included public and charter schools as well as some private schools that requested to participate in the program. Each school had a team of personnel dedicated to the SafeVoice Program, and SafeVoice support center staff was entering that information into the support center database. He said all of the information would be in place by the time the 2018-2019 school year commenced.

Mr. Conmay thought NDE had a significant statewide marketing plan to announce that the SafeVoice Program was operational, which would likely cause a surge in reporting.

In answer to a question from Assemblywoman Spiegel, Mr. Conmay said it was his understanding that early numbers for the Nevada SafeVoice Program far exceeded that of the Colorado program in its initial phase. Nevada's numbers were expected to trend even higher, because the SafeVoice Program was a statewide program as opposed to regional, like in Colorado.

Senator Gansert thanked the agency for its efforts with the SafeVoice Program. She said the program was critical for Nevada, and she was pleased it was rolled out quickly. She said she appreciated the testimony from Ms. Mendoza, which conveyed the importance of the program; how it was impacting the lives of Nevada's youth; and how it was helping to save people.

Senator Gansert thought support center staffing could be adjusted as necessary based on fluctuations in tip volume, because the support center was staffed with contract personnel.

Assemblyman Oscarson said he knew firsthand that the SafeVoice Program was effective, because the program saved lives in the community of Pahrump several weeks ago. He said he was grateful for the efforts of the agencies involved and their ongoing support of the SafeVoice Program. He said he was equally appreciative of the SafeVoice support center staff. He thought it must be heartbreaking work, but at the same time, it was satisfying to know the program was making a difference in the lives of Nevadans.

Assemblywoman Carlton noted that Agenda Items C-1 and C-2 had been approved by the Governor under the emergency work program provision. With regard to Agenda Items E-51 and E-135, she said the workload fluctuated for some of the SafeVoice support center shifts. She requested that the agency provide additional workload statistics over the coming months so the Committee would have a better idea of staffing needs before the 2019 Legislative Session. Assemblywoman Carlton said the Committee was supportive of the program, and it should be funded appropriately.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA ITEMS E-51 AND E-135 AND REQUIRE THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF INVESTIGATIONS, TO PROVIDE TIP VOLUME STATISTICS TO THE INTERIM FINANCE COMMITTEE FOLLOWING THE COMMENCEMENT OF THE 2018-2019 SCHOOL YEAR.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Senator Atkinson was not present for the vote.)

- 136. Department of Public Safety - Division of Emergency Management - FY 2018 -** Addition of \$270,234 in Federal Emergency Management Agency (FEMA) 4303 Grant funds, deletion of \$34,204 in Emergency Management Preparedness Grant funds and \$34,205 in Department of Homeland Security Grant funds to cover disaster administration/management costs associated with the January 2017 flood events in Northern Nevada. Requires Interim Finance approval since the amount added to the FEMA 4303 Northern Nevada January Disaster category exceeds \$75,000. **Work Program #C42996**

Agenda Items E-131, E-136 and E-139 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-139.

- 137. Department of Public Safety - Division of Emergency Management - FY 2019 -** Addition of \$134,687 in federal State and Local Implementation Grant Program (SLIGP) funds and deletion of \$40,205 in federal Homeland Security Grant Program funds to support the agency's Interoperable Public Safety Broadband Network program. Requires Interim Finance approval since the amount added to the SLIGP category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 138. Work Program #C43075**

Refer to motion for approval under Agenda Item E.

- 138. Department of Public Safety - Emergency Management Assistance Grants - FY 2019 -** Addition of \$150,000 in federal State and Local Implementation Grant funds to support division activities associated with the Nationwide Interoperable Public Safety Broadband Network program. Requires Interim Finance approval since the amount added to the State and Local Implementation Grant Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 137. Work Program #C43078**

Refer to motion for approval under Agenda Item E.

- 139. Department of Public Safety - Traffic Safety - FY 2018 -** Transfer of \$1,155,954 from the Nevada Department of Transportation (NDOT) Flex Funds category to the

NDOT Highway Safety Improvement Plan (HSIP) category to make a correction to the category in which the NDOT federal HSIP funding authority was placed. Requires Interim Finance approval since the amount transferred to the NDOT HSIP Funds category exceeds \$75,000. **Work Program #C43140**

Agenda Items E-131, E-136 and E-139 were discussed jointly.

Assemblyman Edwards said his questions regarding Agenda Items E-131 and E-136 were answered by the DPS Director during the break. He said he appreciated that fewer taxpayer dollars would be required as a result of a change in the contracting method with NDOT.

In answer to a question from Assemblyman Edwards, Amy Davey, Administrator, DPS, said the purpose of Work Program #C43140 was to make a correction to the category in which NDOT Federal Highway Safety Improvement Plan funding authority was placed. She said a similar request was approved at the April 11, 2018, IFC meeting; however, the funds were inadvertently transferred to the wrong category due to an error on the part of the agency.

Colonel John O'Rourke, Nevada Highway Patrol (NHP), DPS, noted that Work Program #C43178 required a modification.

Jonny McCuin, Administrative Services Officer, NHP, DPS, said the division required an adjustment to the Operating expenditure account authority by \$72,700, which would increase the amount from \$110,300 to \$183,000, and reduce the reversion to the Highway Fund from \$1,219,621 to \$1,146,921. He said there was no adjustment to the In-State Travel expenditure account.

Mr. McCuin said NDOT referenced 79 percent of the division's fuel bills and Thomas Petroleum referenced 21 percent. He said the fuel bills for April and May 2018 were higher than projected. He explained that projections for June 2018 were determined using the number of gallons of gasoline consumed by NHP in June 2017 multiplied by the average price per gallon of gasoline charged in May 2018. Mr. McCuin said Contract Services reimbursements received to date were significantly higher than budgeted. Contract Services reimbursements were used to fund a portion of the NHP personnel for trooper overtime and in-state travel for wide-load escorts, and operating expenses primarily for gasoline. Due to vacancies experienced by NHP in the current year, the division did not need to augment the Personnel category, thus the large reversion to the Highway Fund at the end of the year.

Assemblywoman Carlton noted that the Committee was typically notified of work program revisions in advance. She asked when the division became aware of the need for a revision. Mr. McCuin replied that the division became aware of the revision approximately one to two weeks prior to the meeting today. He explained

that NHP usually received the NDOT fuel bill on the 8th of each month for the previous month; however, the bill was received a day later.

Chair Woodhouse asked the division to provide the revisions in writing to the Committee.

ASSEMBLYMAN EDWARDS MOVED TO APPROVE AGENDA ITEM E-131 AS REVISED, AND AGENDA ITEMS E-136 AND E-139 AS SUBMITTED.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED. (Assemblyman Araujo, Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 140. Department of Conservation and Natural Resources - Account for Off-Highway Vehicles (OHV) - FY 2018** - Transfer of \$48,150 from the Trails and Facilities category to the Off-Highway Vehicles Commission Grants category to support grant and program activities. Requires Interim Finance approval since the amount transferred from the Trails and Facilities category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42639**

Refer to motion for approval under Agenda Item E.

- 141. Department of Conservation and Natural Resources - State Parks - FY 2018** - Addition of \$33,031 in federal Recreational Trails grant funds to cover administration costs related to recreation trails projects. Requires Interim Finance approval since the amount added to the State Trails category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42342**

Refer to motion for approval under Agenda Item E.

- 142. Department of Conservation and Natural Resources - Water Resources - FY 2018** - Addition of \$73,508 in U.S. Department of Energy grant funds transferred from Environmental Protection and transfer of \$30,773 from the In State Travel category to the DOE Grant category and \$55,764 from the Operating category to the DOE Grant category to support basin program activities underlying the Nevada Test Site. Requires Interim Finance approval since the amount added to the DOE Grant category exceeds \$75,000. **Work Program #C43079**

Refer to motion for approval under Agenda Item E.

- 143. Department of Conservation and Natural Resources - Water Resources - FY 2018** - Transfer of \$44,000 from the Operating category to the Court Reporter category to support reimbursable court reporter expenditures. Requires

Interim Finance approval since the cumulative amount transferred from the Operating category exceeds \$75,000. **Work Program #C43080**

Refer to motion for approval under Agenda Item E.

- 144. Department of Conservation and Natural Resources - Nevada Natural Heritage - FY 2018** - Addition of \$40,062 in NatureServe funds transferred from the Department of Conservation and Natural Resources Gift Fund account and \$15,000 in NatureServe Receipts to support data collection activities. Requires Interim Finance approval since the amount added to the NatureServe Projects category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43336**

Refer to motion for approval under Agenda Item E.

- 145. Department of Conservation and Natural Resources - Environmental Protection - Waste Management and Corrective Action - FY 2018** - Addition of \$500,000 in Reclamation fees transferred from the Mining Regulation and Reclamation account to continue with regulatory oversight for characterization and cleanup of large legacy mining sites. Requires Interim Finance approval since the amount added to the Corrective Actions category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 146. Work Program #C42125**

Agenda Items E-145 and E-146 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-146.

- 146. Department of Conservation and Natural Resources - Environmental Protection - Mining Regulation and Reclamation - FY 2018** - Transfer of \$500,000 from the Reserve category to the Transfers category to support ongoing projects in the Abandoned Mine Lands program. Requires Interim Finance approval since the amount transferred to the Transfers category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 145. Work Program #C42224**

Assemblywoman Swank recalled that the reclamation fees from the Mining Regulation and Reclamation account that were transferred during the 2015-2016 Interim were supposed to be a one-time occurrence. She wanted to be certain that the transfer would not happen a third time without first addressing a problem in the agency's budget. Additionally, the fees were paid by mining companies and intended to be used for mining programs; however, it was her understanding there were not enough funds to cover staff time for services such as extensions and permit amendments. Assemblywoman Swank said she was concerned about transferring funds that were meant to cover services.

Jeff Kinder, Deputy Administrator, Division of Environmental Protection (DEP), Department of Conservation and Natural Resources (DCNR), said the division believed the previous transfer would be a single occurrence based on projections.

He said the funds were transferred and tracked separately, and used for the direct cleanup of two legacy mine sites with significant pollution control concerns; the funds were not used for programs. Mr. Kinder said after a recent reevaluation of the programs, the division saw the opportunity for a second transfer for use at the same two legacy sites. He said the funds would allow continued work at one site and closure of the other.

Mr. Kinder said the transfer of funds would not have an effect on the Bureau of Mining Regulation and Reclamation. He said the program was fully staffed, and personnel was working with the regulated community to process permits in a timely manner. He said the transfer of fees would not have an impact on staffing.

Assemblywoman Swank asked if the mining companies were informed that the funds were being redirected, and if the companies were in agreement. She also asked what feedback the division received from the mining companies. Mr. Kinder replied that the DEP met with the mining companies several times prior to the previous work program. He indicated that the companies supported the first work program that requested the transfer of reclamation fees. Mr. Kinder said the DEP had done presentations for mining companies and kept them up-to-date on the progress of the two sites.

In answer to a question from Assemblywoman Swank, Mr. Kinder replied that he could not speak for the Nevada Mining Association, but the division believed the association was in support of the work being done by the DEP.

ASSEMBLYWOMAN SWANK MOVED TO APPROVED AGENDA
ITEMS E-145 AND E-146.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 147. Department of Wildlife - Operations - FY 2018** - Addition of \$49,104 in Application Fees transferred from the Wildlife Fund account to fund a projected shortfall for the remainder of the fiscal year in staff salaries. Requires Interim Finance approval since the cumulative amount added to the Personnel Services category exceeds \$75,000. **Work Program #C43306**

Refer to motion for approval under Agenda Item E.

- 148. Department of Wildlife - Game Management - FY 2018** - Addition of \$81,795 in federal Wildlife Restoration grant funds and \$27,265 in Sportsmen Revenue transferred from the Wildlife Fund account to fund a projected shortfall for the remainder of the fiscal year in staff salaries. Requires Interim Finance approval

since the amount added to the Personnel Services category exceeds \$75,000.
Work Program #C43312

Refer to motion for approval under Agenda Item E.

- 149. Department of Wildlife - Game Management - FY 2019** - Addition of \$2,212,500 in federal Wildlife Restoration grant funds and \$737,500 in Sportsmen Revenue transferred from the Wildlife Fund account to support the replacement of a 1983 Bell helicopter to support the agency mission. Requires Interim Finance approval since the amount added to the Equipment category exceeds \$75,000. **Work Program #C43113**

Assemblywoman Titus thanked the agency for limiting the amount of funds requested for staff salaries in Agenda Items E-147 and E-148. She said she was surprised the agency did not request more funds for salary and overtime due to the implementation of the new licensing system. Assemblywoman Titus said she was able to navigate through the tag application system within the new licensing program with minimal issues. She noted that Department of Wildlife (NDOW) staff responded promptly to her request for assistance.

Assemblywoman Titus said the department was requesting approximately \$2.9 million to purchase a used 2008 Eagle Bell 407HP helicopter. She noted that a Google search revealed that the average cost of a 2008 Eagle Bell 407HP helicopter was \$3.2 million. She said the department's average budgeted cost for air maintenance was about \$468,000 annually. She asked if the new helicopter would impact the agency's air maintenance budget.

Tony Wasley, Director, NDOW, said the agency maintained an air operations unit within the Game Management Division. Traditionally, air operations consisted of two rotary-wing aircraft and a fixed-wing aircraft. He noted that wildlife inventory was a significant part of the agency's mission. The department estimated the total cost to replace a 35-year-old helicopter with an excess of 12,000 hours on the engine was approximately \$2.95 million. He noted that the department replaced an Eagle Bell 206 with an Eagle Bell 407 in FY 2017. He said the air operations unit consisted of two full-time pilots and a mechanic, so there was great value in staying with the same make and model helicopter. For example, a Ford garage was equipped with Ford tools and knowledge; therefore, it made sense to maintain a Bell shop in terms of efficiency and the knowledge set of the mechanic.

Mr. Wasley reiterated that the department's current aircraft was 35 years old and had excessive hours on both the air frame and engine. The air operations unit noticed an increase in maintenance costs and a decrease in reliability, value and efficiency, and ultimately, safety. Mr. Wasley said it was important to note that when the department sold its previous Eagle Bell 206 after 20 years of operations, it sold for more than the purchase price. He said Bell was preparing to release a newer model helicopter that would render the Eagle Bell 206 obsolete. The department

was struggling to locate parts and the cost of those parts was increasing; therefore, there were growing concerns about the safety and efficiency of an aircraft of that age with excessive flight hours. He said NDOW was confident it could replace the aircraft for approximately \$2.95 million.

Mr. Wasley said, with regard to the cost of operations, two years ago NDOW purchased an Eagle Bell 407HP to replace the Eagle Bell 206. Initially there were concerns about fuel consumption rates and other things that may not have been included in the budget; however, the department found that the new aircraft was more efficient, partly due to travel speed. He explained that even though fuel consumption rates were higher, the aircraft arrived at its destination more quickly, thereby burning less fuel per unit time. Mr. Wasley said the department anticipated it would realize some of those same efficiencies, including maintenance costs, with the new helicopter.

Assemblywoman Titus noted that Sportsmen Revenue would be used to purchase the helicopter. She said NDOW had many different types of funds with stipulations concerning usage. She asked if it was permissible to use Sportsmen Revenue for the purchase of a helicopter.

Mr. Wasley replied that Work Program #C43113 requested authority to transfer \$737,500 in Sportsmen Revenue. He explained that the work program was submitted during the process of selling the old helicopter; therefore, the amount of the transfer was estimated for the purpose of the work program. Of the \$737,500, the department generated \$400,000 through the sale of the helicopter, including parts, which reduced the remaining balance to \$373,000. He said \$200,000 was requested through the Wildlife Heritage program, which was administered by the Wildlife Commission. The request was approved by the Wildlife Heritage Committee and would go before the full Wildlife Commission on June 29, 2018. Mr. Wasley said, as with the previous helicopter purchase, NDOW sought partnerships with non-governmental organizations (NGOs). The NGOs, representing nine different partners, had committed approximately \$145,000 toward the purchase of the replacement helicopter. Mr. Wasley said, although the department was requesting authority to transfer \$400,000 in Sportsmen Revenue, approximately \$395,000 was revenue from the sale of the previous helicopter. He stated that 75 percent of the purchase price would be covered by a federal aid grant, and the remaining 25 percent would be covered by state funds. The state dollars would largely be comprised of revenue from the sale of the previous helicopter, Wildlife Heritage account contribution, and NGO partner contributions.

Assemblywoman Titus said the agency indicated that the cost of the helicopter was expected to be less than most alternatives. She said the primary use of the helicopter was to perform surveys of certain wildlife species. She asked how much downtime there was for the helicopter, and if there were other uses for the aircraft, such as seeding and fire suppression. She also asked if a contractor could be used as an alternative to purchasing a helicopter.

Mr. Wasley replied that the current flight schedule was planned for 1,500 hours. He said flying two helicopters with two pilots for approximately 1,500 hours was an aggressive schedule and higher than the industry standard. He noted that weather and other factors sometimes reduced the flight schedule. Mr. Wasley indicated that in FY 2017 the department flew approximately 1,000 hours, which meant there was little downtime. The helicopters were primarily used in fulfilling NDOW's mission of surveying wildlife inventory, which included big game, sage grouse and water fowl. Additionally, the helicopter was used to supplement water supplies in the guzzler system. By carrying multiple buckets under the aircraft, the department could transport water to guzzlers to provide water for wildlife in remote locations. Mr. Wasley said NDOW cooperated with other state agencies as well. For example, during the extreme winter conditions of 2017, NDOW worked with the Division of Water Resources to perform dam inspections in remote locations. He said the department sought additional opportunities to use the helicopters. Mr. Wasley said the department was also interested in talking with NDF about ways to leverage state resources with other partners. He said the department could assemble a comprehensive list for the Committee regarding how the helicopters were utilized by NDOW.

Mr. Wasley said the cost of contract helicopter services was approximately \$2,000 per hour compared to \$800 per hour in-house. If the department could maintain the aircraft for 20 years or more, and sell it for more than the purchase price, the hourly operating costs would be reduced significantly. He said sometimes it was better to provide service internally rather than outsourcing for a lower price, especially when it came to the safety of air operations.

In answer to questions from Assemblywoman Titus, Mr. Wasley replied that the previous helicopter sold for approximately \$400,000. Between the helicopter and parts, there were two lots auctioned off through the state. After fees, the auction generated approximately \$396,000. He said the funds from the sale of the helicopter in FY 2017 were applied to the purchase of a replacement helicopter. In FY 2017, NDOW sold a Cessna 206 and an Eagle Bell 206, which generated \$600,000. The Sportsmen Revenue was used for the 25 percent state match, similar to what the department was proposing in the current work program.

Assemblywoman Titus said she was happy to hear the department was helping with the guzzler programs and other state needs.

ASSEMBLYWOMAN TITUS MOVED TO APPROVE AGENDA
ITEM E-149.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 150. Department of Wildlife - Habitat - FY 2019** - Addition of \$600,000 in Vegetation Management, Habitat Improvement and Restoration Project grant funds to support vegetation, habitat and restoration projects. Requires Interim Finance approval since the amount added to the Nevada Partners for Conservation and Development Program category exceeds \$75,000. **Work Program #C42899**

Refer to motion for approval under Agenda Item E.

- 151. Department of Wildlife - Habitat - FY 2019** - Addition of \$340,860 in federal Wildlife Restoration grant funds and \$257,140 in Trout Stamp fees transferred from the Wildlife Fund account to support the Mason Valley Wildlife Management Area (WMA) water system project. Requires Interim Finance approval since the amount added to the WMA System category exceeds \$75,000. **Work Program #C42927**

Refer to motion for approval under Agenda Item E.

- 152. Department of Wildlife - Habitat - FY 2019** - Addition of \$300,000 in federal Wildlife Restoration grant funds to purchase 13 acres adjacent to the Overton Wildlife Management Area (WMA) for wetland and upland habitat. Requires Interim Finance approval since the amount added to the WMA System category exceeds \$75,000. **Work Program #C43301. WITHDRAWN 5-30-18**

- 153. Department of Transportation - Transportation Administration - FY 2018** - Addition of \$1,400,227 in Highway Fund Authorization to fund a portion of construction costs for the remainder of the microwave system replacement project. Requires Interim Finance approval since the amount added to the Information Services category exceeds \$75,000. **Work Program #C43376**

Agenda Items E-14 and E-153 were discussed jointly.

Patrick Cates, Director, Department of Administration, said Enterprise Information Technology Services (EITS) was requesting permission to increase user charges related to the microwave system replacement project by approximately \$1.7 million due to an unexpected need for additional antennas and other equipment. The reason for the change was due to additional requirements identified during implementation.

Rudy Malfabon, Director, Nevada Department of Transportation (NDOT), stated that NDOT was in agreement with EITS regarding the additional expense for antennas with higher capabilities, which were necessary for public safety throughout the state. He said the total cost included the design and installation of the equipment. Mr. Malfabon said NDOT shared 81 percent of the cost based on the number of

devices and circuits. He said NDOT was requesting approximately \$1.4 million in Highway Funds to fund a portion of the construction costs. He noted that fuel tax revenue was exceeding projections by the Department of Motor Vehicles due to economic improvement. He said unemployment was low and more people were driving their vehicles, which was beneficial for the Highway Fund.

In answer to questions from Senator Denis, Patrick Sheehan, IT Manager, EITS, Department of Administration, replied that additional antennas were necessary because of the frequency coordination process. He said higher quality antennas would help avoid interference with other licensed users. Also, the upgraded antennas and additional hardware facilitated an increase in the bandwidth of the microwave system to approximately double the previous capacity.

Senator Denis asked how the project timeline would be impacted by the change in the project scope. Mr. Sheehan replied that the revised completion date for the project was November 2018. He noted that the project was 70 percent complete as of today.

In answer to a question from Senator Denis, Mr. Sheehan replied that early snowfall could impact the project timeline. He said the majority of the antenna work had been completed, and the crews were currently working on installation and tune up of the new microwave equipment. He said some minor path alignment adjustments would have to be done after the new radios were installed; however, most of the antenna work should be completed before winter. He said the only remaining task would be transitioning customer traffic from the old system to the new.

In answer to a question from Senator Goicoechea, Mr. Sheehan replied that the antennas in Cold Springs, Austin and Eureka would also be on the state microwave system; however, that was a separate project that EITS was working on in conjunction with NDOT. He said Cold Springs, Austin and Eureka were new sites being constructed along Highway 50 fiber and would be connected into the statewide microwave system by the antennas at those locations.

Senator Goicoechea asked which agencies would be impacted by the increased user charges. Jenni Cartwright, Administrator, Department of Administration, replied that multiple state agencies, as well as federal and local entities, utilized the state microwave system. She said the state agencies that utilized the microwave system included the Office of the Governor, EITS, NDOC, NDF, NDOW, NDOT, DPS and Highway Patrol.

Senator Goicoechea said the DPS dispatch center in Elko closed in 2017, because the new microwave system was supposed to provide coverage in the rural areas. He was concerned that the microwave system was still not in place, additional funds were being requested, and coverage in rural Nevada remained spotty. He said new antennas were being installed at existing Bell Telephone sites like Prospect Peak, Rib Hill and Hickison Summit. Mr. Sheehan confirmed that the antennas were being

installed at existing microwave sites and no new construction was involved in that project.

Senator Goicoechea said he was hopeful the coverage would be in place soon, because Highway Patrol troopers from Winnemucca eastward were unhappy about the current situation.

Senator Denis asked if the rural areas would have increased bandwidth due to the upgraded equipment. Mr. Sheehan replied that some bandwidth would be available in the rural areas, but the majority of it would be consumed by NDOT's new radio system due to the required capacity.

Senator Denis asked if any microwave system users would have a problem affording the additional user charges. Ms. Cartwright said she spoke with each state agency that would be impacted by the increased user charges. She said several agencies had already paid their portion of the fees and others were working on submitting payment. Ms. Cartwright said, if the work program was approved, state agencies would have the option to pay the fees in FY 2018 or FY 2019, in large part due to NDOT's willingness to help EITS through this part of the project. She said she had not received any complaints, which she attributed to communication between EITS and the agencies involved, as well as EITS' partnership with NDOT. She was hopeful the agencies would be able to manage the unanticipated charges.

Senator Denis thought some of those agencies may request IFC approval to transfer funds to cover the increased fees. Ms. Cartwright said she could not speak to all of the state agencies involved; however, she thought that NDOC and NDF were able to manage the increased charges, because it was funded through a different category.

Senator Denis asked why the agency proceeded with the unfunded changes before receiving IFC approval. Ms. Cartwright replied that the project was fast paced and necessary for uninterrupted public safety communications. She said there was miscommunication between EITS field staff and Department of Administration fiscal staff. She said EITS had been operating with the understanding that the project was fully funded for the \$10.6 million in the contract and did not realize that full authority was not authorized in the current biennium. Ms. Cartwright said EITS was handling issues as they arose in an effort to keep the project on schedule and maintain radio communication support. After it was determined that EITS and the Department of Administration were operating on different platforms, discussions took place with NDOT, the Governor's Finance Office and LCB Fiscal Division staff. Ms. Cartwright thanked all three entities for helping to find a solution to the problem.

Continuing, Ms. Cartwright said the microwave system replacement was an ongoing project which involved retention and various timing of payments. She said the agency had spending authority for a portion of the work, but 20 percent of the work was postponed until final payment was received. If the project was viewed in its

continuum, it was anticipated that funding would be in place throughout the project; however, if the project was put on hold, the state would be liable for the retention that would be due at the end of the project. Ms. Cartwright apologized for the misunderstanding as well as the oversight on the part of the Department of Administration for not clearly distinguishing between contract authority and approved funding authority.

In answer to a question from Assemblywoman Titus, Mr. Sheehan replied that the microwave upgrade was specifically meant to replace the end-of-life microwave system currently in place. Through the project design changes, the new system would be double the capacity; however, the majority of that capacity would be consumed by the new radio system and the bandwidth it required. The needs of existing customers would still be met, but the project was specifically intended to provide communications for the public safety radio system.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEMS E-14 AND E-153.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Spiegel was not present for the vote.)

- 154. Public Employees Benefits Program - FY 2018** - Transfer of \$30,622 from the State Employee Insurance Costs category to the Operating category to cover projected expenditures through the end of the fiscal year. Requires Interim Finance approval since the cumulative amount added to the Operating category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43215**

Refer to motion for approval under Agenda Item E.

- 155. Public Employees Benefits Program - Non-State Retiree Rate Mitigation - FY 2018** – Transfer of ~~\$186,886~~ **\$177,482** in General Fund appropriations from FY 2019 in order to make projected subsidy payments for non-state, non-Medicare retirees participating in the Public Employees' Benefits Program. Requires Interim Finance approval pursuant to Section 72 of Assembly Bill 518 of the 2017 Legislature. **RELATES TO AGENDA ITEM E. 156. Work Program #C43243. REVISED 6-7-18.**

Refer to motion for approval under Agenda Item E.

- 156. Public Employees Benefits Program – Non-State Retiree Rate Mitigation – FY 2019** – Transfer of ~~\$186,886~~ **\$177,482** in General Fund appropriations to FY 2018 to make projected subsidy payments for non-state, non-Medicare retirees participating in the Public Employees' Benefits Program. Requires Interim Finance

approval pursuant to Section 72 of Assembly Bill 518 of the 2017 Legislature.
RELATES TO AGENDA ITEM E.155. Work Program #C43235. REVISED 6-7-18.

Refer to motion for approval under Agenda Item E.

- 157. Public Employees Benefits Program - FY 2019** - Addition of \$1,539 in Miscellaneous Insurance Premiums, addition of \$96,554 in Non-State Retiree Premiums, deletion of \$101,440,565 in Premium Income, addition of \$268,059 in Non-State Subsidy revenue, addition of \$665,092 in State Employee Premiums, addition of \$127,053 in State Retiree Premiums, and deletion of \$276,753,124 in State Subsidy revenue to delete existing revenue general ledgers and expenditure categories to enhance tracking and transparency by participant group pursuant to Section 11 of Senate Bill 545 of the 2017 Legislature. Requires Interim Finance approval since the amount decreased from the Self-Insured Medical Costs category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 158. Work Program #C43433**

Refer to motion for approval under Agenda Item E.

- 158. Public Employees Benefits Program - FY 2019** - Addition of \$192,165 in Miscellaneous Insurance Premiums, \$9,876,372 in Non-State Retiree Premiums, \$26,702,782 in Non-State Subsidy revenue, \$53,504,875 in State Employee Premiums, \$14,547,940 in State Retiree Premiums, and \$272,211,258 in State Subsidy revenue to establish restructured revenue general ledgers and expenditure categories to enhance tracking and transparency by participant group pursuant to Section 11 of Senate Bill 545 of the 2017 Legislature. Requires Interim Finance approval since the amount added to the State Employee Insurance Costs category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 157. Work Program #C43432**

Refer to motion for approval under Agenda Item E.

- 159. Office of the Military - Emergency Operations Center - FY 2018** - Transfer of \$31,480 from the Reserve category to the Emergency Management Building category and transfer of \$4,630 from the Reserve category to the Personnel Services category to cover projected shortfall in the respective category for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred to the Emergency Management Building category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43344**

Refer to motion for approval under Agenda Item E.

- 160. Silver State Health Insurance Exchange - Administration - FY 2018** - Transfer of \$1,034,630 from the Reserve category to the Transfer to Centers for Medicare and Medicaid Services (CMS) category to fund the projected increase in the fee paid to CMS for the use of the federal platform for the remainder of the fiscal year.

Requires Interim Finance approval since the amount transferred to the Transfer to CMS category exceeds \$75,000. **Work Program #C42902**

Refer to motion for approval under Agenda Item E.

- 161. Silver State Health Insurance Exchange - Administration - FY 2019** - Transfer of ~~\$470,600~~ **\$510,800** from the Reserve category to the Exchange Platform category for the establishment of a Project Management Office to oversee the State-Based Marketplace transition. Requires Interim Finance approval since the amount transferred to the Exchange Platform category exceeds \$75,000. **Work Program #C42913. REVISED 5-31-18**

Heather Korbolic, Executive Director, Silver State Health Insurance Exchange (SSHIX), said Work Program #C42913 requested authority for \$510,800 to fund the establishment of a Project Management Office (PMO) for Nevada's transition to a state-based marketplace.

Ms. Korbolic provided the following timeline for the state's transition to a state-based marketplace:

- December 2017 - SSHIX closed a request for information (RFI) soliciting data about proven and demonstrated marketplace technology and consumer assistance center functions.
- January 2018 - SSHIX made a site visit to the Minnesota state-based exchange. Ms. Korbolic noted that Minnesota issued the most recent request for proposal (RFP) for technology.
- February 2018 - SSHIX made a site visit to Idaho's state-based exchange, a state similar to Nevada in terms of population and budget.
- March 2018 - The Centers for Medicare and Medicaid Services (CMS) provided SSHIX with a comprehensive list of transition milestones.

Ms. Korbolic said throughout the aforementioned time period, SSHIX developed and issued an RFP intended to select a proven technology and support center solution with an anticipated contract start date of August 2018. During the February 8, 2018, IFC meeting, the agency recognized and acknowledged that a complicated project of this size would require engagement from an independent vendor to validate and verify successful deliverables. However, SSHIX was unable to analyze the true volume of work required to successfully manage a project of this scope until after the site visits to Minnesota and Idaho, and receipt of the project milestones from CMS. Ms. Korbolic said although SSHIX was confident in its ability to oversee a successful transition to a state-based marketplace, the agency made the determination to seek formal project management assistance from qualified personnel with direct experience in establishing a state-based marketplace under the Affordable Care Act (ACA). She said conversations and visits with other states, along with the detailed roadmap provided by CMS, convinced the agency that

maximizing success in Nevada's transition would require a level of specialized expertise and experience that existing SSHIX staff could not provide. Ms. Korbolic said if Work Program #C42913 was approved, SSHIX intended to use the PMO to coordinate project management including, but not limited to, verifying compliance with federal security and privacy regulations; independent verification of CMS regulatory milestones; coordination with CMS for data migration; independently assuring quality and functionality of the SSHIX platform and consumer assistance center for functionality; and the development and authoring of the SSHIX standard operating procedures and training materials for stakeholders and staff. The requested PMO positions would not only be instrumental in bridging the experience gap and imparting expertise to staff, but would also provide functions that were far too specialized for existing staff members, including privacy and security compliance. Ms. Korbolic said SSHIX believed that the Division of Labor would allow for administrative staff to remain in control of the project while delegating the weighty and technical aspects to personnel with the appropriate level of knowledge and expertise.

Assemblyman Sprinkle asked why project management services were not requested in conjunction with the agency's request to transition to a private vendor during the February 8, 2018, IFC meeting. Ms. Korbolic replied that at that time SSHIX was unsure of the entire project scope or the expertise that would be required. When SSHIX expressed the need for independent verification and validation, the agency was unsure what that entailed. She said site visits to Idaho and Minnesota, as well as the transition milestones supplied by CMS, provided insight into presenting a more analytical scope of work.

Assemblyman Sprinkle expressed concern that mistakes made during the inception of SSHIX would be repeated. Ms. Korbolic agreed it was critical to avoid repeating past mistakes during the transition.

Assemblyman Sprinkle asked if SSHIX was aware of any other potential costs that may be necessary prior to the 2019 Legislative Session. Ms. Korbolic replied that the agency did not foresee other potential costs.

Russell Cook, Information Systems Manager, SSHIX, said SSHIX identified three specific areas in which the cost associated with the transition were presently unknown; however, the agency had a contingency plan in place for each of those areas. He said the first area with unknown costs related to the required integration between the agency's system and the Division of Welfare and Supportive Services (DWSS) to accommodate shared use of the federal data services hub. He explained that the data services hub was used to verify income, household composition, and citizenship or lawful presence. Shared use of the data services hub had been in place since 2014; however, SSHIX was currently working with members of DWSS IT staff to determine what, if any, security and privacy regulations had been enacted in the interim that would modify the requirements of the integration, as well as what changes had been implemented to the DWSS system in the interim that

may also require modification. Mr. Cook said as a contingency plan, a set number of programmer hours would be included in the vendor contract in the event that the scope of work exceeded DWSS' ability to accommodate the changes.

Mr. Cook said the second area with unknown costs related to the first. He said only one Authority to Connect (ATC) was granted to each state for the data services hub, which was why SSHIX and DWSS had to share the service. He said the ATC would need to be revised and resubmitted to CMS by the SSHIX vendor. Mr. Cook said an independent security assessment, which could not be performed by the state or vendor, would also need to be performed. The agency was unsure of the specific requirements of the independent security assessment over the next year and a half; therefore, SSHIX was unsure whether any of the costs would fall within FY 2019 or FY 2020. He said the agency was working with CMS to finalize the requirements within the next month or two. Mr. Cook said there was a strong potential for shared cost savings for the portion of the assessment that dealt with overlapping functions between SSHIX and DWSS. He said SSHIX and DWSS were trying to identify potential shared cost savings. He indicated that it would be difficult to put a number on the cost. Additionally, SSHIX was unsure which fiscal year the costs would fall into. The determination would be made after receiving guidance from CMS.

Mr. Cook said the third area with unknown costs related to changes in federal regulations regarding the ACA, which may be enacted during the implementation or transition phase of the project. He said the vendor contract would allow for minor changes, such as data formats, requiring fewer than 200 person hours to implement. If significant changes were necessary that would exceed 200 hours, SSHIX had the option to utilize the additional programmer hours, and the negotiated change would go into effect to enact the modifications. After the go-live date, SSHIX would use the change request to accommodate modifications, but the agency would have the option to utilize the included programmer hours if it was deemed in the state's best interest to do so.

Assemblyman Sprinkle said each of the three areas mentioned by Mr. Cook required additional work by the vendor. He asked how that would impact the cost of the project. Ms. Korbolic replied that the agency knew there would be potential unknowns regarding the time and energy required for the project; therefore, a package would be built into the contract to include a specific number of programmer hours, which could be utilized by SSHIX if necessary. She said contract changes to add more programmer hours would not be necessary, because they would be included in the contract from the beginning.

In answer to a question from Assemblyman Sprinkle, Ms. Korbolic replied that the agency's request at the February 8, 2018, IFC meeting was for funds for design, development and implementation. She was hopeful the contract would be approved by the Board of Examiners on August 14, 2018.

In answer to a question from Senator Denis, Ms. Korbolic replied that SSHIX was unaware of additional costs that would require a work program aside from the three unknowns discussed by Mr. Cook.

Senator Gansert recalled discussion during the February IFC meeting about declining enrollment. She asked for the current status of enrollment. Also, she recalled that SSHIX initially intended to obtain a platform that had been proven effective in at least one other state. Ms. Korbolic replied that the vendor that was issued a letter of intent by SSHIX was called Get Insured. She said Get Insured was operational in California, Minnesota and Idaho. Get Insured was the only company that had successfully migrated a state (Idaho) from healthcare.gov to a state-based marketplace.

Senator Gansert asked if the state would receive a credit for any unused programmer hours. Ms. Korbolic said the programmer hours would be built into the contract as payment upon use; therefore, the agency would not pay for any unused programmer hours. She said the contract was currently being negotiated and had not been awarded.

In answer to a question from Senator Gansert, Ms. Korbolic said the percentage of the total contract value would be up to \$25 million for five years. She said SSHIX was currently assessing 3.15 percent of the premiums collected in Nevada. The fee for healthcare.gov was expected to increase to 3 percent in 2019, which would leave approximately 0.15 percent for operating revenue. Ms. Korbolic said the agency was confident the transition to a state-based marketplace would result in a savings without spending approximately 1.5 percent in current revenues on exchange technology and a consumer assistance center; therefore, SSHIX would experience a savings of approximately 50 percent after transitioning away from healthcare.gov. She noted that SSHIX previously estimated that \$12 million would be spent in 2020 to utilize healthcare.gov.

Senator Gansert asked for the current status of enrollment in the Exchange. Ms. Korbolic replied that in Plan Year 2018, 91,003 consumers were enrolled in a health care plan through SSHIX, an increase of 2 percent from the prior year. She noted that federally-facilitated states, which were states that were fully functional and using the healthcare.gov system, experienced enrollment declines of 5.5 percent.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA
ITEM E-161.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 162. Silver State Health Insurance Exchange - Administration - FY 2019** - Transfer of \$370,576 from the Reserve category to the Navigators category to maintain a sufficient number of staff to continue consumer outreach and education as well as enrollment to uninsured and hard-to-reach populations. Requires Interim Finance approval since the amount transferred to the Navigators category exceeds \$75,000.
Work Program #C43214

Ms. Korbolic said Work Program #C43214 was a request to transfer \$370,576 from the Reserve category to the Navigators category to maintain a sufficient number of Navigators and In-Person Assistants (IPA) to fulfill outreach, education and enrollment functionalities for the Exchange. She said SSHIX contracted with Navigators and IPAs to staff events; promote and assist with open enrollment and special enrollment periods; perform outreach and educate consumers about the Exchange through grassroots efforts; and provide year-round consumer assistance. Approval of the work program would allow SSHIX to continue to successfully implement the agency's mission to reduce the number of uninsured Nevadans.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA
ITEM E-162.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 163. Department of Employment, Training and Rehabilitation - Administrative Services - Information Development and Processing - FY 2019** - Addition of \$94,300 from the Employment Security Special Fund and deletion of \$37,084 from the Cost Allocation Reimbursement Fund to support the technical modifications for data collection related to veterans pursuant Senate Bill 137 of the 2017 Legislative Session. Requires Interim Finance approval since the 2017 S.B. 137 UI Modification category exceeds 10 percent of the legislatively approved amount for that category.
Work Program #C43316. RELATES TO AGENDA ITEM E. 105. RECEIVED AFTER SUBMITTAL DEADLINE, 5-30-18.

Refer to motion for approval under Agenda Item E.

- 164. Office of the Secretary of State- Secretary of State - FY 2019** - Transfer of \$131,590 from the Information Services category to the Operating category to provide adequate budget authority to pay for rent and security expenses for the new lease agreement with the City of North Las Vegas. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000.
Work Program #C43555. RECEIVED AFTER SUBMITTAL DEADLINE, 5-31-18.

Scott Anderson, Chief Deputy Secretary of State, Office of the Secretary of State (SOS), testified on behalf of Secretary of State Barbara Cegavske. He said Secretary of State Cegavske was unable to attend the meeting due to pre-planned travel; however, she could be contacted via telephone if necessary. Mr. Anderson introduced Craig Kozeniesky, Deputy Secretary of State for Operations, SOS; Sheri Hudder, Management Analyst, SOS; and Diana Foley, Deputy Secretary of State for Securities, SOS.

Mr. Anderson said Work Program #C43555 was a request to allow the SOS to pay the necessary expenditures for a new lease agreement with the City of North Las Vegas. He said the Grant Sawyer office suite used by the SOS had become problematic for daily operations due to the health concerns and impacts to the office's workforce as a result of air quality and associated contaminants negatively affecting the environment. He stated that the first and foremost concern in relation to the work program was the health and welfare of SOS staff affected by the air quality in the office.

Mr. Anderson said the SOS and City of North Las Vegas, through State Public Works Division's (SPWD) Leasing Services, tentatively agreed to rental terms for 14,107 square feet within the City Hall Building. The SOS was prepared to sign a three-year lease to begin September 1, 2018, and the City of North Las Vegas offered a zero cost month-to-month lease through August 31, 2018, with shared security costs for Fridays when city offices were closed. Mr. Anderson said \$312,785 was available in Category 26 for FY 2019, because the agency switched to a lower cost vendor for offsite support of SOS FileNet servers. The unused contract authority would be utilized to pay the additional cost per square foot and the increased square footage in the new office space. He said there was an additional \$9,300 budgeted for phone and data wiring services for the new space, which would be absorbed within Category 26 authority during FY 2019. Also, the one-time cost to relocate staff during FY 2018 would be absorbed within the existing budget authority. Mr. Anderson said the SOS appreciated SPWD Leasing Services, the Governor's Finance Office, LCB Fiscal Division, City of North Las Vegas and SOS staff for assisting with the work program. He said the agency wished it was not necessary to move, but the main priority was the health and welfare of SOS staff.

Assemblywoman Carlton said the Grant Sawyer Building had experienced intermittent issues since it was built. She said everyone wanted to ensure that staff was safe; however, the Committee was receiving conflicting information. She said there were a couple doctor reports on the matter, one of which indicated that the mold remediation was effective, the problem had been removed, and that most of the mold issue would be resolved by the end of the summer of 2018. Assemblywoman Carlton said the first time she was informed about the issue was when the work program was brought forward. She was disappointed that someone from the SOS did not have a conversation with the Committee prior to the meeting today. She stated that LCB as well as other state agencies also had employees in

the Grant Sawyer Building. Assemblywoman Carlton said there needed to be a global discussion about the issue.

Mr. Anderson said there were reports indicating that the mold remediation had been effective; however, the SOS also met with the doctor who issued the report. In that meeting, it was stated most emphatically that any staff experiencing issues or symptoms related to the problems in the Grant Sawyer Building should not be there. In addition to the issues listed in the report, there was also ongoing maintenance and other remediation efforts that were causing problems in addition to the mold abatement efforts. Mr. Anderson said SPWD Buildings and Grounds could speak more to the overall plan in regard to the ongoing maintenance. He noted that the SOS was working extensively with SPWD Building and Grounds in regard to the mold issue. Mr. Anderson thought the Committee was notified about the matter and apologized that was not the case.

Mr. Anderson said 9 out of 34 SOS staff in the Las Vegas office had approved workers' compensation claims related to the conditions in the Grant Sawyer Building. He said the ongoing cycle of staff becoming symptomatic at work and having to be sent home could not continue, because it was unfair to staff or SOS customers. The SOS thought the recommended alternative would allow the SOS to carry out its business while SPWD Buildings and Grounds completed the required maintenance at the Grant Sawyer Building.

Assemblywoman Carlton reiterated that LCB staff was also located in the Grant Sawyer Building. She said everyone had concern for their staff and did not want them to be sick. She said she grew up around asbestos, and friends had died from exposure to it, so she understood environmental concerns.

Assemblywoman Carlton said the tenants that remained in the Grant Sawyer Building would be financially impacted if SOS vacated the building, because the cost of rent was based on the number of tenants. Not only would the state be financially responsible for helping the SOS relocate, it would also be responsible for the increased rent costs for the state agencies in the building. She thought other agencies were considering vacating the Grant Sawyer Building as well. Assemblywoman Carlton said it may be necessary to have a conversation with the SOS about how the move impacted everyone involved.

Assemblyman Frierson said he was baffled that a state agency was proposing to abandon 80 percent of the building and allow the remaining occupants to work in what was claimed to be an unhealthy environment. He said, if the environment in the Grant Sawyer Building was truly unhealthy, the agencies should come before the Committee as a collective group to request to move out of the building. He said he would suggest that the SOS discuss the matter with the remaining tenants rather than leaving them behind.

Mr. Anderson said he understood the concerns of the Committee. He said the agency was only aware of issues affecting the SOS offices on the fifth floor. The agency was unaware of how those issues were impacting other tenants in the building. The SOS offices were in proximity to the roof and other issues that could be exacerbating the problem.

Assemblyman Edwards said it was his understanding that one of the reasons SOS personnel were heavily impacted was because the problem in the building was intense. He said remediation efforts that should have resolved the problem actually created additional unforeseen problems. Assemblyman Edwards said it made sense to relocate staff rather than having 30 percent of staff out of the office on a regular basis.

Assemblywoman Carlton clarified that the state was the owner and landlord of the Grant Sawyer Building.

Patrick Cates, Director, Department of Administration, said the Department of Administration acknowledged the concerns of the SOS regarding the conditions of the Grant Sawyer Building. He said there was an ongoing Capital Improvement Program (CIP) project which required a lot of maintenance in the building, which was very disruptive to employees. Mr. Cates said there were approximately 700 people in the Grant Sawyer Building. As of June 15, 2018, there were 21 workers' compensation claims, 9 of which involved SOS staff.

Mr. Cates said in the fall of 2017, the Department of Administration was notified by the SOS and other occupants of problematic conditions in the building. He said he also became aware of deficiencies in the management of building maintenance throughout Southern Nevada. He thought there had been benign neglect of maintenance in Southern Nevada for a very long time. The Grant Sawyer Building had a long history of problems. Ceiling tiles began falling shortly after the building opened, and there was a mold problem in the 1990s. Mr. Cates said the Department of Administration began making significant personnel changes as soon as the depth of some of those problems came to light. He said a new Deputy Administrator was hired for Building and Grounds, and resources were reallocated to focus on the Grant Sawyer Building in particular, and Southern Nevada in general. Additionally, project funds were reallocated, and approximately \$600,000 from the FY 2018 Buildings and Grounds budget was used to replace ceiling tiles and plumbing fixtures. Mr. Cates said he was notified that plumbing fixtures were being bagged by maintenance staff and left unrepaired for weeks. Leaks in ceilings were not repaired and buckets were left in hallways. He said those conditions were completely unacceptable. The department accepted responsibility and began taking significant steps to correct the problems. In doing so, there was increased activity by maintenance staff in work areas, which created other problems. Mr. Cates said major CIP projects were underway, including the heating, ventilation and air conditioning (HVAC) system, which was a significant project that involved shutting down parts of the A/C system.

Mr. Cates said the SOS was the sole agency impacted by the installation of the replacement chiller. He said the chiller was located in the mechanical room above the SOS office suite. When the chiller was installed, the drains were opened to flush the new equipment; however, the drains were rarely used and cracks had developed, which caused water to come through the ceiling light fixtures into the SOS office space. Mr. Cates noted that when the Department of Administration became aware of the significance of the issues and how disruptive the maintenance work was for occupants, the department began providing weekly updates to all the tenants of the Grant Sawyer Building.

Mr. Cates said he understood the level of frustration among occupants; therefore, the Department of Administration engaged with medical professionals concerning the mold issues. In November 2017, an industrial hygienist took indoor air samples of the SOS suite and other places within the Grant Sawyer Building. The indoor air samples did not indicate elevated levels of mold in the building; however, the Department of Administration was not content with those results, because there were leaks in variable air volume (VAV) valves in the HVAC system, which raised suspicions. Mr. Cates said the department brought in Dr. James Craner, an occupational, environmental health medicine expert who had done work in the Grant Sawyer Building in the past. He noted that Dr. Craner was a PhD Mycologist. A study was set up to determine the levels and types of mold in the building, the results of which were provided to all the tenants of the Grant Sawyer Building, LCB Fiscal Division staff and the press. Dust samples were obtained from carpet and air plenums throughout the building and then subjected to petri dish and DNA analysis. Mr. Cates said Dr. Craner stated there were very low total and specific mold concentrations in the dust, which was indicative of a relatively clean building. He said Dr. Craner also indicated the samples were reflective of the outdoor Las Vegas environment. One exceptional finding was very low concentrations of two types of mold associated with water damage: *Aspergillus* and *Stachybotrys*. Dr. Craner's working hypothesis was that some people in the building were sensitive to low concentrations of those particular molds. Mr. Cates said that Dr. Craner's prescription to resolve the problem was to stop the source of the leaks, which was likely causing those molds. He indicated the source of the leaks was the VAV valves in the HVAC system. The VAV valves were located in the ceiling on every floor in the building. The valves were known to leak intermittently throughout the building. Mr. Cates said additional funds were available as part of the HVAC project; therefore, a contractor was hired to replace all the VAV valves. He said the replacement work was complete, and in theory, that should put an end to leaks and mold. Mr. Cates said Dr. Craner also prescribed hot water extraction and wet cleaning of carpets and large porous surfaces throughout the building to remove any possible mold or remnants of mold in the immediate work environment. He said the first three floors of the building had already been cleaned. When the work was complete throughout the building, Dr. Craner anticipated symptoms would dissipate for individuals who were experiencing health issues due to the mold. Another set of tests would be performed when the carpet and floor cleaning project was complete.

Mr. Cates said that Dr. Craner stated in a letter relative to his report that from a public health standpoint, the building was safe for occupancy. The indoor environmental problems were identified and measured, and a portion of the occupants were affected to varying extents by reversible, building related symptoms that primarily affected the upper respiratory tract and mucus membranes. The environmental conditions were expected to be rectified within the next four months, or approximately August 2018. Based on the available scientific and medical research, and Dr. Craner's extensive experience evaluating and treating occupants of water damage mold-contaminated buildings, there was a very low probability of any expected long-term health effects. For symptomatic occupants, a case-by-case determination should be made based on the individual's tolerance of the symptoms, the extent to which it impacted work activity, and personal medical conditions or concerns.

Mr. Cates said all 21 employees in the Grant Sawyer Building with workers' compensation claims related to the mold issue had been examined by the workers' compensation doctor and released to return to full duties.

Mr. Cates said, based on the opinion of medical experts, the Department of Administration did not believe the building was unsafe; however, conditions in the building were rough. Due to ongoing CIP work and maintenance activity, the department supported the request by the SOS to relocate. Roofing work had begun, but was currently on hold due to complaints about the smell and excessive dust in the work environment. He said it would be easier to complete the work if the fifth floor offices were empty. Mr. Cates said Buildings and Grounds was evaluating the Grant Sawyer Building as a whole to determine the next steps. Options were being considered for a CIP project for the 2019-21 biennium, and the work could be extensive and disruptive. He stated that additional occupants may need to be moved out of the building to undertake the scope of work that was being considered, which included completion of the HVAC project as well as plumbing, carpet, paint and other upgrades. From a revenue standpoint, it was better for the building to remain occupied while the work was taking place; however, conditions would be difficult for occupants.

Mr. Cates said the Department of Administration hoped to submit a work program for the August 2018 IFC meeting to transfer funds within the CIP and begin investigating and planning for the next CIP for the Grant Sawyer Building. In terms of loss of income and rent and the impact on other agencies, the department could absorb the loss of revenue for the remainder of the 2017-19 biennium if the SOS relocated. Additionally, rates would not increase for the remaining tenants. He said other agencies had expressed interest in leasing office space at the Grant Sawyer Building; however, he was unsure if any proposals had been fully developed. Mr. Cates said the Department of Administration thought it would be in the best interest of the SOS to vacate the building, which would allow the roofing project to be completed. The department would do further evaluations and develop

a plan for the next CIP. He noted there would not be a loss of revenue, because multiple agencies wanted to lease space in the building.

In answer to a question from Assemblyman Frierson, Mr. Cates confirmed that, based on the opinion of Dr. Craner who conducted the study, the Grant Sawyer Building was safe for occupancy.

Assemblyman Frierson asked if there was specific construction work that was solely impacting the SOS. Mr. Cates thought the location of the SOS offices in the building presented extra challenges. For example, the leaks in the ceiling light fixtures only occurred on the fifth floor where the SOS was located. Additionally, the roofing project impacted occupants on the fifth floor more than other floors.

Assemblyman Frierson stated that he worked at the Grant Sawyer Building. He was working in the building when tiles were falling and staff had to work under nets; therefore, he was sympathetic to the occupants of the building. He said a request to move due to health concerns was a different story than a request to move, because Buildings and Grounds required space for construction activity. Assemblyman Frierson said the final conclusion was that the building environment did not pose a health hazard, but there was still a desire to move by a small portion of the building's occupants despite that conclusion. He said he would like to see an assessment of the entire building and the tenants to determine who needed to move for construction purposes. From there, a global conversation should take place rather than an individual discussion, which was inefficient and disrespectful to other agencies in the building. He thought that one agency vacating the building over health concerns had the potential for mass hysteria over something that was no longer an issue.

Assemblyman Frierson said the Department of Administration indicated it would be submitting a work program for the August 2018 IFC meeting and presenting a plan concerning future remediation efforts at the Grant Sawyer Building. He stated that the method by which the SOS went about seeking authority to relocate was not supportive of other agencies in the building, and he found that disturbing.

Mr. Anderson said while the report stated the levels of mold in the Grant Sawyer Building were indicative of a safe building, Dr. Craner stated in a meeting with SOS staff that it was unsafe for employees who were symptomatic to be in the building. Nine SOS staff submitted workers' compensation claims had been confirmed, and others may be forthcoming, not just from the mold issue, but also due to remediation issues as discussed by Mr. Cates. He said some staff members had left the employment of the SOS because of health concerns brought about by the mold issues in the building. Additionally, some staff remained symptomatic. He noted that a former senator recently met with Secretary of State Cegavske at the SOS offices in Las Vegas and left feeling ill. Mr. Anderson said the SOS did not want to relocate, but it was necessary for the health and welfare of staff.

Mr. Anderson said the proposal was reasonable, and funding was available through savings in another area. Additionally, Buildings and Grounds would be able to complete the necessary building maintenance, which was anticipated to be a lengthy project. He said it was difficult to continue providing services from the Las Vegas office due to the significant issue that affected staff. Mr. Anderson said he had been to the Las Vegas office several times and personally witnessed a number of staff that were absent because they were symptomatic. He said the SOS would not be before the Committee today if the Grant Sawyer Building was in top shape and a safe building. The agency made great efforts to get the item on the agenda today, because of the urgent need to protect staff. Regardless of what the report said, environmental issues in the office were impacting staff and something had to be done.

Chair Woodhouse called a recess at 3:15 p.m. The meeting was reconvened at 3:52 p.m.

Senator Kieckhefer said it sounded as though the Department of Administration needed the space on the fifth floor of the Grant Sawyer Building for ongoing maintenance work. There was a need to finish the roofing and HVAC projects that were on hold. Based on that need, he moved to approve the work program through the end of the 2017-19 biennium as presented. Additionally, he requested that the department provide an update at the August 2018 IFC meeting in terms of an overall review of the Grant Sawyer Building and the work that was needed, understanding it was probably a long-term project.

SENATOR KIECKHEFER MOVED TO APPROVE AGENDA
ITEM E-164 AND REQUIRE THE DEPARTMENT OF
ADMINISTRATION TO PROVIDE AN UPDATE ON THE
STATUS OF THE GRANT SAWYER BUILDING AT THE
INTERIM FINANCE COMMITTEE MEETING IN AUGUST 2018.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

Assemblyman Frierson noted that it was the understanding of the Committee that the SOS was relocating to provide an opportunity for maintenance work to resume at the Grant Sawyer Building. Additionally, the Department of Administration would absorb the increased costs associated with the SOS vacating the building, and no additional requests for funds associated with the relocation of the SOS would be necessary.

Mr. Cates replied that the loss of revenue was relatively small, and the agency was confident that the Buildings and Grounds budget could absorb the cost.

In answer to a question from Senator Goicoechea, Mr. Anderson replied that the moving costs would be absorbed in the SOS budget.

Senator Parks asked if the new SOS lease agreement would be through the end of the 2017-19 biennium. He asked if the lease would be renegotiated after that time, or if the lease was month-to-month. Senator Kieckhefer replied that the Committee only had the authority to approve the work program through the end of the biennium. All external leases had funding out clauses if not funded by the Legislature; therefore, the new SOS lease would include the same clause.

In answer to a question from Assemblywoman Spiegel, Senator Kieckhefer replied that Work Program #C43555 was for authority for expenditures in the SOS lease category above what was currently available; therefore, the motion was to approve the increase in authority for SOS office needs as presented, which was in line with the Department of Administration's need for space in the building to complete the work, particularly on the roof and with the HVAC system.

In response to a question from Assemblywoman Diaz, Senator Kieckhefer clarified that the Legislature did not approve leases, but it did authorize funding for them. The IFC only had the authority to fund the lease through the upcoming fiscal year, which began July 1, 2018. Any increase in rent that the SOS accrued based on the execution of a new lease would have to be approved by the 2019 Legislature.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick was not present for the vote.)

RECLASSIFICATIONS:

Refer to motion for approval under Agenda Item E.

AGENCY	AGENCY/ ACCOUNT NUMBER	POSITION NUMBER	PRESENT CLASS, CODE, GRADE, SALARY	PROPOSED CLASS, CODE, GRADE and SALARY
Secretary of State – Commercial Recordings	040/1050	0136	Administrative Assistant II Code: 2.212 Grade: 25/01 Employee/Employer Paid Retirement \$32,029.92	Business Process Analyst II Code: 7.656 Grade: 36/01 Employee/Employer Paid Retirement \$50,508.72
Department of Agriculture	550/4470	0003	Auditor II Code: 7.145 Grade: 34/01 Employee/Employer Paid Retirement \$46,311.84	Public Health Rating & Survey Officer Code: 10.527 Grade: 37/01 Employee/Employer Paid Retirement \$52,742.88
Department of Business and Industry – Industrial Relations	742/4680	0077	Employee Development Manager Code: 7.513 Grade: 38/01 Employee/Employer Paid Retirement \$55,039.68	Chief Investigator Compliance/Audit Code: 11.360 Grade: 37/01 Employee/Employer Paid Retirement \$52,742.88

Department of Public Safety – Communication and Compliance	655/4702	11130	Public Safety Dispatcher III Code: 11.122 Grade: 31/01 Employee/Employer Paid Retirement \$40,862.16	Administrative Assistant III Code: 2.211 Grade: 27/01 Employee/Employer Paid Retirement \$34,681.68
Department of Public Safety – Parole and Probation	652/3740	0205	Parole and Probation Specialist II Code: 12.614 Grade: 31/01 Employee/Employer Paid Retirement \$40,862.16	Management Analyst 1 Code: 7.637 Grade: 33/01 Employee/Employer Paid Retirement \$44,474.40
Department of Transportation – Agency Risk Management	800/4660	022-003	Right of Way Supervisor Code: 7.412 Grade: 39/01 Employee/Employer Paid Retirement \$57,503.52	Professional Engineering Specialist P.E. Code: 6.231 Grade: 42/01 Employee/Employer Paid Retirement \$65,751.12
Department of Transportation - Administration	800/4660	071-011	Reprographics Technician II Code: 9.276 Grade: 27/01 Employee/Employer Paid Retirement \$34,681.68	Management Analyst III Code: 7.624 Grade: 37/01 Employee/Employer Paid Retirement \$52,742.88
Department of Transportation – District II C-201 Administration	800/4660	201-020	Administrative Assistant III Code: 2.211 Grade: 27/10 Employer Paid Retirement \$44,307.36	Program Officer I Code: 7.649 Grade: 31/08 Employer Paid Retirement \$48,274.56
Department of Veterans Services	240/2561	041001	Safety Officer Code: 11.263 Grade: 27/10 Employer Paid Retirement \$44,307.36	Transportation & Safety Attendant II Code: 3.535 Grade: 26/10 Employer Paid Retirement \$44,307.36 Retained Rate
Department of Veterans Services	240/2561	041006	Safety Officer Code: 11.263 Grade: 27/07 Employee/Employer Paid Retirement \$44,474.40	Transportation & Safety Attendant II Code: 3.535 Grade: 26/07 Employee/Employer Paid Retirement \$44,474.40 Retained Rate
Department of Veterans Services	240/2561	041007	Safety Officer Code: 11.263 Grade: 27/10 Employee/Employer Paid Retirement \$50,508.72	Transportation & Safety Attendant II Code: 3.535 Grade: 26/10 Employee/Employer Paid Retirement \$50,508.72 Retained Rate
Department of Veterans Services	240/2561	041005	Safety Officer Code: 11.263 Grade: 27/09 Employee/Employer Paid Retirement \$48,337.20	Transportation & Safety Attendant II Code: 3.535 Grade: 26/09 Employee/Employer Paid Retirement \$48,337.20 Retained Rate
Department of Veterans Services	240/2561	041002	Safety Officer Code: 11.263 Grade: 27/10 Employee/Employer Paid Retirement \$50,508.72	Transportation & Safety Attendant II Code: 3.535 Grade: 26/10 Employee/Employer Paid Retirement \$50,508.72 Retained Rate
Department of Veterans Services	240/2561	041003	Safety Officer Code: 11.263 Grade: 27/07 Employee/Employer Paid Retirement \$44,474.40	Transportation & Safety Attendant II Code: 3.535 Grade: 26/07 Employee/Employer Paid Retirement \$44,474.40 Retained Rate

Department of Veterans Services	240/2561	041004	Safety Officer Supervisor Code: 11.260 Grade: 29/08 Employee/Employer Paid Retirement \$50,508.72	Transportation & Safety Attendant III Code: 3.530 Grade: 28/08 Employee/Employer Paid Retirement \$50,508.72 Retained Rate
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F. DEPARTMENT OF ADMINISTRATION – STATE PUBLIC WORKS DIVISION

1. Request to modify the scope and funding to CIP Project 17- C04, Construct New Department of Motor Vehicles Service Office, Reno pursuant to NRS 341.145(1)(f).

Patrick Cates, Director, Department of Administration, introduced Ward Patrick, Division Administrator, SPWD. He said Gus Nunez, former Division Administrator, retired in December 2017, and Chris Chimits, Interim Division Administrator, also retired recently. Mr. Cates said that Mr. Patrick had been with the SPWD for over 20 years and brought a wealth of experience. He said he was happy to have Mr. Patrick on the team.

Ward Patrick, Division Administrator, SPWD, Department of Administration, introduced Terri Albertson, Director, DMV, and Tonya Laney, Division Administrator, DMV.

Mr. Patrick said the agency was requesting a change in scope for CIP Project 17-C04 from the 2017-19 CIP for a new DMV building in Reno. The project was for the design and construction of a new DMV facility. The agency was requesting to defer certain portions of the work from the 2017-19 CIP to the 2019-21 CIP. The deferred items included the commercial driver's license (CDL) course, a portion of the landscaping work, data telecom wiring and equipment, furnishing and equipment, the roofing maintenance agreement, and local government requirements. Mr. Patrick said the total cost of the deferred items was \$8.66 million, and the total project cost was anticipated to increase from \$42 million to \$50.67 million. He said the increased costs were primarily due to the recent unanticipated and unprecedented construction cost increases in Northern Nevada and inflation increases that were beyond the SPWD's estimates for the project.

SENATOR KIECKHEFER MOVED TO APPROVE AGENDA ITEM F-1.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick was not present for the vote.)

2. Information regarding the Project Exception Report pursuant to NRS 341.100(8)(g).

Mr. Patrick said the Project Exception Report included three items, one of which was the DMV office in south Reno discussed in Agenda Item F-1. The other two items were smaller projects for DHHS. One of the projects went out to bid; however, there was insufficient funding for the project. Mr. Patrick said the second item was CIP Project 17-M47. The engineer's estimates had been received and the project was ready to go out to bid; however, there was insufficient funding for the project. He said another 2017-19 CIP project had been completed and there was extra funding available; therefore, the SPWD would be bringing a request before the IFC to transfer the remaining funds to the other two projects to complete the work.

There was no further discussion on this item.

G. STATEMENT OF CONTINGENCY ACCOUNT BALANCE.

Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, LCB, directed the Committee to the Statement of Contingency Account Balance on page 19 in Volume IV of the meeting packet ([Exhibit D](#)). The current balance of the unrestricted General Fund portion was approximately \$14.6 million. Allocation requests before the Committee totaled \$7.5 million, which would reduce the balance to \$7.1 million if approved. The balance of the unrestricted Highway Fund portion was \$1,676,000. The Committee approved an allocation request for \$8,691, which reduced the balance to \$1,668,000. The balance of the restricted portion of the General Fund was approximately \$15.3 million.

H. REQUESTS FOR ALLOCATION FROM THE IFC CONTINGENCY ACCOUNT (GENERAL FUND) PURSUANT TO NRS 353.268 (Note: IFC may approve a different amount for an allocation than the amount requested).

1. Judicial Branch – Request for an allocation for Fiscal Year 2019 for information technology projects that were unable to be completed in Fiscal Year 2018 for the following:

- a) Supreme Court – ~~\$424,960~~, **\$167,998. REVISED 6-5-18.**
- b) Court of Appeals – \$65,000

Robin Sweet, Director and Administrator, Administrative Office of the Courts (AOC), introduced Todd Myler, Manager of Budgets, AOC, and Rick Stefani, Director of Information Technology, AOC.

Todd Myler, Manager of Budgets, AOC, said the Supreme Court and Court of Appeals were requesting \$232,998 from the IFC Contingency Account for FY 2019 to complete information technology projects approved during the 2017 Legislative Session. He said language allowing the funds to be carried forward was inadvertently omitted from the Appropriations Act. He said various

aspects of the projects were complete; however, a final contract could not be executed until funding was received.

In answer to a question from Senator Denis, Mr. Myler replied that the original request was for approximately \$489,000 between the two budget accounts. He said the request was reduced by approximately \$250,000 due to various changes in the project scope and reductions in costs.

Senator Denis asked if there were any changes to the project. Rick Stefani, Director of Information Technology, AOC, confirmed that the project remained the same. He said the original quote from one of the vendors was \$325,000 to perform integration work between the case management system and document management system; however, the project scope was refined, which reduced the cost to \$125,000. He said the project cost was reduced by about \$200,000, but the funds were needed through FY 2019.

Senator Denis said it was nice to have a request for less money rather than to correct a mistake.

In answer to a question from Chair Woodhouse, Mr. Stefani confirmed that the \$232,998 being requested was sufficient to complete the two projects within FY 2019.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEM H-1.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick was not present for the vote.)

2. Nevada Department of Corrections – Request for an allocation of \$3,174,606 in Fiscal Year 2018 to fund projected shortfalls for the following:
 - a) Director's Office – \$1,168,178
 - b) Northern Nevada Correctional Center – \$471,674
 - c) Stewart Conservation Camp – \$82,627
 - d) Pioche Conservation Camp – \$15,515
 - e) Southern Desert Correctional Center – \$405,490
 - f) Wells Correctional Camp – \$26,025
 - g) Humboldt Conservation Camp – \$19,673
 - h) Florence McClure Women's Correctional Center – \$236,939
 - i) High Desert State Prison – \$748,485

Agenda Items H-2 and M-7(a) were discussed jointly.

John Borrowman, Deputy Director, NDOC, said the department was requesting \$3,174,606 from the IFC Contingency Account to fund projected shortfalls in

the Personnel Services, Inmate Drivens and Utility categories for the remainder of FY 2018. He said the shortfall in the Personnel Services category was due to the loss of State Criminal Alien Assistance Program (SCAAP) grant funding in the Director's budget account in the amount of approximately \$1.1 million, with an additional \$700,000 in other institutions' Personnel Services categories due to overtime coverage for vacant posts attributable to unbudgeted inmate transportation and hospital coverage. Additionally, the department was projecting a shortfall in the Inmate Drivens category in the amount of \$619,000 and the Utility category in the amount of approximately \$689,000, which brought the total to approximately \$3.2 million.

Mr. Borrowman said the department experienced an increase in food costs as well as an unanticipated, unbudgeted increase in utility rates. Despite operational adjustments to reduce the deficit, access to the Inmate Welfare fund, and a reduction in agency expenditures, there was still a remaining balance of approximately \$3.2 million that required relief.

Assemblyman Sprinkle recalled public testimony as well as e-mails expressing concern for the safety of NDOC employees due to some of the changes that had been implemented at the institutions. He asked the agency to address those issues.

James Dzurenda, Director, NDOC, said he shared those concerns. He said it was vital that staff was safe, because that meant the community was also safe. When the department began implementing changes to reduce overtime, it was monitored daily to ensure that incident rates were not rising. The department expanded intelligence efforts to determine if gang activity was increasing. He said the Wardens were told to take action at any cost if incident rates or gang activity increased. Mr. Dzurenda said only one facility had experienced a rise in incidents since January 1, 2018. He said Northern Nevada Correctional Center had shown a small increase in assault rates attributable to gang activities unrelated to the minimum staffing plan that was enacted at the facility. Since Memorial Day, the department increased its security by adding two additional shake-down teams, one in Northern Nevada and one in Southern Nevada. The teams specifically targeted gang members in housing units that were suspected to be high in contraband. He said the shake-down teams were enacted for the summer months, because tempers had a tendency to flare due to the hot temperatures, which led to an increased number of incidents. Mr. Dzurenda said the department was still on target to meet its overtime reduction goal for FY 2018.

Assemblyman Sprinkle asked if the department thought the institutions were still a safe work environment in spite of the overtime reduction plan. Mr. Dzurenda said he believed the work environment was safe at the current time; however, as shake-downs and inmate monitoring decreased, contraband issues would gradually increase. Additionally, inmates would begin to realize they could manipulate the system if there were fewer staff in a particular area. Mr. Dzurenda

said the increased inmate monitoring and shake-down teams were only short-term solutions. Assemblyman Sprinkle said it sounded as though the department recognized the potential for increased security problems.

Assemblyman Sprinkle asked if NDOC implemented other changes to help reduce overtime. Mr. Dzurenda replied that the department changed the policy for overnight hospital stays to be consistent with local law enforcement agencies. The previous policy allowed for two officers per inmate regardless of the inmate's classification level; however, the new policy allowed for one officer per inmate, up to four inmates, with an additional officer to help with transferring inmates and breaks. He said most local law enforcement agencies utilized someone from the community to help with reliefs. Mr. Dzurenda said the new policy would reduce overtime significantly and keep the hospitals safe.

Mr. Dzurenda said another change that was implemented to assist with overtime reduction was the required number of weeks for Peace Officers Standards and Training (POST). He said in the past, Category 3 officers were required to attend POST for eight weeks; however, the number of weeks was reduced to six. In doing so, two weeks of overtime was eliminated, because the institutions only had to have posts covered for six weeks instead of eight. He said in-service training was provided at the facilities to compensate for the reduced time at the POST academies. Mr. Dzurenda said not only did the reduced number of weeks result in fewer overtime hours, staff remained on facility grounds in case of an emergency.

Mr. Dzurenda said the department was having a difficult time filling a number of vacancies at Ely State Prison due to the location; therefore, a number of position control numbers (PCN) were transferred to HDSP and Southern Desert Correctional Center to cover overnight hospital stays and transportation posts as well as unbudgeted overtime locations. In order to transfer the PCNs, one of the housing units that required a large number of staff was closed, and the inmates were temporarily transferred to Eloy, Arizona.

Mr. Dzurenda said approximately 370 inmates were still on overflow status, but they were located inside a housing unit where an officer was posted. Subsequently, evidence-based programming was not impacted and overtime was not necessary to monitor inmates on overflow status. He noted that in the past, inmates on overflow status were placed in areas intended for evidence-based programming.

Mr. Dzurenda said all of the aforementioned efforts helped reduce overtime. The reduction in POST academy training, addition of in-service training, and reduction in the number of officers required for overnight hospital stays were all permanent changes. He said the relocation of Ely State Prison PCNs was temporary until the post charts were reviewed. The department, along with LCB Fiscal Division staff and outside auditors, were currently reviewing the

legislatively approved post charts for every institution. He said the audit would determine the appropriate staffing levels for each facility compared to the current legislatively approved post charts. Mr. Dzurenda said he questioned some of the reasoning behind the current post charts. For example, the post charts did not include an assigned post for the youth housing unit at Lovelock Correctional Center; the post charts for Ely State Prison and Lovelock Correctional Center did not include an assigned post for the graveyard shifts in the minimum-security housing units; and the post charts for Florence McClure Women's Correctional Center allowed for only one officer for transportation duties instead of two. Mr. Dzurenda said the examples he provided contributed to overtime hours. He said upon completion of the audit, NDOC would have a true indication of the posts that were necessary at each institution, which would reduce future overtime.

Assemblyman Sprinkle thanked Mr. Dzurenda for the comprehensive update. He requested that the department continue to work closely with LCB Fiscal Division staff to ensure the Committee was receiving up-to-date information, and Mr. Dzurenda agreed.

In answer to a question from Assemblywoman Benitez-Thompson, Mr. Dzurenda replied that NDOC would know in August 2018 (FY 2019) whether the state would be awarded the SCAAP grant for approximately \$1.3 million. He said the grant was currently on hold by the federal government, but the department had been verbally advised that Nevada would be awarded the grant.

Assemblywoman Carlton recalled public comment at the meeting today in support of NDOC's request. She stated that she received approximately 20 telephone calls the previous day regarding the shift relief factor. The individuals that contacted her were under the impression that she was responsible for denying 12-hour shifts at the prisons. She wanted it to be perfectly clear that the Legislature did not have authority to authorize 12-hour shifts; therefore, NDOC administrative staff needed to be corrected on the matter rather than falsely accusing the Legislature. Assemblywoman Carlton said the department was responsible for authorizing 12-hour shifts, and the Legislature supported the shifts if they were fiscally viable. She said it was important for the department to determine if implementing 12-hour shifts would do more harm than good. Assemblywoman Carlton said she would be happy to join Mr. Dzurenda when he clarified the matter with NDOC administrative staff.

Mr. Dzurenda replied that one of the reasons for the audit was to determine whether 12-hour shifts would be beneficial for the department. He said he would send a memo to NDOC staff clarifying that the Legislature was not responsible for denying 12-hour shifts. He said he would also copy LCB Fiscal Division staff on the memo.

Assemblyman Frierson said it was important for NDOC to have the necessary resources. He said if there was a discrepancy in the legislatively approved post charts then the issue needed to be resolved. He asked the department to provide more accurate post charts so the Committee could see where there was a need and how the situation should be handled differently. He said the sooner the information was available, the sooner the matter could be corrected. Mr. Dzurenda agreed and hoped to provide updated post charts soon.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA
ITEM H-2.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Araujo
and Assemblyman Hambrick were not present for the vote.)

3. Nevada Department of Public Safety – Nevada Highway Patrol – Request for an allocation of \$32,300 to cover the cost of providing protective services to dignitaries visiting Nevada in Fiscal Year 2018. **WITHDRAWN 6-7-18.**
4. State Department of Conservation and Natural Resources – Forestry Division
 - a) Request for an allocation of ~~\$2,154,240~~ **\$1,621,538** to fund emergency response expenses in Fiscal Year 2018. **REVISED 6-11-18.**
 - b) Request for an allocation of \$2,500,000 to fund projected emergency response expenses in Fiscal Year 2019.

Kacey KC, State Forester Firewarden, Division of Forestry (NDF), Department of Conservation and Natural Resources (DCNR), introduced Dave Prather, Deputy Administrator, NDF, and John Christopherson, Deputy Administrator, NDF.

Ms. KC said the agency had two requests totaling \$4,121,538. She said Agenda Item H-4a was a request for funds for the remainder of FY 2018 to support increased fire suppression costs from FY 2017 and FY 2018. Agenda Item H-4b was a request for \$2.5 million to fund projected emergency response expenses in FY 2019.

Ms. KC said to the best of her knowledge, all fire billings for FY 2017 and FY 2018 had been processed through the incident billing unit. The NDF was still awaiting bills from some cooperators and approval of cost share agreements, but everything up to the last two months had been reviewed. She said two fires had started just today. Although the fire billing had not been started for those two fires, the division was entering the fire season somewhat prepared.

Ms. KC said the division processed many bills in the past three months. She said the cooperators were paying their bills quickly, so NDF received more

cooperator revenue than anticipated. Continuing, Ms. KC said the division had been working very closely with FEMA, because a number of fires qualified for Fire Management Assistance Grants (FMAG). She stated that FEMA understood the division's situation and processed FMAGs for four fires in the last month. She said FMAGs for two fires were processed with partial bills covering receipts the division had to date. Ms. KC said NDF was still missing cooperator receipts for some fires, but FEMA processed the FMAGs as receipts were received. She said FEMA had paid bills in full for two fires, and the division should receive funding for three fires very soon totaling approximately \$250,000. Ms. KC said \$5 million in grant funding was still being reviewed in Washington, D.C. The division hoped to receive those funds in FY 2018, but it was not guaranteed.

Ms. KC said thus far in the current fire season 118 fires that impacted 8,205 acres in Nevada. She said the fire season was beginning as expected due to a lot of grass fuels added by spring moisture. Approximately 92 percent of the fires in the current season were human caused, which was slightly below the number of human-caused fires during the same time last year. She said 10 fires were caused by lightning with minimal impact on acreage; however, that would probably increase in July and August if dry lightning occurred.

Assemblywoman Titus thanked the fire departments in the state for their rapid response to fires in her community of Smith Valley over the last two weeks. She said both of the fires in Smith Valley were human-caused. She said she spoke with an individual who was found guilty of starting a fire about their reimbursement to the state for fire suppression costs. Assemblywoman Titus inquired about the success rate of prosecuting individuals accused of starting wildfires. She also asked how successful the state had been at recouping fire suppression costs, and how those funds were used. Ms. KC said to the best of her knowledge, the state did not keep a record of that information. She said during the short time in her position, the division had not gone through the prosecution process. The Bureau of Land Management and U.S. Forest Service were responsible for prosecuting human-caused fires in their own jurisdictions; however, many of the human-caused fires in the current season were started in local jurisdictions with which the NDF had cooperative agreements. She said the division's Deputy Attorney General was currently working with the attorneys that represented the local jurisdictions concerning the legal process.

Assemblywoman Titus asked if the division could find out how much the state had been able to recoup for costs associated with human-caused fires, and if those funds were placed in the General Fund. Ms. KC said she would research the information and provide it to the Committee.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE
AGENDA ITEM H-4.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Edwards and Assemblyman Hambrick were not present for the vote.)

- I. REQUEST FOR ALLOCATION FROM THE IFC CONTINGENCY ACCOUNT (HIGHWAY FUND) PURSUANT TO NRS 353.268** (Note: IFC may approve a different amount for an allocation than the amount requested) – Nevada Department of Public Safety – Investigations Division – Request for an allocation of \$8,691 to cover a projected shortfall in Personnel Services for the remainder of Fiscal Year 2018. **RELATES TO AGENDA ITEM E. 134.**

This item was discussed in conjunction with Agenda Item E-134. Refer to testimony and motion for approval under Agenda Item E-134.

- J. STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES – DIVISION OF STATE LANDS – FUND TO PROTECT THE LAKE TAHOE BASIN –** Request for approval to reduce the amount authorized for water quality, erosion control and stream restoration and enhancement projects by \$3,706,659 and increase the amount authorized for enhancements of recreational opportunities by \$1,541,659, forest health, restoration and fuels management projects by \$738,000, control of sensitive species and improvement of wildlife habitat projects by \$127,000, and increase contingency money to carry out environmental improvement projects by \$1,300,000 to implement several high-priority projects that are currently in design, pursuant to Senate Bill 438, Section 2, subsection 2(b) (2011 Legislature). **RELATES TO AGENDA ITEM M. 9a.**

Agenda Items J and M-9a were discussed jointly.

Charlie Donohue, Division Administrator, Division of State Lands (State Lands), DCNR, introduced Elizabeth Kingsland, Lake Tahoe Program Manager, State Lands, DCNR.

Mr. Donohue said Agenda Item M-9a was the semiannual report to the Committee on the Environmental Improvement Program (EIP). Highlights within the report included the acquisition of a sensitive parcel in Douglas County totaling 7.6 acres immediately adjacent to Edgewood Creek. He said the Lake Tahoe resource team utilized excess coverage mitigation fees secured from the Tahoe Regional Planning Agency (TRPA) for the acquisition of the parcel. The team planned to restore coverage on the site for retirement purposes, as well as reserve a portion of the coverage to be made available to other private development projects for a fee. Mr. Donohue said the parcel would be retired and managed for conservation purposes.

Mr. Donohue said in the fall of 2017, the division worked closely with TRPA, the Lake Tahoe Invasive Species Coordinating Committee, and the Division of State Parks to address the Asian clam population at Sand Harbor boat launch facility. Six acres of

lakebed were currently being treated with bottom barrier mats to suffocate the clams and limit reproduction capability.

Mr. Donohue provided a status of the history of the Lake Tahoe bonds program. He said the agency had the ability to expend between \$4 million and \$4.5 million annually on project implementation. For the EIP to perform at an optimal level, sufficient funds were required to enter into funding agreements as well as contracts. An outstanding authority of \$6.5 million still remained from Senate Bill (S.B.) 438, with \$2.5 million slated to be sold by the Office of the State Treasurer in the fall of 2018. He hoped that in addition to the remaining \$4 million from S.B. 438, the agency would have the opportunity to work with the Interim Committee for the Oversight of the TRPA to sponsor legislation for an additional \$4 million in new authority.

Mr. Donohue said the remaining \$6.5 million in authority from S.B. 438 was the subject of Agenda Item J. At the time S.B. 438 was authorized in 2011, the division anticipated that the local governments would have a greater need for water quality funding to implement the Tahoe Basin Total Maximum Daily Load. He said, while water quality implementation had been occurring, the need for funds in other programmatic areas was now greater for forest restoration and recreation projects that were ready to go. Mr. Donohue said the program areas were included in S.B. 438. He said an approval of the division's request would also help meet the requirement of expending 85 percent of the bonds sold within a three-year period as outlined by the Office of the State Treasurer.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA
ITEM J.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick
was not present for the vote.)

K. ECONOMIC FORUM – Report required pursuant to NRS 353.228(1)(f) regarding the Economic Forum meeting conducted on June 8, 2018.

Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, LCB, said Linda Rosenthal, newly elected chairwoman of the Economic Forum, was unable to provide the statutorily required presentation of the Economic Forum's required interim meeting, held on June 8, 2018, to the IFC. He said Chairwoman Rosenthal asked Mr. Guindon, as staff to the Economic Forum, to make the presentation in her absence.

Mr. Guindon referred the Committee to the handout titled *Economic Forum Report to the Interim Finance Committee – June 2018*. He said the document summarized what occurred during the June 8, 2018, meeting of the Economic Forum. He said one of the most important provisions under A.B. 332 was the requirement for the Economic Forum to review the status of current actual fiscal year-to-date (YTD) collections compared to the Economic Forum's latest General Fund revenue forecast.

Mr. Guindon said at the June 8, 2018, meeting, the Economic Forum was provided with a status report of the actual General Fund revenue collections through May 2018 for the revenue sources, which the Economic Forum was responsible for forecasting. The status report encompassed about 9 to 11 months of the monthly revenue sources as well as the first three quarters of the quarterly revenue sources. Mr. Guindon directed the Committee to Table 2 located in the handout ([Exhibit G](#)). Table 2 displayed the General Fund revenues actual collections versus the forecast before the application of tax credits that were taken for the various programs. He said the Economic Forum was responsible for forecasting gross revenue, which was easier than trying to account for the various tax credit programs. Mr. Guindon said the yellow column displayed FY 2017 actual YTD, the orange column displayed FY 2018 actual YTD, and the green column displayed the fiscal YTD difference of the actual less the forecast for FY 2018 for the revenue source. He said the far right columns indicated dollar and percent differences.

Referring the Committee to the first revenue source listed under Major General Fund Revenues on Table 2, Mr. Guindon said the actual Sales and Use Tax collections through the first nine months of FY 2018 were approximately \$8.7 million below the forecast YTD, or about 1 percent, and the Gaming Percentage Fee Tax was about \$7.9 million above the forecast. He said Commerce Tax collections, located at the bottom of the Major General Fund Revenues section, were \$12.5 million for the fiscal YTD. He said it was important to note that the Commerce Tax for FY 2018 was not due until August 14, 2018, after the completion of the fiscal year business activity period. Mr. Guindon said the \$12.5 million most likely reflected taxes from FY 2017 that were collected and reported in FY 2018; however, the dollar figure could also include FY 2018 returns for entities that were going out of business or FY 2016 returns that were filed late.

Mr. Guindon said actual fiscal YTD collections for the state's seven major General Fund revenue sources, which accounted for about 75 percent of total General Fund revenues, were approximately \$27.2 million, or 1.1 percent above the forecast.

Mr. Guindon directed the Committee to the All Other General Fund Revenues section located on Table 2, which included approximately 80 different General Fund revenue sources and accounted for about 5 percent of the General Fund revenue. He said the All Other General Fund Revenues category was approximately \$28.1 million above the forecast fiscal YTD. One of those revenue sources, the Net Proceeds of Minerals Tax, was approximately \$18 million above the forecast. He said nearly all the collections for FY 2018 for this revenue source had been reported by the Department of Taxation and posted in the Office of the State Controller's system. Mr. Guindon noted that the Net Proceeds of Minerals Tax was difficult to forecast. He said total General Fund revenues before tax credits were approximately \$61 million, or about 2 percent above the forecast YTD.

Mr. Guindon said with regard to Commerce Tax credits, under the provisions established by the 2015 Legislature, businesses were allowed a credit equal to 50 percent of their Commerce Tax liability in the preceding fiscal year against their Modified Business Tax

(MBT) for the current fiscal year. He said the estimated credits that could be taken against the MBT in FY 2018 for the Commerce Tax paid in FY 2017 was approximately \$88 million; however, the actual amount of credits taken was only \$54.5 million through the first three quarters of FY 2018, which generated a net positive difference of approximately \$34 million. Although additional credits were expected to be taken in the fourth quarter of FY 2018, it was anticipated that the actual amount would remain significantly below the forecast. Mr. Guindon said the forecast for the Commerce Tax credits was too high, and as a result, the state would see a net positive effect after everything was accounted for at the end of the fiscal year.

Mr. Guindon directed the Committee to the Tax Credit Program section of Table 6 in the handout ([Exhibit G](#)). He said the Film Transferrable Tax Credit program was forecast at about \$11.7 million based on the actions of the 2017 Legislature; however, no film tax credits had been taken fiscal YTD through May 2018. He said the Film Transferrable Tax Credit program may result in a net positive impact to the General Fund if credits were not taken by the end of FY 2018.

Moving on to the Economic Development Transferrable Tax Credits program, Mr. Guindon noted that the tax credit program was only available to Tesla. The forecast for the Economic Development Transferrable Tax Credits program was approximately \$31.1 million; however, Tesla had taken \$73.8 million YTD. He thought that figure would remain stable, because it was unlikely that an audit would be done in time to award additional tax credits before the end of FY 2018. Mr. Guindon said the \$73.8 million in tax credits awarded to Tesla would result in a \$43 million net negative impact on the General Fund, because the figure was more than twice the amount forecast for that tax credit program. He noted that Tesla was very close to reaching \$3.5 billion in capital investment. In fact, he thought Tesla was about \$227 million short of that, which was only about \$6 million or \$7 million more in tax credits that could be earned by Tesla for capital investment. Therefore, Tesla tax credits with regard to capital investment would most likely be fully utilized in FY 2019. From there, Tesla would earn \$12,500 per qualified employee, which was only tested at the end of each fiscal year. He said the employee based tax credits would be a little easier to forecast and would have less impact on the General Fund.

Mr. Guindon said with regard to the Nevada New Markets Job Act tax credits, the gap between the forecast and actual YTD was expected to decrease in the final quarter of FY 2018. Moving on to the Education Choice Scholarship Tax Credits program, he said the forecast was \$26 million, \$6 million of which was from the original legislation and \$20 million was from legislation passed during the 2017 Legislative Session. He said approximately \$12.6 million in Education Choice Scholarship tax credits had been taken YTD. Historically, about \$4 million in Education Choice Scholarship tax credits were taken in the first three quarters. If the program continued on trend, the result would be a net positive impact on the General Fund for FY 2018. Mr. Guindon said it appeared there would be an overall wash of the tax credit programs for FY 2018 based on the positive and negative impacts.

Mr. Guindon noted that the material presented to the Economic Forum at the June 8, 2018, meeting, as well as the *Economic Forum Report to the Interim Finance Committee – June 2018*, could be located on the Economic Forum page of the Legislative Counsel Bureau’s website (<https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2017/Committee/1366/Meetings>). Mr. Guindon said staff would be working with Chairwoman Rosenthal over the next few months to establish the schedule of meetings for the fall of 2018 to prepare the unrestricted General Fund forecast for FY 2019, FY 2020 and FY 2021 that the Governor was required to use in preparing The Executive Budget for the 2019-21 biennium.

Assemblywoman Bustamante Adams noted the Live Entertainment Tax (LET) was below the forecast for the second time. She asked why the LET continued to underperform. Mr. Guindon said only LET collections were reported. Information such as the number of tickets sold or the price of tickets was not provided, which made it particularly difficult to forecast the Gaming portion of the LET. He said the LET was over projected for the 2017-19 biennium; therefore, the Economic Forum would reevaluate it when the forecast was prepared for the 2019-21 biennium in the fall of 2018. Mr. Guindon said during the 2015 Legislative Session, gaming and non-gaming LET were aligned, but they remained separate revenue sources. He noted that T-Mobile Arena was considered a non-gaming establishment rather than a gaming establishment for the purpose of the LET. Additionally, revenue for events such as the Electric Daisy Carnival, Burning Man and the Harvest Festival was also non-gaming revenue. He said it was easier to forecast and monitor the non-gaming side of the LET, because internet reports indicated how many tickets were sold and the cost of tickets. Mr. Guindon said professional sporting events involving a Nevada team were exempt from the LET; thus, Las Vegas Raider games would be exempt from the LET.

Assemblywoman Bustamante Adams said she did not think a professional Nevada team was in place when the revision was made to the LET concerning professional sporting events so it was good insight now that Nevada had a professional team.

Assemblywoman Bustamante Adams noted that the Cigarette Tax was also below forecast for the second time. She asked if people were still purchasing cigarettes in bulk. She also asked if more people were switching from smoking to vaping, because Nevada did not have a vaping tax. Mr. Guindon replied that cigarette pack sales were down, which resulted in lower than anticipated Cigarette Tax collections. In FY 2017, Nevada experienced an increase in Cigarette Tax collections, because California increased its cigarette tax. He thought Assemblywoman Bustamante Adams’ hypothesis concerning vaping was viable. He said it was likely the trend in smokers per capita was continuing to decline, or smokers were substituting vaping for cigarettes, both of which would contribute to the decline in cigarette consumption per capita. Mr. Guindon said the Cigarette Tax, like the LET, was over projected and would be closely examined as the 2019-21 biennium forecast was being prepared.

Assemblyman Frierson asked if the LET was based on the face value of the ticket or the sales price. Mr. Guindon replied that the LET was based on the face value of the ticket,

not the price it was resold for in the secondary market. He noted that tickets must indicate whether LET was included in the price.

- L. ACCEPTANCE OF GIFTS AND GRANTS PURSUANT TO NRS 353.335(2)(a) – ACCEPTED BY THE GOVERNOR BECAUSE OF AN EMERGENCY AS DEFINED IN NRS 353.263 OR FOR THE PROTECTION OF LIFE OR PROPERTY –** Department of Public Safety – Division of Emergency Management – Acceptance of Federal Emergency Management Agency grant funding of \$2,608,623 in Fiscal Year 2018 to cover emergency response and recovery costs associated with the January and February 2017 Northern Nevada flood events.

Justin Luna, Administrative Services Officer, Division of Emergency Management (DEM), DPS, said the DEM would be receiving additional Federal Emergency Management Agency (FEMA) grant funding to pass through reimbursements for eligible costs for jurisdictions affected during the January and February 2017 flood events.

There was no further discussion on this item.

M. INFORMATIONAL ITEMS.

The Committee expressed interest in hearing testimony on the following items: Agenda Items M-7a, Nevada Department of Corrections, and E-9a, Department of Conservation and Natural Resources, Division of State Lands.

Assemblyman Sprinkle requested further testimony on Agenda Item M-5d, DHHS, Division of Child and Family Services (DCFS).

Senator Kieckhefer requested further testimony on Agenda Item M-5a(2), DHHS, Aging and Disability Services Division.

Senator Denis request further testimony on Agenda Item M-8a, Department of Public Safety, Director's Office.

1. OFFICE OF THE GOVERNOR
 - a) State Energy Office – Notice to eliminate one full-time equivalent (FTE) position due to it no longer being necessary for current grant-related activities and the position being vacant for more than one year. **WITHDRAWN 5-31-18**
 - b) Governor's Finance Office – Budget Division
 - 1) Report on the study regarding credit card transactions and associated fees (letter of intent, 2017 Legislature).
 - 2) Quarterly report of the agency activity relating to contracting with current or former employees of the state, for the period ending March 31, 2018, pursuant to NRS 333.705(5).

There was on discussion on these items.

2. DEPARTMENT OF ADMINISTRATION

- a) Nevada State Library, Archives and Public Records – Notice to add four full-time equivalent (FTE) positions to provide continuing education support for library development and customer assistance. **WITHDRAWN 5-24-18.**
- b) Purchasing Division – Six-month report on preference for bid or proposal submitted by a local business owned by a veteran with a service-connected disability for the period ending March 31, 2018, pursuant to NRS 333.3368.

There was no discussion on this item.

3. NEVADA SYSTEM OF HIGHER EDUCATION – Quarterly report on the progress made by the University of Nevada, Reno School of Medicine in obtaining federal approval for the research program on the medical use of marijuana, as well as the status of activities and information received through the program, for the period ending March 31, 2018, pursuant to NRS 453A.600.

There was no discussion on this item.

4. DEPARTMENT OF BUSINESS AND INDUSTRY – Home Means Nevada – Quarterly report concerning the status of the Foreclosure Mediation Assistance program for the period ending March 31, 2018, pursuant to Senate Bill 490, Section 16(a) (2017 Legislature).

There was no discussion on this item.

5. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- a) Aging and Disability Services Division
 - 1) Quarterly report for the Senior Rx and Disability Rx Prescription Caseload Data for the period ending March 31, 2018, pursuant to NRS 439.630(1)(c).

There was no discussion on this item.

- 2) One-time report on the 5 percent rate increase effective June 1, 2018, for Supported Living Arrangements and Jobs and Day.

Senator Kieckhefer said he only became aware of the 5 percent rate increase for the Jobs and Day Training (JDT) and Supported Living Arrangements (SLA) programs during public comment earlier in the meeting today. It was his understanding the rate increase approved by the division was based on existing authority within those categories. He asked where that authority came from. Senator Kieckhefer also asked if there was a wait list for either program.

Senator Kieckhefer asked if the rate increase was intended to be a one-time occurrence. If so, he asked if providers were notified of the division's intention. He said the annualized cost in FY 2019 was almost

\$8 million. In order to include the increase in the budget, the division would require an enhancement of approximately \$17 million. He asked how the agency planned to fund the increase for the long term.

Dena Schmidt, Division Administrator, Aging and Disability Services Division (ADSD), Department of Health and Human Services (DHHS), said the division had not yet implemented the 5 percent rate increase. She said the ADSD wanted to discuss it with the Committee prior to taking action. The division had budget authority to implement the increase, which was a 5 percent aggregate increase. Ms. Schmidt said the ADSD would like to propose that the increase be retroactive from June 1, 2018, so providers would receive the increase beginning with June payments through the end of the fiscal year. She said the division had projections to maintain the increase. Ms. Schmidt said both programs had wait lists due to a decrease in access to those services, because many providers were struggling to retain staff.

Senator Kieckhefer asked if the wait lists were due to a lack of providers or if the programs were capped. Lisa Sherych, Deputy Administrator, ADSD, DHHS, replied that part of the reason for the wait lists was because there was not enough provider capacity for the network. Additionally, some individuals were behaviorally complex and required services beyond what current providers were able to appropriately support.

Melissa Lewis, Administrative Services Officer, ADSD, DHHS, said the SLA and JDT categories had surpluses due to the wait lists. The surplus in the JDT category was also caused by required certification from the Department of Employment, Training and Rehabilitation (DETR). She said DETR currently had a backlog of certification applications. Until the backlog was processed, JDT services could not be provided for clients.

Ms. Lewis said, with regard to the 5 percent rate increase, the division would ask to continue the increase in the agency budget request. She said the 5 percent increase would probably be part of the adjusted base budget; however, the division would verify that with the Governor's Finance Office and LCB Fiscal Division.

Senator Kieckhefer said, if the increase became effective in June 2018, it may impact whether the increase would be included in the base budget or as an enhancement. He said the 5 percent increase, when annualized over the biennium, was a significant dollar amount.

Senator Kieckhefer said he did not want to set unreasonable expectations. He said JDT and SLA services were critical, and he had been a proponent of growing and expanding those services over his legislative career; however, he wanted to be cautious.

- b) Division of Health Care Financing and Policy – Quarterly report on the Disproportionate Share Hospital Supplemental Payment Program for the period ending March 31, 2018, pursuant to NRS 422.390.

There was no discussion on this item.

- c) Division of Public and Behavioral Health – Progress report on the elimination of the inspection backlog and achieving compliance with the Centers for Medicare and Medicaid Services (CMS), as requested during the December 7, 2017, meeting of the Interim Finance Committee.

There was no discussion on this item.

- d) Division of Child and Family Services – Report on the specialized foster care programs implemented in Clark and Washoe Counties for the first six months of Fiscal Year 2018 (letter of intent, 2017 Legislature).

Assemblyman Sprinkle said originally he did not intend to request additional testimony on Agenda Item M-5d; however, issues were raised during public comment so he thought it was an opportune time for the Committee to receive an update regarding basic skills training (BST) in Clark County. Additionally, the Division of Child and Family Services (DCFS) could respond to remarks made during public comment.

Reesha Powell, Deputy Administrator, DCFS, DHHS, said the division submitted the outcome report concerning the specialized foster care (SFC) programs on January 31, 2018. The report indicated that the SFC programs were beneficial. She said only one SFC model was being used statewide in SFC homes as well as Advanced Foster Care homes, also referred to as Enhanced Foster Care homes in Washoe County. Ms. Powell said the single SFC model was working well. There was increased placement stability among SFC youth, which was good, because it was better for children to move less frequently. Children in the SFC program were also provided increased access to mental health services. Lastly, children and foster parents who were surveyed indicated they had more customer satisfaction. Ms. Powell said children and foster parents liked the new SFC model, and they felt supported and were more satisfied.

Ms. Powell said, with regard to BST, Washoe County did not incur any BST billing during the last six months. She said Clark County providers continued to bill for medically-necessary BST. Although some fiscal issues still needed to be resolved, she said the SFC programs were working well, and children were benefitting from the implementation of a single, statewide model.

In answer to a question from Assemblyman Sprinkle, Ross Armstrong, Division Administrator, DCFS, DHHS, replied that Medicaid oversaw BST billing.

Jill Marano, Assistant Director, Clark County Department of Family Services (CCDFS), recalled discussion at the December 2017 IFC meeting about the use of BST to fund SFC. She said there was concurrence statewide that BST was not an ideal funding solution for SFC; therefore, CCDFS had been collaborating with Medicaid for almost 18 months to identify an alternative funding source, and the agencies were close to making a determination. Additionally, the agencies were deliberating about whether a waiver or state plan amendment for Medicaid would be necessary. She said bundled and unbundled rates were also being discussed; however, minimal progress had been made in that area. Ms. Marano said it was the intention of CCDFS to transition to a different funding model for the Clark County SFC program in FY 2019; however, transition planning was delayed, because an alternate funding source had not been determined.

Ms. Marano said the public comments regarding the Clark County SFC program were concerning. The agency was under the impression that changes to the current funding model would not be implemented until a permanent, sustainable model was in place; however, CCDFS recently learned that was not the case. She said there was some concern about placement stability for SFC youth in Clark County.

Assemblyman Sprinkle said Ms. Marano's concern made him concerned as well. He asked if there was a contingency plan in place to ensure that SFC youth continued to receive services. He said there was a single statewide SFC system in place, which was outstanding compared to two years ago. Ms. Marano replied that CCDFS learned at a public workshop held on June 6, 2018, that changes would be made prior to having a sustainable plan in place; therefore, the agency had only recently begun to develop a contingency plan. She said CCDFS increased communications with Medicaid in an effort to understand what options were available, and determine if there was an opportunity to extend the status quo for this small population of approximately 350 youth. Ms. Marano said CCDFS was very interested in working with Medicaid to extend the present circumstances for the SFC population or expedite a solution.

Assemblyman Sprinkle said the comments made during public comment were legitimate concerns. He said he would be in contact with CCDFS to discuss the matter further.

6. DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION – Report on progress eliminating reliance on transfers from the Special Fund budget to support routine Unemployment Insurance (UI) operations (letter of intent, 2017 Legislature).

There was no discussion on this item.

7. DEPARTMENT OF CORRECTIONS

- a) Quarterly report on department-wide overtime for the period ending March 31, 2018, as requested during the August 24, 2017, meeting of the Interim Finance Committee.
- b) Director's Office – Quarterly report on the capacity issues and transfer of inmates out of state for the period ending March 31, 2018 (letter of intent, 2017 Legislature).

There was no discussion on these items.

8. DEPARTMENT OF PUBLIC SAFETY

- a) Director's Office – Quarterly report regarding the operations and effectiveness of the Nevada Office of Cyber Defense for the period ending March 31, 2018 (letter of intent, 2017 Legislature).

Senator Denis said he was pleased to see the quarterly report provided by the Office of Cyber Defense Coordination (OCDC). He thought it was important for the Committee to understand the responsibilities of the OCDC. He noted that the agency was doing more outreach in the community. Senator Denis said he appreciated that the OCDC provided a list of entities it had been in contact with, which included multiple government agencies.

Senator Denis noted that the OCDC had analyzed a number of network log entries. For example, in January 2018 approximately 14 billion network log entries were analyzed. He asked the agency for clarification.

Shaun Rahmeyer, Division Administrator, OCDC, DPS, replied that the information provided by the agency was specifically requested by the Committee. He said he worked closely with the State Chief Information Officer and Chief Information Security Officer to develop the figures listed in section 4 on page 258 in Volume IV of the meeting packet. The figures included the number of log entries identified by the state security apparatus ([Exhibit D](#)).

In answer to a question from Senator Denis, Bob Dehnhardt, Chief Information Security Officer, EITS, Department of Administration, said he provided the analytical information for the report at the request of Mr. Rahmeyer. He said the 42 billion log entries were individual entries, the vast majority of which were normal events. He said security incidents were individual events that manage security operations center analytics and correlation engines kicked out for further investigation. Events that were validated positive were incidents which required further investigation after review by OCDC analysts. Mr. Dehnhardt said incidents were ranked as informational, warning, critical or emergency, and the majority that were analyzed fell into the informational and warning areas. Between January and March 2018 there were 26 critical or emergency incidents, which were items such as malware, ransomware or viruses. He said those types

of incidents were forwarded to EITS, where staff identified which agency needed to respond to the incident. He said EITS also provided the agencies with assistance in resolving the matter. Incidents that were classified as warnings were not necessarily bad or malicious; however, EITS still analyzed those incidents and worked with agency information security officers to determine if further action was necessary.

Senator Denis said it did not appear there were any major issues such as security breaches. Mr. Dehnhardt confirmed there had been no security breaches during that time period. He said the state system was fairly clean compared to other organizations, and the number of actual incidents that transpired was lower than average. He said EITS had good reporting on the number of events provided to the manage security operations center. Senator Denis said a major security breach was always a concern.

Mr. Rahmeyer said the volume of events on a monthly basis was somewhat arbitrary. He said the volume of attacks did not correlate to whether the state system was safe from one month to the next. Just one incident could be a major data breach that could cost millions of dollars to remediate. Mr. Rahmeyer suggested that it might be in the interest of the Committee to reevaluate the actual information that was being analyzed by EITS Information Security staff to have a more tangible understanding of the threat environment. Senator Denis agreed. He said it was important to understand the threat environment to ensure the state's data was safe.

In answer to a question from Senator Denis, Mr. Rahmeyer replied that some entities had reached out to the OCDC, and in other cases, the agency initiated contact. He said the majority of agencies were excited to partner with the OCDC. He said there seemed to be a long-standing need for a more holistic approach to cyber security management across Nevada. Mr. Rahmeyer said there were a lot of disparate programs in the state. He said it was beneficial to have entities that could create more efficient processes, and limit investing in a variety of programs or wasting fiscal resources to reinvent something that was already established in another area of the state. Mr. Rahmeyer said he did a lot of outreach in the Clark County area with the Registrar of Voters through the last primary election season. He said a lot of entities in Clark County, specifically in Henderson, were interested in partnering with the OCDC and moving cyber security forward in the state.

Senator Denis said he appreciated that the OCDC was reaching out to private organizations in addition to state agencies. He said it was beneficial for organizations to have a resource available for cyber security matters, because it would help maintain a safe cyber environment for everyone.

Mr. Rahmeyer said the OCDC was very new. As the representative for the agency, he engaged with entities across the state in an advocacy role. He said,

as mentioned by Senator Denis, not everyone had the resources or technical capability to improve their security apparatus, particularly in the rural areas. Mr. Rahmeyer said it was his goal to create a voice for entities that did not have that ability.

- b) Division of Parole and Probation – Quarterly report on the status of the agency’s pre-sentence investigations backlog for the period ending March 31, 2018 (letter of intent, 2017 Legislature).

There was no discussion on this item.

- c) Division of Emergency Management – Emergency Assistance Account – Quarterly report on the status of the Emergency Assistance Account for the period ending March 31, 2018, pursuant to NRS 414.135(5).

There was no discussion on this item.

9. NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

- a) Division of State Lands – Semiannual report on the status of the state’s Environmental Improvement Program (EIP)/Fund to Protect the Lake Tahoe Basin (FPLTB) for the period ending December 31, 2017, pursuant to Chapter 514, Statutes of Nevada 1999. **RELATES TO AGENDA ITEM J.**
- b) Division of Environmental Protection – Notice to add one full-time equivalent (FTE) position due to a high volume of public documents related to the mining regulatory and reclamation program to be scanned and archived in accordance with the Governor’s Strategic Planning Framework.

There was no discussion on these items.

10. DEPARTMENT OF TRANSPORTATION – Report on the activities of the Advisory Committee on Transportational Storm Water Management and the implementation and efficacy of the department’s storm water program pursuant to NRS 408.439.

There was no discussion on this item.

11. LEGISLATIVE AUDITOR – Six-month report on the agency’s implementation of recommendations made by the Legislative Auditor pursuant to NRS 218G.270 – Department of Health and Human Services – Division of Public and Behavioral Health – Medical Marijuana Program.

There was no discussion on this item.

12. DEPARTMENT OF EDUCATION – Report summarizing Class Size Reduction Variances for the third and fourth quarters of the 2013-14 school year, pursuant to NRS 388.700(5). **RECEIVED AFTER SUBMITTAL DEADLINE, 6-4-18.**

There was no discussion on this item.

N. PUBLIC COMMENT.

There was no public comment.

Assemblywoman Carlton congratulated Jim Wells, Director, Governor's Finance Office, on his upcoming retirement and thanked him for his service to the state.

O. ADJOURNMENT.

Chair Woodhouse adjourned the meeting at 5:20 p.m.

Senator Joyce Woodhouse, Chair
Interim Finance Committee

Rick Combs, Director, Legislative Counsel Bureau,
and Secretary, Interim Finance Committee

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EXHIBIT G

EXHIBIT G



BRIAN SANDOVAL
Governor

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

**STATE OF NEVADA
DEPARTMENT OF TAXATION**

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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

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Carson City, NV 89706

marijuana@tax.state.nv.us



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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:	
Contact person who will provide information, sign, or ensure actions are taken pursuant to R092-17 & NRS 453D		
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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TABLE OF CONTENTS

1.	TERMS AND DEFINITIONS	4-7
2.	APPLICATION OVERVIEW	8
3.	APPLICATION TIMELINE	8
4.	APPLICATION INSTRUCTIONS.....	9
5.	APPLICATION REQUIREMENTS, FORMAT AND CONTENT.....	9
6.	APPLICATION EVALUATION AND AWARD PROCESS.....	17
ATTACHMENT A - RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION		21
ATTACHMENT B - OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM		24
ATTACHMENT C - OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM		25
ATTACHMENT D - REQUEST AND CONSENT TO RELEASE APPLICATION FORM		27
ATTACHMENT E – PROPOSED ESTABLISHMENT PROPERTY ADDRESSPROPERTY		29
ATTACHMENT F - MULTI-ESTABLISHMENT LIMITATIONS FORM.....		30
ATTACHMENT G - NAME, SIGNAGE AND ADVERTISING PLAN FORM.....		31
ATTACHMENT H - IDENTIFIER LEGEND FORM.....		32
ATTACHMENT I – FACILITY TYPE AND JURISDICTION FORM		33
ATTACHMENT J - FEDERAL LAWS AND AUTHORITIES.....		34



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1. TERMS AND DEFINITIONS

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

TERMS	DEFINITIONS
<i>Applicant</i>	Organization/individual submitting an application in response to this request for application.
<i>Awarded applicant</i>	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.
<i>Confidential information</i>	Any information relating to building or product security submitted in support of a recreational marijuana establishment license.
<i>Department</i>	The State of Nevada Department of Taxation.
<i>Edible marijuana products</i>	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.
<i>Enclosed, locked facility</i>	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.
<i>Establishment license approval to operate date</i>	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.
<i>Conditional establishment license award date</i>	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.
<i>Evaluation committee</i>	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.
<i>Excluded felony offense</i>	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.



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<i>Facility for the production of edible marijuana products or marijuana infused products</i>	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.
<i>Identifiers or Identified Criteria Response</i>	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.
<i>Marijuana Testing Facility</i>	Means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.
<i>Inventory control system</i>	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.
<i>Marijuana</i>	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.
<i>Marijuana-infused products</i>	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.
<i>May</i>	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.
<i>Medical use of marijuana</i>	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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Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
NAC	Nevada Administrative Code. All applicable NAC documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NAC/CHAPTERS.HTML
Non-Identified Criteria Response	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.
NRS	Nevada Revised Statutes. All applicable NRS documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NRS/ .
Pacific Time (PT)	Unless otherwise stated, all references to time in this request for applications and any subsequent award of license are understood to be Pacific Time.
Recreational marijuana retail store	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.
Recreational marijuana establishment	Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.
Recreational marijuana establishment agent	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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<i>Recreational marijuana establishment agent registration card</i>	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.
<i>Recreational marijuana establishment license</i>	A license that is issued by the Department pursuant to NRS 453D and R092-17 to authorize the operation of a recreational marijuana establishment.
<i>Shall</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<i>Should</i>	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.
<i>State</i>	The State of Nevada and any agency identified herein.
<i>Will</i>	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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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 OR 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"> Financial statements showing the resources of the applicant, both liquid and illiquid. 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. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 	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"> 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. The source of those liquid assets. 	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"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. <i>Please note: The content of this response must be in a non-identified 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"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 	30



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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified 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"> Building and construction plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. 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. 	

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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- 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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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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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"/> Corp.
	<input type="checkbox"/> LLC	<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:
------------	-------------	-----

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

Case No. 82014

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

TGIG, LLC; NEVADA HOLISTIC MEDICINE, LLC; GBS NEVADA PARTNERS, LLC; FIDELIS HOLDINGS, LLC; GRAVITAS NEVADA, LLC; NEVADA PURE, LLC; MEDIFARM, LLC; MEDIFARM IV LLC; THC NEVADA, LLC; HERBAL CHOICE, INC.; RED EARTH LLC; NEVCANN LLC, GREEN THERAPEUTICS LLC; AND GREEN LEAF FARMS HOLDINGS LLC,

Appellants,

v.

THE STATE OF NEVADA DEPARTMENT OF TAXATION

Respondent.

**RESPONDENTS' APPENDIX IN SUPPORT
OF ANSWERING BRIEF
Volume II of III**

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INDEX

Volume	Document	Page Nos
II.	Amended Trial Protocol No. 2, filed 7/2/20	381-401
III.	Department of Taxation's Brief in Support of its Motion for Directed Verdict, filed 8/11/20.....	571-581
II.	Department of Taxation's Joinder to Essence Entities' Motion to Dismiss or, Alternatively, Motion for Judgment on the Pleadings, filed 2/12/20	374-375
I.	Department of Taxation's Opposition to Motion for Preliminary Injunction, filed 5/9/19.....	1-250
II.	Department of Taxations' Opposition to Motion for Preliminary Injunction, filed 5/9/19.....	251-262
II.	Essence Entities' Motion to Dismiss or Alternatively, for Judgment on the Pleadings, filed 2/11/20.....	359-373
II.	ETW Plaintiffs' Third Amended Complaint, filed 1/29/20	263-358
II.	Record on Review in Accordance with the Nevada Administrative Procedure Act, filed 6/12/20.....	376-380
III.	Transcript of Proceedings, Bench Trial – Day 9, Volume II, dated 7/29/20	512-569
II.	Trial Exhibit 84 (2018 Retail Marijuana Store Application Scores and Rankings) admitted 7/10/2020.....	402-408
II.	Trial Exhibit 1007 (Department of letter regarding allocation of licenses for retail marijuana stores) admitted 7/20/2020.....	409-410

II.	Trial Exhibit 1008 (Scoring tool for Organizational Structure (identified)) admitted 7/21/2020.....	475-480
II.	Trial Exhibit 1009 (Scoring tool for care, quality safekeeping (non-identified)) admitted 7/21/2020	481-494
II.	Trial Exhibit 1010 (Scoring tool for adequacy of size-building plans (non-identified)) admitted 7/21/2020	495-499
III.	Trial Exhibit 1011 (Scoring tool likely impact on the community (non-identified)) admitted 7/21/2020	500-503
III.	Trial Exhibit 1012 (Scoring tool for taxes beneficial financial contributions (identified)) admitted 7/21/202	504-507
III.	Trial Exhibit 1013 (Scoring tool for financial resources (identified)) admitted 7/21/2020.....	508-511
II.	Trial Exhibit 1125 (Train the Trainer Training PowerPoint presentation) admitted 7/20/2020.....	411-474
III.	Trial Exhibit 1259 (Department of Taxation's letter to THC, Nevada, LLC denying application for marijuana distributor license) admitted 8/5/2020	570

DATED this 29th day of March, 2022.

AARON D. FORD
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By: /s/ Akke Levin
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Akke Levin (Bar No. 9102)
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 29th day of March, 2022, and e-served the same on all parties listed on the Court's Master Service List.

/s/ *Lucas Combs*

Lucas Combs, an employee of
the office of the Nevada Attorney General



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

STATE OF NEVADA DEPARTMENT OF TAXATION

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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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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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**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**

To be completed by the applicant for the physical address of the proposed marijuana establishment.

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 H IDENTIFIER LEGEND FORM

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 be 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 (use as many sheets as needed).

Criteria Response Identifier	Actual Person or Company (for Department verification outside the evaluation process)
Example: Owner A	John Smith
Example: Owner B	John Doe
Example: Construction Company A	Acme Construction



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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:

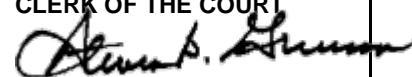
- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts,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



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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B
Consolidated with: A-785818
A-786357
A-786962
A-787035
A-787540
A-787726
A-801416

Dept No.: XI

THIRD AMENDED COMPLAINT

Plaintiffs ETW MANAGEMENT GROUP LLC (“ETW”), GLOBAL HARMONY LLC (“Global Harmony”), GREEN LEAF FARMS HOLDINGS LLC (“GLFH”), GREEN THERAPEUTICS LLC (“GT”), HERBAL CHOICE INC. (“Herbal Choice”), JUST QUALITY, LLC (“Just Quality”), LIBRA WELLNESS CENTER, LLC (“Libra”), ROMBOUGH REAL ESTATE INC. dba MOTHER HERB (“Mother Herb”), NEVCANN LLC (“NEVCANN”), RED EARTH LLC (“Red Earth”), THC NEVADA LLC (“THCNV”), ZION GARDENS LLC (“Zion”), and MMOF VEGAS RETAIL, INC. (“MMOF”) (collectively, the “Plaintiffs”), by and

1 through their undersigned counsel of record Adam K. Bult, Esq., Maximilien D. Fetaz, Esq., and
2 Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Adam R.
3 Fulton, Esq., of the law firm of Jennings & Fulton, Ltd., hereby file their Third Amended
4 Complaint against the STATE OF NEVADA, DEPARTMENT OF TAXATION (the "DOT");
5 CHEYENNE MEDICAL, LLC; CIRCLE S FARMS, LLC; CLEAR RIVER, LLC; COMMERCE
6 PARK MEDICAL L.L.C.; DEEP ROOTS MEDICAL LLC; ESSENCE HENDERSON, LLC,
7 ESSENCE TROPICANA, LLC; EUREKA NEWGEN FARMS LLC; GREEN THERAPEUTICS
8 LLC; GREENMART OF NEVADA NLV, LLC; HELPING HANDS WELLNESS CENTER,
9 INC.; LONE MOUNTAIN PARTNERS, LLC; NEVADA ORGANIC REMEDIES LLC;
10 POLARIS WELLNESS CENTER L.L.C.; PURE TONIC CONCENTRATES LLC; TRNVP098;
11 WELLNESS CONNECTION OF NEVADA, LLC; DOES 1 through 20 inclusive, and ROE
12 CORPORATIONS 19 through 20, inclusive, alleging and complaining as follows:

13 **PARTIES**

14 1. At all times relevant hereto, ETW is and was a limited liability company organized
15 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
16 Nevada.

17 2. At all times relevant hereto, Global Harmony is and was a limited liability
18 company organized and existing under the laws of the State of Nevada and authorized to do
19 business in Clark County, Nevada.

20 3. At all times relevant hereto, GLFH is and was a limited liability company
21 organized and existing under the laws of the State of Nevada and authorized to do business in
22 Clark County, Nevada.

23 4. At all times relevant hereto, GT is and was a limited liability company organized
24 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
25 Nevada.

26 5. At all times relevant hereto, Herbal Choice is and was a Nevada corporation
27 authorized to do business in Clark County, Nevada.

28 6. At all times relevant hereto, Just Quality is and was a limited liability company

1 organized and existing under the laws of the State of Nevada and authorized to do business in
2 Clark County, Nevada.

3 7. At all times relevant hereto, Libra is and was a limited liability company organized
4 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
5 Nevada.

6 8. At all times relevant hereto, Mother Herb is and was a Nevada corporation and
7 authorized to do business in Clark County, Nevada.

8 9. At all times relevant hereto, NEVCANN is and was a limited liability company
9 organized and existing under the laws of the State of Nevada and authorized to do business in
10 Clark County, Nevada.

11 10. At all times relevant hereto, Red Earth is and was a limited liability company
12 organized and existing under the laws of the State of Nevada and authorized to do business in
13 Clark County, Nevada.

14 11. At all times relevant hereto, THCNV is and was a limited liability company
15 organized and existing under the laws of the State of Nevada and authorized to do business in
16 Clark County, Nevada.

17 12. At all times relevant hereto, Zion is and was a limited liability company organized
18 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
19 Nevada.

20 13. At all times relevant hereto, MMOF is and was a Nevada corporation authorized to
21 do business in Clark County, Nevada.

22 14. At all times relevant hereto, the DOT is and was an agency and political
23 subdivision of the State of Nevada.

24 15. The true name and capacity of ROE CORPORATION 1 is Cheyenne Medical,
25 LLC. At all times relevant hereto, Cheyenne Medical, LLC is and was a limited liability
26 company organized and existing under the laws of the State of Nevada and authorized to do
27 business in Clark County, Nevada.

28 16. The true name and capacity of ROE CORPORATION 2 is Circle S Farms, LLC.

At all times relevant hereto, Circle S Farms, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

17. The true name and capacity of ROE CORPORATION 3 is Clear River, LLC. At all times relevant hereto, Clear River, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

18. The true name and capacity of ROE CORPORATION 4 is Commerce Park Medical L.L.C. At all times relevant hereto, Commerce Park Medical L.L.C. is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

19. The true name and capacity of ROE CORPORATION 5 is Deep Roots Medical LLC. At all times relevant hereto, Deep Roots Medical LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

20. The true name and capacity of ROE CORPORATION 6 is Essence Henderson, LLC. At all times relevant hereto, Essence Henderson, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

21. The true name and capacity of ROE CORPORATION 7 is Essence Tropicana, LLC. At all times relevant hereto, Essence Tropicana, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

22. The true name and capacity of ROE CORPORATION 8 is Eureka NewGen Farms LLC. At all times relevant hereto, Eureka NewGen Farms LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

23. The true name and capacity of ROE CORPORATION 9 is Green Therapeutics

1 LLC. At all times relevant hereto, Green Therapeutics LLC is and was a limited liability
2 company organized and existing under the laws of the State of Nevada and authorized to do
3 business in Clark County, Nevada.

4 24. The true name and capacity of ROE CORPORATION 10 is Greenmart of Nevada
5 NLV. At all times relevant hereto, Greenmart of Nevada NLV is and was a limited liability
6 company organized and existing under the laws of the State of Nevada and authorized to do
7 business in Clark County, Nevada.

8 25. The true name and capacity of ROE CORPORATION 11 is Helping Hands
9 Wellness Center, Inc. At all times relevant hereto, Helping Hands Wellness Center, Inc. is and
10 was a limited liability company organized and existing under the laws of the State of Nevada and
11 authorized to do business in Clark County, Nevada.

12 26. The true name and capacity of ROE CORPORATION 12 is Lone Mountain
13 Partners, LLC. At all times relevant hereto, Lone Mountain Partners, LLC is and was a limited
14 liability company organized and existing under the laws of the State of Nevada and authorized to
15 do business in Clark County, Nevada.

16 27. The true name and capacity of ROE CORPORATION 13 is Nevada Organic
17 Remedies LLC. At all times relevant hereto, Nevada Organic Remedies LLC is and was a limited
18 liability company organized and existing under the laws of the State of Nevada and authorized to
19 do business in Clark County, Nevada.

20 28. The true name and capacity of ROE CORPORATION 14 is Polaris Wellness
21 Center L.L.C. At all times relevant hereto, Polaris Wellness Center L.L.C. is and was a limited
22 liability company organized and existing under the laws of the State of Nevada and authorized to
23 do business in Clark County, Nevada.

24 29. The true name and capacity of ROE CORPORATION 15 is Pure Tonic
25 Concentrates LLC. At all times relevant hereto, Pure Tonic Concentrates LLC is and was a
26 limited liability company organized and existing under the laws of the State of Nevada and
27 authorized to do business in Clark County, Nevada.

28 30. The true name and capacity of ROE CORPORATION 16 is TRNVP098. At all

1 times relevant hereto, TRNVP098 is and was a limited liability company organized and existing
2 under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

3 31. The true name and capacity of ROE CORPORATION 17 is Wellness Connection
4 of Nevada, LLC. At all times relevant hereto, Wellness Connection of Nevada, LLC is and was a
5 limited liability company organized and existing under the laws of the State of Nevada and
6 authorized to do business in Clark County, Nevada.

7 32. Upon information and belief, Defendants identified in Paragraphs 15-31 were
8 granted conditional recreational dispensary licenses by the DOT on or after December 5, 2018
9 (the "Successful Applicants").

10 33. The true names and capacities, whether individual, corporate, associate or
11 otherwise, of Defendants Does 1-20, inclusive, and Roe Corporations 18-20, inclusive, are
12 unknown to Plaintiffs, which therefore sue said Defendants by such fictitious names. Plaintiffs
13 will amend this Third Amended Complaint to state the true names and capacities of said fictitious
14 Defendants when they have been ascertained.

15 34. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously
16 named Defendants are responsible in some manner for the occurrences herein alleged, and that
17 Plaintiffs' damages as herein alleged were proximately caused by Defendants' acts. Each
18 reference in this Complaint to "Defendant" or "Defendants," or a specifically named Defendant
19 refers also to all Defendants sued under fictitious names.

20 **JURISDICTION AND VENUE**

21 35. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,
22 § 6, NRS 4.370(2), NRS 30, and because the acts and omissions complained of herein occurred
23 and caused harm within Clark County, Nevada. Further, the amount in controversy exceeds
24 \$15,000.00.

25 36. Venue is proper in this Court pursuant to NRS 13.020(2)-(3).

26 **GENERAL ALLEGATIONS**

27 37. Plaintiffs incorporate and reallege Paragraphs 1 through 18 as though fully set
28 forth herein.

The Statutory Scheme Governing Retail Marijuana Licenses

38. In or around November 2016, the citizens of the State of Nevada approved a statutory ballot initiative that, *inter alia*, legalized the recreational use of marijuana and allowed for the licensing of recreational marijuana dispensaries.

39. The statutory scheme approved by the voters was codified in NRS Chapter 453D and vested authority for the issuance of licenses for retail marijuana dispensaries in the DOT.

40. NRS 453D.200(1) required the DOT to “adopt all regulations necessary or convenient to carry out the provisions of” that Chapter, including procedures for the issuance of retail marijuana licenses, no later than January 1, 2018.

41. NRS 453D.200(6) provides that the “[DOT] shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.”

42. NRS 453D.210(5)(b) required that for an application to be complete, the applicant must include the “physical address where the proposed marijuana establishment will operate” and the proposed marijuana establishment “is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property.”

43. NRS 453D.210(4)-(5) permits the DOT to issue a retail marijuana license only to those entities or persons that have submitted a complete license application to the DOT in compliance with regulations adopted by the DOT. The circumstances under which an application was to be considered complete were to be promulgated into regulations by the DOT, pursuant to NRS 453D.200(1)(a).

44. NRS 453D.210(5)(d) limits the number of retail marijuana licenses that may be issued by the DOT in the various counties across the State of Nevada.

45. However, NRS 453D.210(d)(5) provides that a county government may request that the DOT issue retail marijuana licenses above the limits set forth in NRS 453D.210(5)(d).

46. As mandated by NRS 453D.210(6), “[w]hen competing applications are submitted for a proposed retail marijuana store within a single county, the Department **shall use an**

1 **impartial and numerically scored competitive bidding process** to determine which application
2 or applications among those competing will be approved.” (emphasis added).

3 ***The DOT’s Adoption of Flawed Regulations that Do Not Comply with Chapter 453D***

4 47. On or around May 8, 2017, the DOT adopted temporary regulations pertaining to,
5 *inter alia*, the application for and the issuance of retail marijuana licenses.

6 48. The DOT continued preparing draft permanent regulations as required by NRS
7 453D.200(1) and held public workshops with respect to the same on July 24 and July 25, 2017.

8 49. On or around December 16, 2017, the DOT issued a Notice of Intent to Adopt
9 permanent regulations pursuant to the mandates of NRS 453D.200(1).

10 50. On or around January 16, 2018, the DOT held a public hearing on the proposed
11 permanent regulations (LCB File No. R092-17), which was attended by numerous members of
12 the public and marijuana business industry.

13 51. At the hearing, the DOT was informed that the licensure factors contained in the
14 proposed permanent regulations would have the effect of favoring vertically-integrated
15 cultivators/dispensaries and would result in arbitrary weight being placed upon certain
16 applications that were submitted by well-known, well-connected, and longtime Nevada families.

17 52. Despite the issues raised at the hearing, on or around January 16, 2018, the DOT
18 adopted the proposed permanent regulations in LCB File No. R092-17, which have since been
19 codified in NAC 453D (the “Regulations”).

20 53. As required by NRS 453D.200(1)(a), the DOT issued NAC 453D.268, which sets
21 forth a host of elements that are required to be submitted to form a complete application. NAC
22 453D.272 relates to the DOT’s method of evaluating competing retail marijuana license
23 applications.

24 54. NAC 453D.272(1) provides that where the DOT receives competing applications,
25 it will “rank the applications...in order from first to last based on compliance with the provisions
26 of this chapter and chapter 453D of NRS and on the content of the applications relating to”
27 several enumerated factors.

28 55. The factors set forth in NAC 453D.272(1) that are used to rank competing

1 applications (collectively, the “Factors”) are:

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

26 56. Aside from the Factors, there is no other competitive bidding process used by the
27 DOT to evaluate competing applications.

28 57. NAC 453D.272(5) provides that the DOT will not issue more than one retail

1 marijuana license to the same person, group of persons, or entity.

2 58. NRS 453D.210(4)(b) and NAC 453D.312(4) requires the DOT to provide the
3 specific reasons that any license application is rejected.

4 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

5 59. NRS 453D.210 required the DOT to accept applications and issue licenses only to
6 medical marijuana establishments for 18 months following the date upon which the DOT began
7 to receive applications for recreational dispensaries (the “Early Start Program”).

8 60. Upon information and belief, the DOT began to accept applications for
9 recreational dispensary licenses on or around May 15, 2017.

10 61. Beginning upon the expiration of the Early Start Program (or on or around
11 November 15, 2018), the DOT was to receive and consider applications for a recreational
12 dispensary license from any qualified applicant.

13 62. The DOT released the application package for non-Early Start Program applicants
14 on July 6, 2018 and required those applications to be returned in complete form between
15 September 7 and September 20, 2018. A true and correct copy of the application package is
16 attached hereto as **Exhibit 1**.

17 63. Following that release, the DOT revised the application package. However, the
18 DOT only notified certain applicants about the revised application package. A true and correct
19 copy of the revised application package is attached hereto as **Exhibit 2**.

20 64. Each of the Plaintiffs submitted a complete Application for issuance of a retail
21 marijuana license after the expiration of the Early Start Program during the period specified by
22 the DOT and some Plaintiffs submitted multiple Applications for different localities that
23 contained the same substantive information.

24 65. Each and every Application submitted by Plaintiffs was full, complete, and
25 contained substantive information and data for each and every factor outlined in the application
26 form.

27 66. Some of the information requested by the form application was “identified,” such
28 that the reviewer would know the identity of the applicant when scoring the same, while some

1 was unidentified, such that the reviewer would not know the identity of the applicant.

2 67. Each of the Successful Applicants also submitted an application to the DOT for
3 retail marijuana licenses.

4 68. However, some or all of the Successful Applicants' applications were not
5 complete when submitted to the DOT as required by NAC 453D.268.

6 69. For example, some or all of the Successful Applicants' applications failed to
7 include the following information:

- 8 a. The physical address where the proposed establishment was to be located,
9 which precluded a determination of the applicant's community impact;
- 10 b. The physical address of co-owned or affiliated marijuana establishments;
- 11 c. Disclosure of all owners, officers, and board members of the applicant
12 entity, allowing for inaccurate and manipulated diversity scoring;
- 13 d. Whether those persons were had served or was currently serving as an
14 owner, officer, or board member of another marijuana establishment;
- 15 e. Whether those persons were health care providers currently providing
16 written documentation for medical marijuana cards;
- 17 f. Whether those persons had an ownership or financial interest in any other
18 marijuana establishment; and
- 19 g. Documentation concerning the size of the proposed marijuana
20 establishment, including the building and floor plan.

21 70. In addition, some or all of the Successful Applicants' applications did not include
22 information required by NRS 453D.210(5), including, but not limited to:

- 23 a. The physical address where the establishment will operate;
- 24 b. The location of the proposed establishment in relation to schools; and
- 25 c. The identities of all owners, officers, and board members of the applicant
26 entity, such that a background check could be performed on each as
27 required by NRS 453D.200(6).

28 71. Further, the revised application submitted by certain applicants omitted the

1 statutorily required affirmation that the applicant either own the proposed location or have the
2 consent of the owner to operate a marijuana establishment. *See* NRS 453D.210(5)(b).

3 72. On or around December 5, 2018, despite submission of incomplete applications,
4 each of the Successful Applicants were awarded conditional recreational dispensary licenses by
5 the DOT.

6 73. On or around December 5, 2018, each of the Plaintiffs' Applications was denied
7 by identical written notices issued by the DOT.

8 74. Each of the written notices from the DOT does not contain any specific reasons
9 why the Applications were denied and instead states merely that "NRS 453D.210 limits the total
10 number of licenses that can be issued in each local jurisdiction. This applicant was not issued a
11 conditional license because it did not achieve a score high enough to receive an available
12 license..."

13 75. The DOT utilized the Factors in evaluating each of the Applications, assigning a
14 numerical score to each Factor, but the Factors are partial and arbitrary on their face.

15 76. In addition, the DOT's review and scoring of each of the Plaintiffs' Applications
16 was done errantly, arbitrarily, irrationally, and partially because, *inter alia*:

- 17 a. The Applications were complete but received zero scores for some Factors
18 and the only way to receive a zero score is to fail to submit information
19 with respect to that Factor;
- 20 b. The scoring method used by the DOT combined certain Factors into one
21 grouping, effectively omitting certain Factors from consideration;
- 22 c. Plaintiffs that submitted multiple Applications containing the same
23 substantive information and data for different localities received widely
24 different scores for certain Factors; and
- 25 d. The Plaintiffs received much higher scores for the unidentified data and
26 information when compared with the identified data and information
27 submitted.

28 77. Moreover, the highest scored Factor was the organizational structure of the

1 application and the DOT required that Plaintiffs disclose information about the identities of “key
2 personnel” with respect to that Factor, resulting in arbitrary and partial weight being placed upon
3 applications from well-known and well-connected applicants.

4 78. The DOT improperly engaged Manpower US Inc. (“Manpower”) to provide
5 temporary personnel for the review and scoring of submitted license Applications without
6 providing them with any uniform method of review to ensure consistency and impartiality, which
7 further contributed to the arbitrary and partial scoring of Plaintiff’s Applications.

8 79. Tthe DOT issued multiple licenses to the same entity or group of persons to the
9 exclusion of other applicants, including Plaintiffs, in violation of the DOT’s own Regulations.

10 **FIRST CLAIM FOR RELIEF**

11 **Violation of Substantive Due Process – The DOT**

12 80. Plaintiffs incorporate and reallege Paragraphs 1 through 69 as though fully set
13 forth herein.

14 81. The Fourteenth Amendment to the United States Constitution provides that “no
15 state [may] deprive any person of life, liberty, or property, without due process of law.”

16 82. Similarly, Article 1, Section 8 of the Nevada Constitution provides that “[n]o
17 person shall be deprived of life, liberty, or property, without due process of law.”

18 83. Plaintiffs are persons within the meaning of the United States and Nevada
19 Constitutions’ guarantees of due process.

20 84. NRS 453D.210 mandates the DOT to issue a retail marijuana license to an
21 applicant where a lesser number of complete applications are submitted than the statutory cap on
22 the number of licenses for a given county.

23 85. Similarly, where a greater number of complete applications are submitted than the
24 statutory cap on the number of licenses for a given county, NRS 453D.210 mandates the award of
25 licenses to those applicants who score the best in an impartial and numerically scored competitive
26 bidding process and does not permit the DOT to deny or reject all applications in such a process.

27 86. Impartial and numerically scored competitive bidding processes create a legitimate
28 claim of entitlement to award of a contract in the lowest bid or bidders, where that process

1 requires the award to the lowest bid or bidders and does not grant the awarding body unfettered
2 discretion to reject all bids.

3 87. Thus, the right to a retail marijuana license under a statutory scheme with limited
4 discretion and under an impartial and numerically scored competitive bidding process constitute
5 protectable property interests under the Nevada and United States Constitutions.

6 88. Here, either a lesser number of complete applications than the statutory cap were
7 submitted to the DOT due to the Successful Applicants' omission of information as described
8 herein or Plaintiffs were, or should have been, among the lowest bidders (i.e., the highest scoring
9 applicants) in the impartial and numerically scored bidding process.

10 89. As a result, Plaintiffs had a protected property interest in the approval of their
11 Applications and the issuance of a license to them.

12 90. The denials of Plaintiffs' complete Applications were arbitrary and irrational
13 because a lesser number of complete applications was received than the statutory cap, requiring a
14 license to be issued to the Plaintiffs.

15 91. Alternatively, the denials of Plaintiffs' Applications were based upon the Factors.

16 92. The Factors are arbitrary, irrational, and lack impartiality on their face.

17 93. As a result of the DOT's use of the Factors in denying Plaintiffs' Applications,
18 Plaintiffs have been deprived of their fundamental property rights in violation of the substantive
19 due process guarantees of the Nevada and United States Constitutions.

20 94. In addition, the Factors violate due process as applied to Plaintiffs' Applications
21 because, *inter alia*:

- 22 a. The Applications were complete but received zero scores for some Factors
23 and the only way to receive a zero score is to fail to submit information
24 with respect to that Factor;
- 25 b. The scoring method used by the DOT combined certain Factors into one
26 grouping, effectively omitting certain Factors from consideration;
- 27 c. Plaintiffs that submitted multiple Applications containing the same
28 substantive information and data for different localities received widely

different scores for certain Factors;

d. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;

e. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and

f. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

95. As a result of the DOT's arbitrary, irrational, and partial application of the Factors to Plaintiffs' applications, Plaintiffs have been deprived of their fundamental property rights in violation of the substantive due process guarantees of the Nevada and United States Constitutions, as applied.

96. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

97. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

SECOND CLAIM FOR RELIEF

Violation of Procedural Due Process – The DOT

98. Plaintiffs incorporate and reallege Paragraphs 1 through 81 as though fully set forth herein.

99. The Fourteenth Amendment to the United States Constitution provides that "no state [may] deprive any person of life, liberty, or property, without due process of law."

100. Similarly, Article 1, Section 8 of the Nevada Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

101. Plaintiffs are persons within the meaning of the United States and Nevada Constitutions' guarantees of due process.

102. NRS 453D.210 mandates the DOT to issue a retail marijuana license to an applicant where a lesser number of complete applications are submitted than the statutory cap on the number of licenses for a given county.

103. Similarly, where a greater number of complete applications are submitted than the statutory cap on the number of licenses for a given county, NRS 453D.210 mandates the award of licenses to those applicants who score the best in an impartial and numerically scored competitive bidding process and does not permit the DOT to deny or reject all applications in such a process.

104. Impartial and numerically scored competitive bidding processes create a legitimate claim of entitlement to award of a contract in the lowest bid or bidders, where that process requires the award to the lowest bid or bidders and does not grant the awarding body unfettered discretion to reject all bids.

105. Thus, the right to a retail marijuana license under a statutory scheme with limited discretion and under an impartial and numerically scored competitive bidding process constitute protectable property interests under the Nevada and United States Constitutions.

106. Here, either a lesser number of complete applications than the statutory cap were submitted to the DOT due to the Successful Applicants' omission of information as described herein or Plaintiffs were, or should have been, among the lowest bidders (i.e., the highest scoring applicants) in the impartial and numerically scored bidding process.

107. As a result, Plaintiffs had a protected property interest in the approval of their Applications and the issuance of a license to them.

108.

109. NRS 453D, in conjunction with the Regulations, govern the application for and the issuance of retail marijuana licenses within the State of Nevada.

110. Under those provisions, the DOT denied Plaintiffs' Applications for a retail marijuana license without notice or a hearing.

111. The denial notices sent by the DOT did not comply with NRS 453D.210(4)(b) or procedural due process because they do not specify the substantive reasons that Plaintiffs' Applications were denied.

112. Neither NRS 453D nor the Regulations provide for a mechanism through which Plaintiffs may have their Applications fully and finally determined, either before or after denial of the same.

113. As a result of the denial of Plaintiffs' Applications without notice or a hearing, Plaintiffs have been denied their right to procedural due process guaranteed by the Nevada and United States Constitutions.

114. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

115. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

THIRD CLAIM FOR RELIEF

Violation of Equal Protection – The DOT

116. Plaintiffs incorporate and reallege Paragraphs 1 through 93 as though fully set forth herein.

117. The Fourteenth Amendment to the United States Constitution provides that no "state [may]...deny to any person within its jurisdiction the equal protection of the laws."

118. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be "general and of uniform operation throughout the State."

119. Plaintiffs are persons within the meaning of the Nevada and United States Constitutions' guarantees of equal protection.

120. Plaintiffs have a fundamental right to engage in a profession or business, including that of retail marijuana establishments.

121. The DOT utilized the Factors when evaluating Plaintiffs' Applications.

122. The Factors violate equal protection on their face because they contain arbitrary, partial, and unreasonable classifications that bear no rational relationship to a legitimate governmental interest.

123. Specifically, these Factors favor those entities that already have retail marijuana licenses, to the detriment of those entities that have only a cultivation licenses, production license,

1 or no license at all.

2 124. Additionally, the Factors favor those entities that are vertically-integrated and
3 allow for the winners to easily vertically integrate and crowd out the market, thereby creating a
4 regulatory scheme that encourages a monopolistic market.

5 125. These Factors were promulgated by the DOT for the sake of economic
6 protectionism, and therefore the Factors are *de facto* irrational.

7 126. The Factors further violate equal protection on their face because they contain
8 arbitrary, partial, and unreasonable classifications that are not narrowly tailored to the
9 advancement of any compelling interest.

10 127. In addition, the application of the Factors to Plaintiffs' Applications violates equal
11 protection because it was arbitrary, partial and unreasonable, bearing no rational relationship to a
12 legitimate governmental interest and/or failing to be narrowly tailored to any compelling
13 government interest, to wit:

- 14 a. The Applications were complete but received zero scores for some Factors
15 and the only way to receive a zero score is to fail to submit information
16 with respect to that Factor;
- 17 b. The scoring method used by the DOT combined certain Factors into one
18 grouping, effectively omitting certain Factors from consideration;
- 19 c. Plaintiffs that submitted multiple Applications containing the same
20 substantive information and data for different localities received widely
21 different scores for certain Factors;
- 22 d. The Plaintiffs received much higher scores for the unidentified data and
23 information when compared with the identified data and information
24 submitted;
- 25 e. The DOT placed improper weight upon other applications simply because
26 they were submitted by well-known and well-connected persons; and
- 27 f. The DOT improperly utilized Manpower temporary workers who had little
28 to no experience in retail marijuana licensure to review the Applications

and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

128. As a result of the DOT's actions as set forth herein, Plaintiffs' rights to equal protection of the law were violated.

129. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

130. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment – All Defendants

131. Plaintiffs incorporate and reallege Paragraphs 1 through 105 as though fully set forth herein.

132. Under NRS 30.010, *et seq.*, the Uniform Declaratory Judgment Act, any person whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

133. Plaintiffs and the Successful Applicants submitted Applications for issuance of a retail marijuana license between September 7 and September 20, 2018.

134. Some Plaintiffs and the Successful Applicants submitted multiple Applications for different localities that contained the same substantive information.

135. NRS 453D.210(4)-(5)(a) permits the DOT to approve an application only if it is complete, as defined in NRS 453D.210(4)-(5)(a) and NAC 453D.268.

136. NRS 453D.210(5) sets forth additional objective factors that must be met in order for the DOT to approve a given application.

137. Further, the DOT enacted the Regulations, including the Factors and NAC 453D.272(5), pursuant to NRS 453D.200 and NRS 453D.210(6).

138. NRS 453D.210(6) requires that the Factors be "an impartial and numerically

1 scored competitive bidding process.”

2 139. Plaintiffs contend that:

- 3 a. Each and every Application submitted by Plaintiffs was full and complete
4 as defined by NRS 453D.210 and NAC 453D.268, and contained
5 substantive information and data for each and every factor outlined in the
6 application form;
- 7 b. Some or all of the Applications submitted by the Successful Applicants
8 were not full and complete as defined by NRS 453D.210 and NAC
9 453D.268, and failed to contain substantive information and data for each
10 and every factor outlined in the application form;
- 11 c. Some or all of the Applications submitted by the Successful Applicants
12 also omitted statutorily required information outlined in NRS 453D.200
13 and NRS 453D.210;
- 14 d. The denials of Plaintiffs’ Applications were based upon the Factors, which
15 were are arbitrary, irrational, and lack impartiality on their face;
- 16 e. As a result of the DOT’s use of the Factors in denying Plaintiffs’
17 Applications, Plaintiffs were arbitrarily denied retail marijuana licenses;
- 18 f. The Factors were not applied equally and fairly to all applicants;
- 19 g. The DOT violated NRS 453D.210(6) because the Factors are not impartial
20 and are instead partial, arbitrary, and discretionary, in contravention of
21 NRS 453D.210(6);
- 22 h. The DOT applied the Factors to their Applications in an arbitrary and
23 partial manner, including because:
- 24 i. The Applications were complete but received zero scores for some
25 Factors and the only way to receive a zero score is to fail to submit
26 information with respect to that Factor;
- 27 ii. The scoring method used by the DOT combined certain Factors into
28 one grouping, effectively omitting certain Factors from

- consideration;
- iii. Plaintiffs that submitted multiple Applications containing the same substantive information and data for different localities received widely different scores for certain Factors;
- iv. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;
- v. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and
- vi. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process;
- i. The DOT violated NRS 453D.210(6) because the Factor evaluation procedure is not a competitive bidding process, as required by NRS 453D.210(6);
- j. The DOT violated NAC 453D.272(5) because multiple retail marijuana licenses were issued to the same entity or group of persons, including certain of the Successful Applicants; and
- k. The denial notices sent by the DOT failed to comply with NRS 453D.210(4)(b) because they do not give the specific substantive reasons for the denial of Plaintiffs' Applications.
140. The DOT contends that:
- a. The Factors are compliant with NRS 453D.210(6);
- b. All applications it approved were complete and were done so in a valid manner; and

c. The denial notices complied with NRS 453D.210(4)(b).

141. The Successful Applicants contend that:

a. Each and every Application submitted by Successful Applicants was full, complete, and contained substantive information and data for each and every factor outlined in the application form and as required by NRS 453D.210; and

b. The Factors were applied equally and fairly to all applicants.

142. The foregoing issues are ripe for judicial determination because there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

143. Accordingly, Plaintiffs request a declaratory judgment from this Court that: (1) the Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive bidding process; (2) the DOT applied the Factors to Plaintiffs' Applications in a wholly arbitrary and irrational manner; (3) the Factors were not applied equally and fairly to all applicants; (4) several of the Successful Applicants had incomplete or deficient applications, making the grant of a conditional license to them void; (5) the DOT violated NAC 453D.272(5) by issuing multiple retail marijuana licenses to the same entity or group of persons; and (6) the denial notices did not comply with NRS 453D.210(4)(b).

FIFTH CLAIM FOR RELIEF

Petition for Judicial Review – All Defendants

144. Plaintiffs incorporate and reallege Paragraphs 1 through 116 as though fully set forth herein.

145. The DOT exceeded its jurisdiction when it misinterpreted and incorrectly applied the provisions of NRS 453D, NAC 453D and the related Nevada laws or regulations and improperly issued licenses to the applicants that do not merit licenses under the provisions of NRS 453D, NAC 453D, and the related Nevada laws or regulations.

146. Plaintiffs are aggrieved by the decision of the DOT to deny Plaintiffs' Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC

453D, and the related Nevada laws or regulations.

147. There is no provision in NRS 453D, NAC 453D, and the related Nevada laws or regulations allowing for an administrative appeal of the DOT's decision, and apart from injunctive relief, no plain, speedy, and adequate remedy for the DOT's improper actions.

148. Accordingly, Plaintiff petitions this Court for judicial review of the record on which the DOT's denials were based, and an order providing *inter alia*:

- a. A determination that the DOT's decision lacked substantial evidence;
- b. A determination that the DOT's denials are void *ab initio* for non-compliance with NRS 453D, NAC 453D, and the related Nevada laws or regulations; and
- c. Such other relief as is consistent with those determinations.

149. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

SIXTH CLAIM FOR RELIEF

Petition for Writ of Mandamus – The DOT

150. Plaintiffs incorporate and reallege Paragraphs 1 through 122 as though fully set forth herein.

151. 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.

152. The DOT 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 Applications for no legitimate reason.

153. The DOT acted arbitrarily and capriciously in the denial by performing and/or failing to perform the acts set forth supra, and because, *inter alia*:

- a. The DOT lacked substantial evidence to deny Plaintiffs' Applications; and
- b. The DOT denied Plaintiffs' Applications in order to approve the

Applications of other competing applicants without regard to the merit or completeness of Plaintiffs' Applications and the lack of merit or completeness of the Applications of other competing applicants.

154. These violations of the DOT's legal duties were arbitrary and capricious actions that compel this Court to issue a writ of mandamus directing the DOT to review Plaintiffs' Applications on their completeness and merits and/or approve them.

155. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law, including but not limited to NRS 34.270.

WHEREFORE, Plaintiffs pray for relief from this Court as follows:

1. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' substantive due process rights, as set forth herein;
2. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' procedural due process rights, as set forth herein;
3. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' rights to equal protection of the law, as set forth herein;
4. For relief in the form of a judgment from this Court that: (1) the Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive bidding process; (2) the DOT applied the Factors to Plaintiffs' Applications in a wholly arbitrary and irrational manner; (3) the Factors were not applied equally and fairly to all applicants; (4) several of the Successful Applicants had incomplete applications or deficient, making the grant of a conditional license to them void; (5) the DOT violated NAC 453D.272(5) by issuing multiple retail marijuana licenses to the same entity or group of persons; and (6) the denial notices did not comply with

1 NRS 453D.210(4)(b);

2 5. For judicial review of the record and history on which the denial of those
3 Applications was based;

4 6. For the issuance of a writ of mandamus;

5 7. For preliminary and permanent injunctive relief to cease, abate, and/or
6 remedy the unconstitutional, unlawful, and/or wrongful conduct as
7 described herein;

8 8. For an award of attorneys' fees and costs in bringing the instant action as
9 provided by applicable law; and

10 9. For any additional relief this Court deems just and proper.

11 DATED this 29th day of January, 2020.

12 BROWNSTEIN HYATT FARBER SCHRECK, LLP

13 /s/ Adam K. Bult

14 ADAM K. BULT, ESQ., Nevada Bar No. 9332

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16 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

17 JENNINGS & FULTON, LTD.

18 ADAM R. FULTON, Esq., Nevada Bar No. 11572

19 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **THIRD AMENDED COMPLAINT** to be submitted electronically for filing and/or service with the Eighth Judicial District Court's Electronic Filing System on the 29th day of January, 2020, to the following:

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EXHIBIT 1



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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



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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: _____	
Contact person who will provide information, sign, or ensure actions are taken pursuant to R092-17 & NRS 453D		
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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TABLE OF CONTENTS

1.	TERMS AND DEFINITIONS	4-7
2.	APPLICATION OVERVIEW	8
3.	APPLICATION TIMELINE	8
4.	APPLICATION INSTRUCTIONS.....	9
5.	APPLICATION REQUIREMENTS, FORMAT AND CONTENT.....	9
6.	APPLICATION EVALUATION AND AWARD PROCESS.....	17
ATTACHMENT A - RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION		21
ATTACHMENT B - OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM		24
ATTACHMENT C - OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM		25
ATTACHMENT D - REQUEST AND CONSENT TO RELEASE APPLICATION FORM		27
ATTACHMENT E – PROPOSED ESTABLISHMENT PROPERTY ADDRESSPROPERTY		29
ATTACHMENT F - MULTI-ESTABLISHMENT LIMITATIONS FORM.....		30
ATTACHMENT G - NAME, SIGNAGE AND ADVERTISING PLAN FORM.....		31
ATTACHMENT H - IDENTIFIER LEGEND FORM.....		32
ATTACHMENT I – FACILITY TYPE AND JURISDICTION FORM		33
ATTACHMENT J - FEDERAL LAWS AND AUTHORITIES.....		34



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1. TERMS AND DEFINITIONS

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

TERMS	DEFINITIONS
<i>Applicant</i>	Organization/individual submitting an application in response to this request for application.
<i>Awarded applicant</i>	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.
<i>Confidential information</i>	Any information relating to building or product security submitted in support of a recreational marijuana establishment license.
<i>Department</i>	The State of Nevada Department of Taxation.
<i>Edible marijuana products</i>	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.
<i>Enclosed, locked facility</i>	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.
<i>Establishment license approval to operate date</i>	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.
<i>Conditional establishment license award date</i>	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.
<i>Evaluation committee</i>	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.
<i>Excluded felony offense</i>	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.



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<i>Facility for the production of edible marijuana products or marijuana infused products</i>	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.
<i>Identifiers or Identified Criteria Response</i>	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.
<i>Marijuana Testing Facility</i>	Means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.
<i>Inventory control system</i>	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.
<i>Marijuana</i>	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.
<i>Marijuana-infused products</i>	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.
<i>May</i>	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.
<i>Medical use of marijuana</i>	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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Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
NAC	Nevada Administrative Code. All applicable NAC documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NAC/CHAPTERS.HTML
Non-Identified Criteria Response	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.
NRS	Nevada Revised Statutes. All applicable NRS documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NRS/ .
Pacific Time (PT)	Unless otherwise stated, all references to time in this request for applications and any subsequent award of license are understood to be Pacific Time.
Recreational marijuana retail store	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.
Recreational marijuana establishment	Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.
Recreational marijuana establishment agent	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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<i>Recreational marijuana establishment agent registration card</i>	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.
<i>Recreational marijuana establishment license</i>	A license that is issued by the Department pursuant to NRS 453D and R092-17 to authorize the operation of a recreational marijuana establishment.
<i>Shall</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<i>Should</i>	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.
<i>State</i>	The State of Nevada and any agency identified herein.
<i>Will</i>	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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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 OR 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"> Financial statements showing the resources of the applicant, both liquid and illiquid. 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. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 	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"> 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. The source of those liquid assets. 	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"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. <i>Please note: The content of this response must be in a non-identified 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"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 	30



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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified 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"> Building and construction plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. 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. 	

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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- 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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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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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"/> Corp.
	<input type="checkbox"/> LLC	<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:
------------	-------------	-----

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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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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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

To be completed by the applicant for the physical address of the proposed marijuana establishment.

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 2



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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



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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:	
Contact person who will provide information, sign, or ensure actions are taken pursuant to R092-17 & NRS 453D		
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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TABLE OF CONTENTS

1.	TERMS AND DEFINITIONS	4-7
2.	APPLICATION OVERVIEW	8
3.	APPLICATION TIMELINE	8
4.	APPLICATION INSTRUCTIONS.....	9
5.	APPLICATION REQUIREMENTS, FORMAT AND CONTENT.....	9
6.	APPLICATION EVALUATION AND AWARD PROCESS.....	17
ATTACHMENT A - RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION		21
ATTACHMENT B - OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM		24
ATTACHMENT C - OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM		25
ATTACHMENT D - REQUEST AND CONSENT TO RELEASE APPLICATION FORM		27
ATTACHMENT E - PROPOSED ESTABLISHMENT PROPERTY ADDRESS.....		29
ATTACHMENT F - MULTI-ESTABLISHMENT LIMITATIONS FORM.....		30
ATTACHMENT G - NAME, SIGNAGE AND ADVERTISING PLAN FORM.....		31
ATTACHMENT H - IDENTIFIER LEGEND FORM.....		32
ATTACHMENT I - FACILITY TYPE AND JURISDICTION FORM		33
ATTACHMENT J - FEDERAL LAWS AND AUTHORITIES.....		34



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1. TERMS AND DEFINITIONS

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

TERMS	DEFINITIONS
<i>Applicant</i>	Organization/individual submitting an application in response to this request for application.
<i>Awarded applicant</i>	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.
<i>Confidential information</i>	Any information relating to building or product security submitted in support of a recreational marijuana establishment license.
<i>Department</i>	The State of Nevada Department of Taxation.
<i>Edible marijuana products</i>	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.
<i>Enclosed, locked facility</i>	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.
<i>Establishment license approval to operate date</i>	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.
<i>Conditional establishment license award date</i>	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.
<i>Evaluation committee</i>	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.
<i>Excluded felony offense</i>	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.



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<i>Facility for the production of edible marijuana products or marijuana infused products</i>	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.
<i>Identifiers or Identified Criteria Response</i>	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.
<i>Marijuana Testing Facility</i>	Means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.
<i>Inventory control system</i>	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.
<i>Marijuana</i>	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.
<i>Marijuana-infused products</i>	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.
<i>May</i>	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.
<i>Medical use of marijuana</i>	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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Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
NAC	Nevada Administrative Code. All applicable NAC documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NAC/CHAPTERS.HTML
Non-Identified Criteria Response	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.
NRS	Nevada Revised Statutes. All applicable NRS documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NRS/ .
Pacific Time (PT)	Unless otherwise stated, all references to time in this request for applications and any subsequent award of license are understood to be Pacific Time.
Recreational marijuana retail store	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.
Recreational marijuana establishment	Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.
Recreational marijuana establishment agent	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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<i>Recreational marijuana establishment agent registration card</i>	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.
<i>Recreational marijuana establishment license</i>	A license that is issued by the Department pursuant to NRS 453D and R092-17 to authorize the operation of a recreational marijuana establishment.
<i>Shall</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<i>Should</i>	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.
<i>State</i>	The State of Nevada and any agency identified herein.
<i>Will</i>	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. 74 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. Narrative descriptions 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. Agent cards will not be accepted.

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). License fee is not required until a conditional license has been awarded.

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 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. 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 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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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 OR 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 including key personnel 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"> Financial statements showing the resources of the applicant, both liquid and illiquid. 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. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 	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"> 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. The source of those liquid assets. 	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"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. <i>Please note: The content of this response must be in a non-identified 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"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 	30



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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified 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"> Building plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. 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. 	

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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- 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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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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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 if the applicant owns property or has secured a lease or other property agreement (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
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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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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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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



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

STATE OF NEVADA
DEPARTMENT OF TAXATION

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

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Reno, Nevada 89502
Phone: (775) 687-9999
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LAS VEGAS OFFICE
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555 E. Washington Avenue
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Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
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Henderson, Nevada 89074
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Fax: (702) 486-3377

ATTACHMENT E
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

To be completed by the applicant for the physical address of the proposed marijuana establishment if the applicant owns property or has secured a lease or other property agreement.

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 H IDENTIFIER LEGEND FORM

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 be 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 (use as many sheets as needed).

Criteria Response Identifier	Actual Person or Company (for Department verification outside the evaluation process)
Example: Owner A	John Smith
Example: Owner B	John Doe
Example: Construction Company A	Acme Construction



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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:

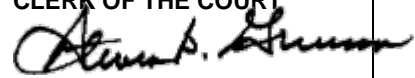
- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts,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



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Attorneys for Integral Associates LLC

d/b/a Essence Cannabis Dispensaries,

Essence Tropicana, LLC, Essence Henderson, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: 19-A-787004 B

Dept. No.: XI

CONSOLIDATED WITH:

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

**ESSENCE ENTITIES' MOTION TO
DISMISS OR, ALTERNATIVELY,
MOTION FOR JUDGMENT ON THE
PLEADINGS OF ALL PLAINTIFFS'
OPERATIVE COMPLAINTS**

HEARING REQUESTED

I. INTRODUCTION

Plaintiffs,¹ all unsuccessful applicants for recreational marijuana dispensary licenses, have sued the State of Nevada Department of Taxation (“DOT”) and all successful license winners seeking to invalidate the winners’ conditional licenses or, alternatively, overthrow the entire application process—unless, of course, the Court will order the State to grant *them* a license, in

¹ “Plaintiffs” refers to all parties that have filed complaints, amended complaints, or complaints in intervention in the consolidated action.

1 which case the Plaintiffs apparently do not consider the State's procedure fundamentally flawed
2 after all. However, Plaintiffs lack standing to challenge the entire application process and cannot
3 seek revocation of the winners' licenses, including the conditional licenses conferred on the Essence
4 Entities.

5 At most, Plaintiffs have standing to challenge the State's treatment of their own applications
6 but only to the limited extent that the State made nondiscretionary, ministerial scoring errors.
7 Plaintiffs do not have standing to contest any alleged deficiencies in the Essence Entities'
8 applications. The right to police the completeness, scoring, or accuracy of the Essence Entities'
9 application belongs solely to the DOT. Plaintiffs cannot usurp the State's authority or standing to
10 do so. On the contrary, the Nevada Supreme Court has made clear that unsuccessful applicants
11 cannot pursue traditional judicial review and may only advance appropriate claims of mandamus
12 or declaratory relief limited to their own applications. But Plaintiffs causes of action go far beyond
13 a desired rescoring of their own applications. Plaintiffs seek to undermine the entire process and
14 overtly or covertly try to invalidate the licenses granted to others. Thus, the Court should dismiss
15 or grant judgment on the pleadings to the extent that Plaintiffs seek to invalidate or revoke the
16 Essence Entities' conditional licenses or otherwise nullify the entire licensing process.

17 **II. STATEMENT OF FACTS**

18 All Plaintiffs dispute the State's denial of their recreational marijuana dispensary
19 application and contest the award of conditional licenses to the winners, including the Essence
20 Entities. All Plaintiffs assert a substantially similar cause of action hodgepodge:

21 **ETW:²**

22 First Claim for Relief: Violation of Substantive Due Process;

23 Second Claim for Relief: Violation of Procedural Due Process;

24 Third Claim for Relief: Violation of Equal Protection;

25 Fourth Claim for Relief: Declaratory Judgment;

26
27 ² ETW Management Group LLC, Global Harmony LLC, Green Leaf Farms Holdings LLC,
28 Green Therapeutics LLC, Herbal Choice Inc., Just Quality, LLC Libra Wellness Center, LLC
Rombough Real Estate Inc. dba Mother Herb, NEVCANN LLC, Red Earth LLC, THC Nevada
LLC, Zion Gardens LLC, MMOF Vegas Retail, Inc.

Fifth Claim for Relief: Petition for Judicial Review; and

Sixth Claim for Relief: Petition for Writ of Mandamus – The DOT.

Serenity:³

First Claim for Relief: Violation of Civil Rights; Due Process: Deprivation of Property (US Const. Amendment XIV; Nev. Const. Art. 1, Sec. 1, 8; Title 42 USC 1983);

Second Claim for Relief: Violation of Civil Rights; Due Process: Deprivation of Liberty;

Third Claim for Relief: Violation of Civil Rights; Equal Protection;

Fourth Claim for Relief: Petition for Judicial Review;

Fifth Claim for Relief: Petition for Writ of Mandamus; and

Sixth Claim for Relief: Declaratory Relief.

Rural Remedies, LLC:

First Claim for Relief: Declaratory Relief;

Second Claim for Relief: Permanent Injunction;

Third Claim for Relief: Violation of 42 USC 1983 by Defendants Jorge Pupo and Dept of Taxation;

Fourth Claim for Relief: Petition for Judicial Review;

Fifth Claim for Relief: Petition for Writ of Mandamus; and

Sixth Claim for Relief: Unjust Enrichment

Nevada Wellness Center, LLC:

First Claim for Relief: Declaratory Relief;

Second Claim for Relief: Injunctive Relief;

Third Claim for Relief: Violation of Procedural Due Process;

Fourth Claim for Relief: Violation of Substantive Due Process;

³ Serenity Wellness Center, LLC, TGIG, LLC, NuLeaf Incline Dispensary, LLC, Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC Tryke Companies Reno, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada, LTD., Nevada Pure, LLC, Medifarm, LLC, Medifarm IV, LLC

1 Fifth Claim for Relief: Equal Protection Violation;
2 Sixth Claim for Relief: Petition for Judicial Review;
3 Seventh Claim for Relief: Petition for Writ of Mandamus;
4 Eighth Claim for Relief: Violation of 42 USC 1983 by Defendants Jorge Pupo and
5 Dept of Taxation;
6 Ninth Claim for Relief: Unjust Enrichment.

7 **MM Development Company, Inc. & LivFree Wellness, LLC:**

8 First Claim for Relief: Declaratory Relief;
9 Second Claim for Relief: Injunctive Relief;
10 Third Claim for Relief: Violation of Procedural Due Process;
11 Fourth Claim for Relief: Violation of Substantive Due Process;
12 Fifth Claim for Relief: Equal Protection Violation;
13 Sixth Claim for Relief: Petition for Judicial Review; and
14 Seventh Claim for Relief: Petition for Writ of Mandamus.

15 **Strive Wellness of Nevada, LLC:**

16 First Claim for Relief: Declaratory Relief;
17 Second Claim for Relief: Petition for Judicial Review;
18 Third Claim for Relief: Petition for Writ of Certiorari;
19 Fourth Claim for Relief: Petition for Writ of Mandamus; and
20 Fifth Claim for Relief: Petition for Writ of Prohibition.

21 **Natural Medicine LLC:**

22 First Claim for Relief: Declaratory Relief;
23 Second Claim for Relief: Petition for Judicial Review;
24 Third Claim for Relief: Petition for Writ of Certiorari;
25 Fourth Claim for Relief: Petition for Writ of Mandamus; and
26 Fifth Claim for Relief: Petition for Writ of Prohibition.

Compassionate Team of Las Vegas LLC:

First Claim for Relief: Declaratory Relief;
Second Claim for Relief: Injunctive Relief;
Third Claim for Relief: Violation of Procedural Due Process;
Fourth Claim for Relief: Violation of Substantive Due Process;
Fifth Claim for Relief: Equal Protection Violation;
Sixth Claim for Relief: Petition for Judicial Review; and
Seventh Claim for Relief: Petition for Writ of Mandamus.

DH Flamingo:⁴

First Claim for Relief: Petition for Judicial Review;
Second Claim for Relief: Petition for Writ of Certiorari;
Third Claim for Relief: Petition for Writ of Mandamus; and
Fourth Claim for Relief: Petition for Writ of Prohibition.

High Sierra Holistics, LLC:

First Claim for Relief: Declaratory Relief;
Second Claim for Relief: Injunctive Relief;
Third Claim for Relief: Violation of Procedural Due Process;
Fourth Claim for Relief: Violation of Substantive Due Process;
Fifth Claim for Relief: Equal Protection Violation;
Sixth Claim for Relief: Petition for Judicial Review; and
Seventh Claim for Relief: Petition for Writ of Mandamus.

Qualcan, LLC:

First Claim for Relief: Declaratory Relief;
Second Claim for Relief: Injunctive Relief;
Third Claim for Relief: Intentional Interference with Prospective Economic
Advantage; and

⁴ D.H. Flaming, Inc. dba The Apothecary Shoppe, Clark Natural Medicinal Solutions LLC dba NuVeda, Nye Natural Medicinal Solutions LLC dba NuVeda, Clark NMSD LLC, dba NuVeda, Inyo Fine Cannabis Dispensary LLC dba Inyo Fine Cannabis Dispensary, Surterra Holdings, Inc.

Fourth Claim for Relief: Intentional Interference with Contractual Relations.

III. ARGUMENT

A. Standards for Motion to Dismiss and Judgment on the Pleadings.

A court may grant a motion to dismiss when the plaintiff fails "to state a claim upon which relief can be granted." NRCP 12(b)(5). Dismissal for failure to state a claim is therefore appropriate when the plaintiff cannot prove any set of facts that would entitle it to relief. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 671-73 (2008). In considering a motion to dismiss, the Court must accept the non-moving party's factual allegations as true and construe them in its favor. *Id.* at 227, 181 P.3d at 672. The Court is not, however, bound to accept as true a legal conclusion couched as a factual allegation. *See id*; *see also Bailey v. Gates*, 52 Nev. 432, 437, 290 P. 411, 412 (1930) ("Good pleading requires that . . . the facts relating to the matter be averred, leaving the court to draw the legal conclusion...").

Similarly, "[j]udgment on the pleadings is proper when, as determined from the pleadings, the material facts are not in dispute and the moving party is entitled to judgment as a matter of law." *Lawrence v. Clark Cty.*, 127 Nev. 390, 393, 254 P.3d 606, 608 (2011). The Court also accepts all well-pled factual allegations as true. *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017). Thus, "[a] judgment on the pleadings is reviewed in the same manner as a dismissal under NRCP 12(b)(5)." *Id.*; *see also Reynolds v. Fed. Nat. Mortg. Ass'n*, No. 68376, 2016 WL 1616604, at *2 (Nev. App. Apr. 19, 2016) (district court's earlier denial of a motion to dismiss did not foreclose a later motion for judgment on the pleadings).

B. All Plaintiffs Lack Standing to Attack the Entire Licensing Process and Cannot Seek to Revoke the Winners' Licenses.

A challenge to a plaintiff's standing may be brought through a motion to dismiss or a motion for judgment on the pleadings. *See Linthicum v. Rudi*, 122 Nev. 1452, 1458, 148 P.3d 746, 750 (2006) (affirming dismissal under NRCP 12(b)(5) based on lack of standing). A lack of standing "may be raised at any stage of the proceedings." *Newdow v. U.S. Congress*, 328 F.3d 466, 484 (9th Cir. 2003) (citing *United States v. Viltrakis*, 108 F.3d 1159, 1160 (9th Cir. 1997)).

1 Nevada courts require "an actual justiciable controversy as a predicate to judicial relief."
2 *Stockmeier v. Nevada Dep't of Corr. Psychological Review Panel*, 122 Nev. 385, 393, 135 P.3d
3 220, 225 (2006) (quotation marks omitted) abrogated on other grounds by *Buzz Stew, LLC v. City*
4 *of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008). Under either the federal or state constitutions,
5 standing is a prerequisite to "an actual justiciable controversy." *See id.* at 392, 135 P.3d at 225.
6 The doctrine of standing is part of the constitutional "case or controversy" or, simply, the "case"
7 requirement. *Id.* at 392-93, 135 P.3d at 225; Nev. Const. art. 6, §§ 4, 6. There is also a
8 "subconstitutional 'prudential' element." *In re Amerco Derivative Litig.*, 127 Nev. 196, 213, 252
9 P.3d 681, 694 (2011). Standing is central to the separation of powers. Nev. Const. art. 3, § 1. It
10 "is founded in concern about the proper – and properly limited – role of the courts in a democratic
11 society." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

12 To possess standing, a plaintiff must allege three things: (1) injury in fact; (2) causation;
13 and (3) redressability. *Stockmeier*, 122 Nev. at 392, 135 P.3d at 225. "[T]he 'irreducible
14 constitutional minimum' of standing requires that a plaintiff has suffered an 'injury in fact' that is
15 not merely conjectural or hypothetical, that there be a causal connection between the injury and the
16 conduct complained of, and that it must be likely, as opposed to merely speculative, that the injury
17 will be redressed by a favorable [court] decision." *Miller v. Ignacio*, 112 Nev. 930, 936 n.4, 921
18 P.2d 882, 885 n.4 (1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 61 (1992)).

19
20
21
22 **i. Plaintiffs have not pled an "injury in fact."**

23 An "injury in fact" is one involving "'an invasion of a judicially cognizable interest' that is
24 'concrete and particularized'" and "'actual or imminent.'" *Grasso v. Umpqua Bank*, 399 P.3d 332,
25 2017 WL 2815091, at *1 (Nev. 2017) (unpublished disposition) (quoting *Bennett v. Spear*, 520 U.S.
26 154, 167 (1997)). "[A] party must show a personal injury and not merely a general interest that is
27 common to all members of the public." *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894
28 (2016).

1 Here, Plaintiffs have not alleged a judicially cognizable "injury in fact" to confer standing.
2 Plaintiffs have not won a license and they do not have any property interest or any entitlement to a
3 license. *See Malfitano v. Cty. of Storey By & Through Storey Cty. Bd. of Cty. Comm'rs*, 133 Nev.
4 276, 282, 396 P.3d 815, 820 (2017); *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 246,
5 871 P.2d 320, 325 (1994). Their purported "injury" is not concrete, particularized, actual, or
6 imminent. Plaintiffs' alleged injuries hinge on the speculation that they *might* have obtained a
7 license if the State's process was different or if alleged irregularities did not occur. But the courts
8 have long recognized that such speculative future outcomes – those dependent upon future
9 decisions by third parties – are too conjectural or hypothetical to establish standing. *Little v. KPMG*
10 *LLP*, 575 F.3d 533, 540 (5th Cir. 2009) (citing *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26,
11 41 (1976)); *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019). Simply put, applicants
12 who hypothesize that they maybe could have won a license under a different process or
13 circumstances lack standing to challenge the licenses issued to others.
14

15
16 Plaintiffs' novel "market share" theory of standing based on existing operations fares no
17 better. Governmental licensing systems are not designed to insulate business from competition,
18 and competitors lack standing to challenge the granting of licenses to competitors. *See Nat'l Wine*
19 *& Spirits Corp. v. Indiana Alcohol & Tobacco Comm'n*, 945 N.E.2d 182, 187 (Ind. Ct. App. 2011)
20 (affirming dismissal for lack of standing because a liquor licensee has no property interest in the
21 certificate of compliance issued to its competitors); *S. Wine & Spirits of Am., Inc. v. Div. of Alcohol*
22 *& Tobacco Control*, No. 11-CV-04175-NKL, 2012 WL 123051, at *3 (W.D. Mo. Jan. 17, 2012)
23 ("economic interest in preventing loss of . . . market share is essentially a desire to avoid the
24 competition . . . [s]uch an interest fails to rise to the level of a legally protectable interest, for
25 purposes of standing.").

26
27 For instance, in *Hauer v. BRDD of Indiana, Inc.*, 654 N.E.2d 316, 319 (Ind. Ct. App. 1995),
28 the court reversed a trial court's entry of an injunction against the state fire marshall on behalf of

1 existing fireworks wholesalers. The existing license holders sought and obtained an injunction
2 against the state fire marshall for issuing certificates of compliance to competitors who they alleged
3 were not complying with the law. As the court of appeals explained in reversing and vacating the
4 injunction against the government, the regulatory scheme is "not designed to protect the market
5 share" of existing operators. *Id.* at 319. The court noted that the criteria under the state's licensing
6 laws is meant to protect the public from the potential dangers of fireworks, it is not to protect
7 existing operators from competition and thus they have no legally protected property interest in the
8 certificates issued to competitors. *Id.*

10 Likewise, Plaintiffs do not possess standing even if the State's application process is
11 analogized to a "competitive bidding" process. Such processes are also designed to benefit the
12 public, not individual competitors. *Independent Enterprises Inc. v. Pittsburgh Water & Sewer*
13 *Authority*, 103 F.3d 1165, 1178 (3d Cir. 1997) is an example. There, a bidder sued for (among other
14 things) procedural and substantive due process violations after its bids were disqualified and
15 rejected. *Id.* at 1177. As with Plaintiffs, the bidder sought an injunction barring the governmental
16 authority from awarding three contracts to other bidders forcing the authority to accept the bidder.
17 *Id.* The Third Circuit held that the bidder had no cognizable property interest. It reasoned that
18 statutes that require contracts be awarded to the lowest responsible bidder "are for the benefit of
19 the public only and do not give a low bidder standing to challenge a municipality's failure to award
20 a contract in accordance with the statute." *Id.* at 1178. A disappointed bidder "sustains no personal
21 injury which entitles him to redress in court." *Id.* (quotations omitted). Rather, the public as a whole
22 sustains the injury, if any. *Id.*

25 In this case, Nevadans as a whole sustain any injury from alleged noncompliance with the
26 recreational marijuana ballot initiative that they enacted. Plaintiffs do not suffer any special injury
27 as applicants. Plaintiffs' allegations are identical to the public's generic interest in a "fair"
28 application process. Without a cognizable legally protectable interest that is tangible and distinct,

1 Plaintiffs are no different than other members of the public. But such a widely shared interest
2 provides no grounds for standing. *See Blanding*, 52 Nev. 52, 280 P. at 650 (party whose interest in
3 the right asserted that does not differ from that of the general public lacks standing). Plaintiffs
4 cannot rest on the citizenry's generalized interest or hijack the State's sovereign interest in licensing
5 only qualified applicants.

6
7 Plaintiffs' alleged loss of market share is also too hypothetical or conjectural. Additional
8 licensees will not necessarily cause Plaintiffs to lose market share. The Plaintiffs are still free to
9 compete and are just as likely to increase their market share as they are to lose it. *See In re ANC*
10 *Rental Corp.*, 57 F. App'x 912, 914-15 (3d Cir. 2003) (applying bankruptcy standing principles).
11 And, Plaintiffs fail to allege their current respective market shares or the anticipated amount of lost
12 market share from new licensees. Generic or conclusory allegations about market positioning is not
13 enough to properly plead standing. *See QSGI, Inc. v. IBM Glob. Fin.*, No. 11-80880-CIV, 2012 WL
14 1150402, at *3 (S.D. Fla. Mar. 14, 2012) (citing *CBC Cos. v. Equifax, Inc.*, 561 F.3d 569, 571–72
15 (6th Cir. 2009) (allegations of “restricting competition”, “decreasing options” and “increasing ...
16 costs” insufficient to establish antitrust standing); *George Haug Co. v. Rolls Royce Motor Cars*
17 *Inc.*, 148 F.3d 136, 140 (2d Cir. 1998) (affirming dismissal for lack of antitrust standing where
18 “Plaintiff has failed to plead its own market share” or the “market share purportedly absorbed by”
19 the defendant's alleged co-conspirator); *Glades Pharms., LLC v. Murphy*, No. 1:06–CV–0940, 2006
20 WL 3694625, at *3 (N.D. Ga. Dec. 12, 2006) (dismissing complaint, noting that “[t]he complaint
21 makes no mention of how many competitors are in the [relevant] market or why [defendant's]
22 entrance into the market would ‘reduce prices’”)).

23
24
25 Finally, Plaintiffs cannot rely on NRS Chapter 598A for standing. Each Plaintiff must
26 demonstrate standing for each cause of action and each form of requested relief. 13A Charles Alan
27 Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3531 (3d ed.). Plaintiffs have not
28 asserted a cause of action under NRS Chapter 598A. Therefore, Plaintiffs cannot abstractly rely on

1 its provisions to manufacture a protectable interest. Plaintiffs have not alleged a cognizable injury
2 in fact.

3 **ii. Plaintiffs did not sufficiently plead causation.**

4 “The more difficult step in the standing inquiry is establishing that these injuries fairly can
5 be traced to the challenged action of the defendant.” *Duke Power Co. v. Carolina Envtl. Study Grp.*,
6 Inc., 438 U.S. 59, 74 (1978). Plaintiffs must allege that their injuries are “connect[ed] with the
7 conduct of which [they] complain.” *Trump v. Hawai’i*, 138 S. Ct. 2392, 2416 (2018). Plaintiffs
8 have not alleged that the unlawful regulations or purported errors in the application process *caused*
9 their applications to be unsuccessful. Nor have they alleged that the supposedly flawed regulations
10 and process *caused* their competitors to win licenses. By way of example, Plaintiffs have not
11 alleged that the State's purported failure to conduct background checks on all owners prevented the
12 State from discovering disqualifying information — there is certainly no such allegation about the
13 Essence Entities.
14

15
16 The same is true for Plaintiffs' complaints about the alleged failure to list “addresses” or
17 "locations" for the outlets on the applications. Plaintiffs have not pled how any such deficiency
18 *caused* the State to reject their applications or *caused* the State to highly rank the Essence Entities.
19 This is especially true under the Nevada Supreme Court’s decision in *Nuleaf CLV Dispensary, LLC*
20 *v. State Department of Health & Human Services, Division of Public & Behavioral Health*, 134
21 Nev. Adv. Op. 17, 414 P.3d 305 (2018). *Nuleaf* held that nothing precludes the State from
22 considering marijuana applicants who do not yet meet the location requirement because there is an
23 opportunity to satisfy the requirement before final approval. *Id.* at 310. Under *Nuleaf*, the alleged
24 location issues could not have been the cause of Plaintiffs’ failures or the Essence Entities’ success.
25

26 But even if Plaintiffs’ allegations are accepted as true, the simultaneous occurrence of two
27 events does not create the inference that they are related. Plaintiffs’ rejections and the State’s
28 alleged missteps are not automatically tied together. Correlation is not causation even for purposes

1 of notice pleading. Plaintiffs do not allege facts hinting that they would have won *but* for their
2 purported claims of error.

3 Significantly, Plaintiffs have not alleged that they would not fall within the class of
4 successful applicants that they seek to enjoin. Many Plaintiffs failed to disclose all of their owners
5 and neglected to comply with the same address and building requirements that they advance.
6 Causation for standing is often found missing with “plaintiffs who were ineligible for desired
7 benefits, or failed to satisfy some precondition; [or] plaintiffs whose injury was due to their own
8 fault.” 13A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3531.5
9 (3d ed.). Plaintiffs’ own deficiencies caused their purported injuries; the award of licenses to the
10 Essence Entities did not.
11

12 **iii. Plaintiffs’ Requested Relief will not Redress their Supposed Injuries.**

13 Plaintiffs’ implicit and explicit requests to invalidate the Essence Entities’ licenses and
14 overturn the entire application process will not redress the alleged injuries stemming from the denial
15 of Plaintiffs’ own applications. Indeed, tossing out the entire application process would exacerbate
16 Plaintiffs’ injuries because there is no guarantee that they will ever be awarded a license in a future
17 round of applications. Invalidating any of the winners’ conditional licenses will not ensure that any
18 particular Plaintiff obtains a license, in no small part because the statutory window to award licenses
19 is closed. *See* NRS 453D.210 (requiring the state to “[i]ssue the appropriate license if the license
20 application is approved” within 90 days).
21

22 The only cause of action that might redress Plaintiffs injuries are mandamus if there are
23 scoring errors on *their own applications*. *See State Dep’t of Health & Human Servs. , Div. of Pub.*
24 *& Behavioral Health Med. Marijuana Establishment Program v. Samantha Inc.*, 133 Nev. 809,
25 816, 407 P.3d 327, 332 (2017) (“The APA does not afford Samantha the right of review it sought,
26 and Samantha did not plead or establish a basis for declaratory, mandamus, or other equitable
27 relief.”).
28

1 Yet Plaintiffs do not allege any ministerial arithmetic or typo mistakes on their applications.
2 At most, Plaintiffs bemoan the State's discretionary scoring decisions. But matters of discretion are
3 not proper subjects of mandamus. The remedy of mandamus is only available "against an officer . . .
4 where he refuses to perform *a definite present duty imposed upon him by law.*" *State ex rel. Conklin*
5 *v. Buckingham*, 58 Nev. 450, 453, 83 P.2d 462, 463 (1938) (emphasis added). The duty must be
6 ministerial, not discretionary. *State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev. 158, 161,
7 321 P.3d 882, 884 (2014); *State ex rel. Mighels v. Eggers*, 36 Nev. 364, 367, 136 P. 104, 105 (1913);
8 *see also Veil v. Bennett*, 131 Nev. 179, 183, 348 P.3d 684, 687-88 (2015) (Pickering, J., concurring
9 in result only with Hardesty and Cherry, JJ.). Before mandamus will issue, the duty required by
10 law must also be "clear" and "specific." *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603,
11 637 P.2d 534, 536 (1981) ("clear"); *Douglas Cty. Bd. of Cty. Comm'rs v. Pederson*, 78 Nev. 106,
12 108, 369 P.2d 669, 671 (1962) ("specific").

13 Plaintiffs' building and scoring complaints are not proper subjects for mandamus because
14 they inherently involve discretion. The point values were entirely within the graders' judgment
15 based on their review and assessment of the applications. The State had no "clear," "specific," or
16 ministerial duty to award any particular score on any category to any particular applicant. Plaintiffs
17 do not offer any objective mathematical or scrivener's errors. Accordingly, even mandamus cannot
18 redress Plaintiffs' non-ministerial, discretionary scoring gripes. Plaintiffs' requested relief seeking
19 to invalidate the winners' conditional licenses or throw out the entire process will not remedy their
20 alleged injuries.

21 . . .

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27

28

1 **IV. CONCLUSION**

2 Because the Plaintiffs lack standing, the Essence Entities respectfully request that the Court
3 dismiss or grant judgment on the pleadings on all of the Plaintiffs' operative complaints to the
4 extent that Plaintiffs seek to revoke the Essence Entities' conditional licenses or invalidate the entire
5 application process.

6 DATED this 11th day of February, 2020.

7 PISANELLI BICE PLLC

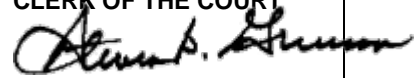
8
9 By: /s/ Todd L. Bice
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14 *Dispensaries, Essence Tropicana, LLC, Essence*
15 *Henderson, LLC*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 11th day of February, 2020, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **ESSENCE ENTITIES' MOTION TO DISMISS OR, ALTERNATIVELY, MOTION FOR JUDGMENT ON THE PLEADINGS OF ALL PLAINTIFFS' OPERATIVE COMPLAINTS** to all parties listed on the Court's Master Service List.

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC



JOIN
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DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE DOT

Case No. A-19-787004-B
Dept. No. XI

CONSOLIDATED WITH:

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

**DEPARTMENT OF TAXATION'S JOINDER TO ESSENCE ENTITIES' MOTION
TO DISMISS OR, ALTERNATIVELY, MOTION FOR JUDGMENT ON THE
PLEADINGS OF ALL PLAINTIFFS' OPERATIVE COMPLAINTS**

The State of Nevada ex. rel. the Department of Taxation, by and through its counsel,
joins in Essence Entities' Motion to Dismiss or, Alternatively, Motion for Judgment on the
Pleadings of All Plaintiffs' Operative Complaints.

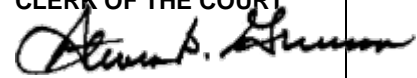
Respectfully submitted February 12, 2020.

AARON D. FORD
Attorney General

By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel

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



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DISTRICT COURT

CLARK COUNTY, NEVADA

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A-19-787035-C
A-19-787540-W
A-19-787726-C
A-19-801416-B

**RECORD ON REVIEW IN ACCORDANCE WITH THE
NEVADA ADMINISTRATIVE PROCEDURE ACT**

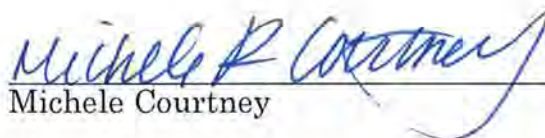
Defendant State of Nevada, the Department of Taxation ("Department") submits the
Record on Review in accordance with NRS 233B.131(1)(b). The Index of the Record on
Review is as follows:

CERTIFICATION OF RECORD ON REVIEW

1. I, Michele Courtney, am an administrative assistant III with the Cannabis Compliance Board/Marijuana Enforcement Division of the State Department of Taxation ("Department").

2. In September 2018, I participated in collecting the Recreational Marijuana Establishment License Applications ("Applications"). All Applications were submitted on jump drives, the full content of which was uploaded on a restricted computer drive with the Department. I hereby certify that the redacted and excerpted Applications contained in this record and listed on the index below are true copies or excerpts of copies of the Applications we have on file for the listed applicants. This certification is conditioned on these applicants' representations that the redacted and excerpted Applications they reproduced to the Department are true and correct redacted or excerpted copies of their original Applications.

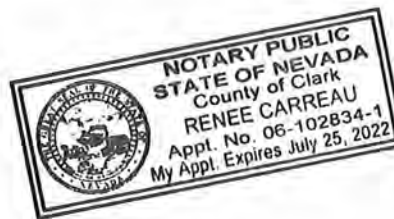
3. The scorecards for all Applications are also maintained on a restricted computer drive with the Department. I hereby certify that the scorecards included in this record and listed on the index below are true and correct copies of the scorecards maintained with the Department.


Michele Courtney

State of Nevada)
) SS:
County of Clark)

SUBSCRIBED AND SWORN to before me
this 12th of June, 2020.


NOTARY PUBLIC, in and for Clark
County, State of Nevada



INDEX		
Part	Bates Nos.	Description
AEO	NUVEDA0000001-473	Clark Natural Medical Solutions ID
AEO	NUVEDA0000474-614	Clark Natural Medical Solutions Non-ID
AEO	NUVEDAQ0001088-1228	Clark NMSD
AEO	Compassionate Exhibit 1-0001-1838	Compassionate Team of Las Vegas
1	Compassionate Exhibit 2-0001-0004	Compassionate Team of Las Vegas
AEO	Compassionate Exhibit 3 - DOT 24010-24275	Compassionate Team of Las Vegas
AEO	DOT-ETW 1-139	ETW Management Group
1	DOT-Fidelis 1 - 338	Fidelis Holdings, LLC 280 ID
2	DOT-Fidelis 613 - 950	Fidelis Holdings, LLC 281 ID
3	DOT-Fidelis 1225 - 1562	Fidelis Holdings, LLC 282 ID
4	DOT-Fidelis 1837 - 2174	Fidelis Holdings, LLC 283 ID
5-6	DOT-GBSNV 1 - 316	GBS Nevada Partners dba ShowGrow 402 ID
7-8	DOT-GBSNV 502 - 817	GBS Nevada Partners dba ShowGrow 403 ID
9-10	DOT-GBSNV 1003 - 1318	GBS Nevada Partners dba ShowGrow 404 ID
11-12	DOT-GBSNV 1504 - 1819	GBS Nevada Partners dba ShowGrow 405 ID
13-14	DOT-GBSNV 2005 - 2320	GBS Nevada Partners dba ShowGrow 406 ID
AEO	DOT-GLOBAL 1-299	Global Harmony, LLC
15-16	DOT-Gravitas 1-556	Gravitas Nevada Ltd., Application 238 ID
17-18	DOT-Gravitas 788-1343	Gravitas Nevada Ltd., Application 239 ID
AEO	DOT-GreenLeaf 1-448	Green Leaf Farms Holdings, LLC, Application 223 ID
AEO	DOT-GreenTherapeutics 1-637	Green Therapeutics, LLC
AEO	DOT-HerbalChoice 1-93	Herbal Choice, Inc.
AEO	DOT-HighSierra 1-245	High Sierra Holistics 303 ID
AEO	DOT-HighSierra 246-484	High Sierra Holistics 303 Non-ID
AEO	DOT-HighSierra 485-729	High Sierra Holistics 304 ID
AEO	DOT-HighSierra 730-968	High Sierra Holistics 304 Non-ID
AEO	DOT-HighSierra 969-1213	High Sierra Holistics 305 ID
AEO	DOT-HighSierra 1214-1452	High Sierra Holistics 305 Non-ID
AEO	INYO00000001-760	Inyo Fine Cannabis Dispensary
AEO	INYO0000768-770	Inyo Fine Cannabis Dispensary
AEO	DOT-JustQuality 1-243	Just Quality, LLC
AEO	DOT-Libra 1-333	Libra Wellness Center, LLC
19-22	DOT-LivFree 1-2162	Live Free, Application 292 Combined ID and Non-ID
23-25	DOT-LivFree 2163-4317	Live Free, Application 293 Combined ID and Non-ID
26-28	DOT-LivFree 4318-6472	Live Free, Application 294 Combined ID and Non-ID
29-30	DOT-LivFree 6473-8596	Live Free, Application 295 ID
31-33	DOT-LivFree 8597-10693	Live Free, Application 296 Combined ID and Non-ID
34-36	DOT-LivFree 10694-12790	Live Free, Application 297 Combined ID and Non-ID
	Not Disclosed	MediFarm IV, LLC
AEO	DOT-MM 1-1228	MM Development Company, Inc., Application 284
AEO	DOT-MM 1229-2493	MM Development Company, Inc., Application 285
AEO	DOT-MM 2494-3758	MM Development Company, Inc., Application 286
AEO	DOT-MM 3759-5023	MM Development Company, Inc., Application 287
AEO	DOT-MM 5024-6288	MM Development Company, Inc., Application 288
AEO	DOT-MM 6289-7520	MM Development Company, Inc., Application 289
AEO	DOT-MMOF 1-179	MMOF Vegas Retail
	Not Disclosed	Natural Medicine Applications
37-38	DOT-NVHolistic 1-205	Nevada Holistic Medicine, LLC 629 ID
39	DOT-NVWell 1-413	Nevada Wellness Center, LLC
40	DOT-NVWell 414-678	Nevada Wellness Center, LLC
41	DOT-NVWell 679-1091	Nevada Wellness Center, LLC
42	DOT-NVWell 1092-1356	Nevada Wellness Center, LLC
43	DOT-NVWell 1357-1769	Nevada Wellness Center, LLC
44	DOT-NVWell 1770-2034	Nevada Wellness Center, LLC
45	DOT-NVWell 2035-2447	Nevada Wellness Center, LLC
46	DOT-NVWell 2448-2712	Nevada Wellness Center, LLC
47	DOT-Nvpure 1-278	Nevadapure, LLC dba Shango
47	DOT-Nvpure 279-483	Nevadapure, LLC dba Shango

AEO refers to documents marked

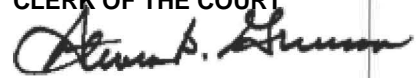
"Highly Confidential-Attorneys' Eyes Only"

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48	DOT-Nvpure 484-761	Nevadapure, LLC dba Shango
48	DOT-Nvpure 762-966	Nevadapure, LLC dba Shango
AEO	DOT-NevCann 1-153	NevCann, LLC
49-50	DOT-NuLeaf 1-824	NuLeaf Incline Dispensary, LLC 416 ID
51-52	DOT-NuLeaf 1252-2075	NuLeaf Incline Dispensary, LLC 417 ID
53-54	DOT-NuLeaf 2503-3326	NuLeaf Incline Dispensary, LLC 418 ID
55-56	DOT-NuLeaf 3754-4577	NuLeaf Incline Dispensary, LLC 419 ID
57-58	DOT-NuLeaf 5005-5828	NuLeaf Incline Dispensary, LLC 420 ID
AEO	NUVEDA0001229-1700	Nye Natural Medicinal Solutions ID
AEO	NUVEDA0001701-1841	Nye Natural Medicinal Solutions Non-ID
AEO	QUALCAN-00000446-00000505	Qualcan
AEO	DOT-RedEarth 1-170	Red Earth, LLC
AEO	DOT-Rombough 1-519	Rombough Real Estate, Inc.
59	RURAL REMEDIES 42	Rural Remedies
59	RURAL REMEDIES NONDISCLOSED 280-281	Rural Remedies
59	RURAL REMEDIES NONDISCLOSED 307-308	Rural Remedies
59	RURAL REMEDIES NONDISCLOSED 412-413	Rural Remedies
59	RURAL REMEDIES 443-480	Rural Remedies
59	RURAL REMEDIES 481-518	Rural Remedies
59	RURAL REMEDIES 519-556	Rural Remedies
59	RURAL REMEDIES 557-594	Rural Remedies
60	RURAL REMEDIES 595-632	Rural Remedies
60	RURAL REMEDIES 633-670	Rural Remedies
61-64	DOT-TGIG 1-9152	TGIG, LLC, Application 349 ID
AEO	DOT-THCNV 1-955	THC Nevada, LLC
65	DOT-TrykeReno 1-569	Tryke Companies Reno, LLC 249 ID
66-67	DOT-TrykeSNV 1-814	Tryke Companies SO NV, LLC 252 ID
68-69	DOT-TrykeSNV 1101-1914	Tryke Companies SO NV, LLC 253 ID
70-71	DOT-TrykeSNV 2201-3014	Tryke Companies SO NV, LLC 254 ID
AEO	DOT-Zion 1-652	Zion Gardens, LLC
72	DOT-56092-56552	All Score Cards
73	DOT-56553-57004	Detailed Scores by Category Sheet-Identified and Non-Identified

- 1
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/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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

Case No. : A-19-787004-B

Dept. No.: XI

7 **CONSOLIDATED WITH:**

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

12 **AMENDED TRIAL PROTOCOL NO. 2**

13 Trial Date: July 13, 2020

14
15 The Court having met with counsel for the parties, and after consideration of the proposal for
16 Trial Protocol submitted by the parties, the written status reports provided by counsel, the issues
17 posed by the current public health emergency and hearing comments of counsel, the Court adopts
18 the following as its amended trial protocol:

19 **I. COURTROOM ETIQUETTE**

20 **A.** Pursuant to Administrative Order No. 06-05, this Court permits counsel and their
21 staff to use wireless communications; however, such devices shall be placed away from recording
22 devices and microphones and must be turned off or placed on airplane mode to ensure that no
23 sounds are emitted from the device that may interrupt the proceedings. If the Court determines a
24 particular device is interfering with the sound and/or recording equipment, the Court may order all
25 electronic devices turned off.

26 **B.** The Court expects counsel to be punctual for all proceedings.

27 **C.** Counsel will be civil to one another as well as to all parties, witnesses, and court
28 personnel at all times. Do not interrupt.

1 **D.** Opposing counsel should not engage in extended conversations with each other when
2 court is in session. The Court will allow counsel to have a private conversation if it is requested and
3 efficient. Counsel should never argue with either opposing counsel or the Court.

4 **E.** Counsel will stand when addressing the Court or when examining witnesses.
5 Counsel must stand near a microphone and may not crowd the witness.

6 **F.** Counsel may approach a witness with the permission of the Court. If counsel needs
7 to approach the witness many times, the Court may instruct the attorney that he or she need not
8 continue to ask. Nonetheless, once the attorney has accomplished his or her reason for approaching
9 the witness (however many times), he or she should return to the place from which he or she is
10 questioning.

11 **G.** The Court does not permit speaking objections. Counsel should give the basis for the
12 objection in a word or phrase (e.g., "hearsay").

13 **H.** Counsel must state every objection for the record. Counsel may join an objection for
14 purposes of the record. The Court does not permit continuing objections.

15 **I.** Counsel has the responsibility to advise their witnesses to comply with any orders
16 granting motions in limine.

17 **J.** Counsel should advise all witnesses that they are not to begin any answer until the
18 question has been completed. Department XI does not require counsel to use Court Call for
19 telephonic appearances. Counsel must contact the Department one (1) day prior to the hearing to
20 setup the telephonic appearance. If multiple counsel elect to appear telephonically, counsel shall set
21 up a conference call number for use by all participating counsel

22 **K.** Counsel may appear by alternate means upon request.

23 **L.** All counsel will comply with Administrative Order 20-17 related to face coverings
24 and social distancing. Screening requirements by marshal(s) will be posted and enforced. Given the
25 large number of participants, this proceeding will be conducted off-site in a location provided by the
26 Court that allows compliance with social distancing requirements and provides only those amenities
27 which are identified as Court critical for conduct of the proceedings.

28 **M.** Given the suspension of proceedings referenced in Administrative order 20-17 and its

1 predecessors, many of the items referenced to be completed under the original trial protocol were
2 near completion. As a result the Court has compressed the final deadlines for the completion of
3 those items.

4 **II. PRETRIAL MOTIONS**

5 **COMPLETED**

6 **III. EXHIBITS**

7 **A.** The Parties shall prepare a joint list of exhibits, based upon the exhibits used during
8 any depositions and documents properly disclosed during discovery, which will be pre-marked with
9 an identification number in the range of 1-999. The Parties will create a joint list of potential trial
10 exhibits that may later be offered for admission at trial and create an electronic storage device for
11 each party and the Court containing these exhibits. The proposed trial exhibit list will mirror the
12 numbering of the deposition exhibits and any withdrawn deposition exhibit will have at the
13 corresponding number a reference to either "reserved" or "withdrawn." Prior to providing such trial
14 exhibits to the Court, the Parties will meet and identify exhibits that can be withdrawn or are
15 duplicates. If all Parties agree a deposition exhibit can be eliminated, it will be removed from the
16 preliminary trial exhibit list. If any party does not agree to eliminate a deposition exhibit, it will be
17 marked as a proposed trial exhibit.

18 **B.** For non-joint exhibits, the Parties will utilize the range of exhibit numbers assigned
19 to each party for identification of the exhibits. Each exhibit shall also bear the production number of
20 the document or item that was used during discovery to ensure that it is a properly, previously
21 produced document or other identifier that can be appropriately cross-referenced by the Parties. If
22 during the course of discovery a document was produced with an alphanumeric designation, the
23 discovery alphanumeric designation will be included on the exhibit list. If a party intends to use a
24 document as an exhibit at trial that was not given an alphanumeric designation (that all Parties were
25 previously provided access to), and was not utilized as an exhibit to a Court filing, the designating
26 party must identify the document in a manner that enables other parties to verify the prior
27 production and/or disclosure of the document and to locate such document.

28 **C.** The numbering system shall differentiate between evidentiary trial exhibits and

1 illustrative aids/demonstrative exhibits, with the illustrative aids/demonstrative exhibit identification
2 number containing the letter D preceding the identification number.

3 **D.** All exhibits shall be listed on a form used by Department XI to record such evidence
4 attached hereto as Exhibit "1."

5 **E.** After numbering the joint exhibits, non-joint trial exhibit number ranges will be
6 utilized by each side (ranges of 1,000 exhibits to each side). The numbering convention to be used
7 for trial exhibits will be strictly numeric. Each side shall designate a representative to eliminate
8 duplicate exhibits for the Plaintiffs and the Defendants, respectively. Each side is assigned a range
9 of exhibit numbers for their own exhibits.

10 **1.** Joint Proposed Exhibits (including deposition exhibits) 1-999

11 **2.** Proposed Non-Joint Exhibit Ranges for Each Side:

12 **a)** Plaintiffs 1,000-1,999.

13 **b)** Defendants 2,000-2,999.

14 If any additional party indicates an intention to participate in the trial by filing and serving a notice
15 with a courtesy copy delivered to the Court before the final pretrial conference on July 10, 2020, the
16 Court will make a determination as to additional ranges of exhibit numbers.

17 **F.** Each party must make its pre-trial disclosures under NRCP 16.1(a)(3) on or before
18 June 26, 2020. Each party's pre-trial disclosure must contain a list of their own proposed trial
19 exhibits in Excel format (including columns with the bates number, date, description, will call, and
20 may call) that can be integrated into a single Joint Exhibit List, and providing a complete set of the
21 exhibits to all the other Parties on an electronic storage device.

22 **G.** Each party will designate a paralegal and/or attorney to work together to coordinate
23 with the vendor on the production of the deposition exhibits and discovery documents to trial
24 exhibits, coordinate in the preparation of the Joint Trial Exhibit List, and ensure the Parties are
25 complying with the Court's requirements for marking exhibits for trial. The Parties'
26 representative(s) should be designated by June 29, 2020 so they can begin discussing Court's
27 requirements for marking exhibits and the Joint Exhibit List, and pricing and logistics with the
28 vendor. The Parties' Joint Exhibit List shall be finalized on or before July 2, 2020.

1 **H.** Given Administrative Order 20-17, the electronic exhibit protocol attached as Exhibit
2 "2" will be utilized by the parties.

3 **I.** All received exhibits shall be stored in the custody of the Court. Charts, summaries
4 or calculations sought to be admitted into evidence under NRS 52.275, along with the originals of
5 the voluminous documents or electronic information, shall be made available to other Parties at the
6 calendar call prior to trial, or, if created during the course of trial, at least one (1) days prior to
7 offering or using said chart, summary or calculation.

8 **J.** Enlargements of any exhibits sought to be used at trial, shall be handled in the same
9 manner as other exhibits. Any exhibit may be enlarged and utilized in a hard format if desired by a
10 Party but must contain the proposed trial exhibit number for reference.

11 **K.** The proposed electronic exhibits shall be submitted in portable document format
12 (.PDF).

13 **L.** Objections to each party's proposed pre-trial exhibits will be served pursuant to
14 NRCP 16.1(a)(3)(B) on or before July 1, 2020 to facilitate the creation of the Joint Exhibit List.
15 Counsel will be familiar with the basis for any objection made pursuant to NRCP 16.1(a)(3)(B) and
16 shall address the objections at the final pretrial conference. Objections not disclosed in accordance
17 with NRCP 16.1(a)(3), other than objections under NRS 48.025 and 48.035, shall be deemed waived
18 unless excused by the court for good cause shown.

19 **M.** All exhibits proposed for use in trial will be cross referenced to exhibits sought to be
20 introduced by all other parties and sides. Counsel shall eliminate duplicative exhibits.

21 **N.** All documents the Parties anticipate using at trial, but for rebuttal documents,
22 impeachment documents, and documents related to unanticipated issues, will be disclosed prior to
23 the start of trial. Documents that are not identified in pre-trial disclosures will be handled on a case
24 by case basis with the understanding that a party seeking to use any document that was not
25 identified in pre-trial disclosures must show good cause.

26 **O.** Certain documents and material, which the Parties shall have need to use and present
27 to the Court, have been produced in this Action pursuant to the Confidentiality Agreement and
28 Protective Order filed on December 20, 2019. Parties shall consult to redact, if appropriate, trial

1 exhibits previously designated as confidential during discovery.

2 **IV. FINAL PRETRIAL CONFERENCE**

3 **A.** Pursuant to EDCR 2.67(a) counsel shall meet and discuss all issues required by the
4 rule on or before July 9, 2020.

5 **B.** In accordance with NRCP 16.1(a)(3)(B)(i), the parties shall designate their trial
6 witnesses on or before July 2, 2020.

7 **C. Designations of Depositions to be Used in Lieu of Live Testimony**

8 **1.** The Parties are discouraged from reading depositions at trial unless absolutely
9 necessary.

10 **2.** The Parties anticipate a number of depositions or prior testimony from the
11 preliminary injunction hearing will be utilized at trial in lieu of live testimony due to the
12 unavailability of the witness or for any other permitted reason under NRCP 32. In accordance with
13 NRCP 16.1(a)(3)(A)(ii), the Parties will identify testimony to be provided via deposition or
14 transcript and provide initial transcript designations on or before June 29, 2020. Any party wishing
15 to make a counter-designation will do so on or before July 2, 2020. Any rebuttal deposition
16 designations are to be made on or before July 6, 2020. Objections to any deposition designation,
17 counter-designation, or rebuttal designation will be made on July 8, 2020.

18 **3.** The Court will rule on any objections to the designations at the Final Pretrial
19 Conference.

20 **4.** The Parties recognize that there may be a need to alter and/or amend
21 depositions designations based on testimony provided during trial. Accordingly, any changes to
22 deposition designations must be provided to the Parties and the Court no less than one (1) judicial
23 day before the deposition testimony is intended to be presented at trial unless good cause is shown
24 for the failure to do so. This procedure does not alter or change evidentiary limitations.

25 **5.** Any video deposition to be shown to the Court shall be edited to streamline
26 the presentation of evidence. The Parties can present excerpts in the order approved by the Court at
27 the Final Pretrial Conference. All portions of a video deposition used in lieu of live testimony
28 presented during a certain phase will be shown together.

1 6. For impeachment or rebuttal purposes, advance notice of the portions of the
2 deposition depicting inconsistent testimony is not required. Proposals for the presentation of
3 deposition transcripts are still subject to evidentiary limitations.

4 7. To avoid delays during trial, counsel will notify the clerk of any depositions
5 anticipated to be used prior to the start of the day's proceedings. Failure of counsel to do so may
6 result in the Court refusing to permit counsel to utilize a particular deposition.

7 **D. Proposed Findings of Fact and Conclusions of Law**

8 1. At the commencement of each phase, counsel will file proposed findings of
9 fact and conclusions of law pertaining to that portion of the trial.

10 2. A copy of the proposed findings of fact and conclusions of law will be
11 emailed to the Court in Word format at the time of filing.

12 **E.** Pursuant to EDCR 2.67(b), on or before 4:00 p.m. on July 9, 2020, counsel shall
13 submit a joint pretrial memorandum executed by all counsel including all issues required by the rule.

14 **F. Final Pretrial Conference**

15 1. The Court will conduct the final pretrial conference on July 10, 2020 at 9 a.m.

16 2. Counsel are required to bring all items identified in EDCR 2.69(a) to the final
17 pretrial conference and exchange all items identified in EDCR 2.69(a) by July 8, 2020.

18 3. Exhibits will be pre-admitted to the extent practicable at the Final Pretrial
19 Conference. All documentary exhibits will be presented in electronic format in accordance with
20 Exhibit "1". Photographic evidence may be presented in hard copy form but must also be submitted
21 in electronic format. In accordance with EDCR 2.67, counsel shall meet, review, and discuss
22 exhibits.

23 4. Any planned demonstrative exhibits including data summaries, compilations
24 or exemplars anticipated to be used must be disclosed prior to the final Pre-Trial Conference.
25 Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or
26 make specific objections to individual proposed exhibits. Any additional demonstrative exhibits that
27 arise during trial shall be disclosed to all parties at least 24 hours in advance.

28 5. Any Power Point or computer animation anticipated to be used during the

1 presentation of evidence to illustrate a witness's testimony must be disclosed two (2) days prior to
2 the Final Pretrial Conference. At the time of the Final Pretrial Conference, the Court will rule on
3 any objections to the Power Point or computer animation. An electronic version of the Power Point
4 or computer animation must be presented to the Court at that time.

5 6. Unless impracticable to present evidence electronically, the Parties are
6 required to use trial presentation software to electronically and simultaneously display evidence to
7 everyone in the courtroom. The Parties will also be allowed to utilize traditional paper form
8 presentation of evidence as long as the other provisions are satisfied, i.e., the paper form
9 presentation of evidence has already been submitted electronically to the Court and other Parties, the
10 hard copy bears the same identifiers as the electronic copy, and hard copy documents of such
11 presentations are made available to the other Parties.

12 7. The Parties may hire an operator to provide, and upon the request of a party to
13 operate, the trial presentation software to avoid the complications of different systems, different
14 switching systems, and delays in presentation. All exhibits will be on one computer system with
15 traditional designations of potential exhibits and admitted exhibits. Each party is required to use the
16 software selected. A Party may contract with the provider for a person to operate the system during
17 trial or may take on the responsibility of hiring and training a person to operate the system for that
18 party during trial. Parties shall insure that non-admitted exhibits are blocked from viewing by the
19 Court until the Court directs the non-admitted exhibit to be disclosed for the Court's view.

20 8. Prior to the commencement of each phase, the Court will rule on any
21 objections to the deposition designations, counter-designations and editing of video deposition to be
22 used in lieu of live testimony. Any use of depositions will require publication of the original
23 transcript prior to reading or playing portions of the deposition.

24 **V. TRIAL SCHEDULE**

25 **A. Days and Hours**

26 1. All trial participants shall be punctual and prepared to proceed on schedule.
27 To minimize interruptions, attorneys may be permitted to enter and leave the courtroom discreetly
28 during the proceedings.

1 2. Court sessions will be held from 8:30 a.m. to 5:00 p.m., with a morning
2 break, a lunch recess, and an afternoon break, Monday through Friday, unless there is a recognized
3 judicial holiday as set forth below. If an issue arises that must be addressed prior to the
4 commencement of the next day of trial, counsel will notify all parties. Counsel will report at 8:00
5 a.m. to resolve any issues that need to be addressed before the presentation of evidence and
6 testimony.

7 3. The Court will recess on the following dates:

8 a) August 13-14, 2020.

9 b) September 7, 2020.

10 **B. Weekly Conferences During Trial**

11 1. To expedite the trial, it is advisable to devote the entire trial day to the
12 uninterrupted presentation of evidence. To the extent possible, objections (other than to a question
13 asked a witness), motions, and other matters that may interrupt the presentation of evidence, should
14 be raised at a time set aside by the Court. To the extent possible, objections, motions and other
15 matters that must be raised during the presentation of evidence shall be stated briefly.

16 2. Any issues to be addressed will be addressed on Friday sessions at 8:00 a.m.
17 The Court will permit counsel to communicate to the Court to plan the week's proceedings and fix
18 the order of witnesses and exhibits, avoiding surprises and ensuring that the Parties will not run out
19 of witnesses. These Weekly Conferences will also be utilized to hear written motions, to resolve
20 other issues and the Court may hear offers of proof and arguments accordingly in order to resolve
21 the same.

22 **VI. CONDUCT OF TRIAL**

23 The trial will be conducted in Phases as defined by the Court. This Order will apply to each
24 individual phase.

25 **A. The use of trial briefs in this matter will be governed by EDCR Rule 7.27.**

26 **B. Opening Statements**

27 1. Opening Statements, if any, shall commence on the first day of each phase.

28 2. The group of parties seeking affirmative relief in that phase shall be time

1 limited in Opening Statement to a total of three (3) hours. These parties shall agree among
2 themselves on the split of the time. If no agreement is reached the Court will allocate the time
3 among the group. No more than one attorney may address the Court during Opening Statement for
4 each party or similarly represented group of parties.¹

5 3. The group of parties participating in a phase not seeking affirmative relief in
6 that phase shall be time limited in Opening Statement to a total of three (3) hours. These parties
7 shall agree among themselves on the split of the time. If no agreement is reached the Court will
8 allocate the time among the group. No more than one attorney per party group represented by a
9 single team of counsel may address the Court during Opening Statement.

10 4. The Parties shall be allowed to deliver their Opening Statements in the order
11 of the presentation of the Parties' cases.

12 5. During Opening Statements, the Parties will be permitted to utilize charts and
13 other demonstrative aids not then in evidence; however, any such Power Points, charts or aids shall
14 be provided to opposing counsel at least one (1) judicial day prior to commencement of the
15 corresponding phase in order to allow any party to file any objection it may have to the same.

16 C. Presentation of Evidence

17 1. The Court, counsel and the witness shall be permitted to view a displayed
18 non-admitted exhibit prior to its formal admission.

19 2. Counsel shall advise the clerk prior to the commencement of the trial day of
20 any deposition transcripts anticipated to be used for publication.

21 3. Parties are encouraged to use trial aids such as glossaries, indexes, time lines,
22 graphics, charts, diagrams, and computer animations to permit the Court a better opportunity to
23 understand the evidence. To the extent practicable, the Parties shall endeavor to prepare joint
24 exhibits for glossaries, indexes, and time lines. Any trial aids will be submitted to the Court
25 electronically.

26 4. Each party shall electronically exchange lists of expected witnesses
27

28 ¹ The Court has modified and lengthened the trial week to accommodate the needs of completing this matter in
the time frames permitted for use of the offsite location.

(including any depositions to be used in lieu of live testimony) who will be called to testify on one (1) day notice. This list shall estimate the length of direct examination for each witness. Any objections shall be made within one (1) judicial day of service of the disclosure. For impeachment or rebuttal purposes, advance notice of the portions of the deposition depicting inconsistent testimony is not required.

5. Counsel shall give one (1) week notice of their intent to call an adverse party or its employees to testify. If a party will not make an employee available to testify and that employee is beyond the Court's subpoena power, any party may offer that witness's deposition for any purpose, unless it appears that the absence of the witness was procured by the party offering the deposition. Use of any such deposition is subject to the disclosure requirements and any evidentiary limitations.

6. No more than one attorney per party group represented by a single team of counsel may examine a witness or make objection during the examination of the witness.

7. If, for any reason, a break in the proceedings of any phase of more than a week occurs, counsel for the Parties may make an interim statement to the Court prior to the resumption of the presentation of evidence. No more than one attorney per party may make an interim statement. Such interim statement may only be used to explain or summarize evidence and testimony already presented to the Court during that phase.

D. Closing Arguments

1. Counsel should be prepared to begin closing arguments immediately following the close of all evidence in the phase.

2. During Closing Arguments, the Parties will be permitted to utilize Power Point, charts and other demonstrative aids; however, any such charts or aids shall be provided to opposing counsel at least one (1) judicial days prior to Closing Argument in order to allow any party to file any objection it may have to the same. An electronic copy of the Power Point, charts and other demonstrative aids must be provided to the Court.

3. The group of parties seeking affirmative relief in that phase shall be time limited in Closing Statement to a total of six (6) hours. These parties shall agree among themselves

1 on the split of the time. If no agreement is reached the Court will allocate the time among the group.

2 4. The group of parties participating in a phase not seeking affirmative relief in
3 that phase shall be time limited in Opening Statement to a total of six (6) hours. These parties shall
4 agree among themselves on the split of the time. If no agreement is reached the Court will allocate
5 the time among the group. No more than one attorney per party group represented by a single team
6 of counsel may address the Court during Closing Argument.

7 5. Each party with affirmative claims, will have two opportunities to address the
8 Court in closing arguments. Different attorneys may argue the first and second closing arguments
9 for each per party group represented by a single team of counsel. The total time will not be
10 increased.

11 **VII. TRANSCRIPTS AND COURT REPORTING**

12 A. The Parties agree to utilize the Court's JAVs Court Recording System which will be
13 the official record.

14 B. The Parties agree to equally split the cost of expedited daily transcripts from the
15 Official Court Recorder. Each party shall either commit or decline to receive expedited daily
16 transcripts at the beginning of each Phase of the trial, and costs will be split equally among the
17 Parties that choose to receive the expedited transcripts.

18 C. Additionally, to facilitate the ability of the Parties to view questions, objections and
19 testimony, the Parties agree to have the proceedings reported on a real-time basis at their own
20 expense. Each party shall either commit or decline access to real-time court reporting at the
21 beginning of each Phase of the trial, and costs will be split equally among the Parties that choose to
22 have real-time access.

23 D. Should the Parties desire to have real time reporting during any phase of the trial, the
24 parties are required to make their own arrangements with the real time court reporters. The details
25 of any arrangements shall also be provided to the Official Court Recorder, at 702-671-4374. Each
26 party will need to provide its own monitor, device or other equipment for real time reporting
27 viewing.
28

VIII. PHASES

The trial will be conducted in a series of phases presented to the same judge. The phases shall proceed seriatim, in the order set forth herein. Each phase may begin with an opening statement restricted to the issues to be litigated in that phase and may end with a closing statement. If all issues related to a particular phase have been resolved, the parties will proceed to the next phase with remaining issues.

A. First Phase – Petition for Judicial Review²

1. Unless otherwise resolved on the briefing outlined above in Section II, the DH Flamingo Plaintiffs, Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center, LLC, MM Development Company, Inc., Livfree Wellness LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such claims will present their affirmative claims related to their claims for Petition for Judicial Review.

a) The Plaintiffs will have one (1) day to present oral arguments based upon the administrative record, unless good cause is shown to extend the time.

b) The administrative record shall be filed by the DOT and include, with appropriate redactions, if necessary, of all records related to the applications and DOT's granting or denial of applications.

2. The DOT and Defendants will present their defenses and affirmative claims, if any, related to the Plaintiffs' claims for petition for judicial review.

a) The DOT and Defendants will have one (1) day to present arguments based on the administrative record against the petitions for judicial review, unless good cause is shown to extend the time.

3. The Plaintiffs will present their rebuttal on their affirmative claims.

a) The Plaintiffs will have one day (1) to present oral arguments based on the administrative record in rebuttal on its claims for judicial

² This phase will follow the presentation of Phase 2.

review, unless good cause is shown to extend the time.

4. The Court will deliberate, review the evidence, and render a decision on the claims raised in the First Phase.

B. Second Phase³ – Legality of the 2018 recreational marijuana application process (claims for Equal Protection, Due Process, Declaratory Relief, Intentional Interference with Prospective Economic Advantage, Intentional Interference with Contractual Relations, and Permanent Injunction)⁴

1. The Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center, LLC, Qualcan, LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such claims will present their affirmative claims related to legality of 2018 recreational marijuana application process, including their claims for equal protection, due process, declaratory relief, and permanent injunction.

a) The Plaintiffs will have four (4) weeks to present testimony and evidence on their affirmative claims, unless good cause is shown to extend the time.

2. The DOT and Defendants will present their defenses and affirmative claims, if any, related to the claims by the plaintiffs.

a) The DOT and Defendants will have four (4) weeks to present testimony and evidence their defenses and affirmative claims, if any, unless good cause is shown to extend the time.

3. The Plaintiffs will present their rebuttal on their affirmative claims.

a) The Plaintiffs will have one (1) week to present testimony and evidence in rebuttal on its affirmative claims, unless good cause is shown to extend the time.

4. The Court will deliberate, review the evidence, and render a decision on the

³ This phase will begin on July 13, 2020.

⁴ Given the modification to the trial week, the Court has adjusted the time permitted to accommodate use of the offsite facility.

1 claims raised in the Second Phase.

2 **C. Third Phase⁵ – Writ of mandamus (Improper scoring of applications related to**
3 **calculation errors on the 2018 recreational marijuana application).**

4 **1. MM Development Company, Inc. and Livfree Wellness LLC and any other**
5 **Plaintiffs with mandamus claims will present their affirmative claims related to their writ of**
6 **mandamus claim based on the allegation of improper scoring of their applications due to calculation**
7 **errors.**

8 **a)** The Plaintiffs will have three (3) days to present testimony and
9 evidence their affirmative claims, unless good cause is shown to
10 extend the time.

11 **2. The DOT and Defendants will present their defense and affirmative claims, if**
12 **any, related to the claims by the MM Development Company, Inc. and Livfree Wellness LLC.**

13 **a)** The DOT and Defendants will have one (1) day to present testimony
14 and evidence its defenses and affirmative claims, if any, unless good
15 cause is shown to extend the time.

16 **3. The Plaintiffs will present their rebuttal on their affirmative claims.**

17 **a)** The Plaintiffs will have one (1) day to present testimony and evidence
18 in rebuttal on its affirmative claims, unless good cause is shown to
19 extend the time.

20 **4. The Court will deliberate, review the evidence, and render a decision on the**
21 **claims raised in the Third Phase.**

22 **D. Duplication of Testimony**

23 In order to avoid duplication of testimony, if any party desires to use testimony from any
24 phase in a subsequent phase, the party shall inform all parties and the Court of the testimony to be
25 offered via transcript, cite the portions of the transcript to be used, and provide all parties and the
26 Court a copy of the portions of transcript to be used at least three (3) judicial days before the


27 _____
28 ⁵ This phase has been partially resolved by motion practice. Any remaining issues will be presented following Phase 1.

1 beginning of the phase in which the testimony will be used in lieu of live testimony.

2 **IX. MISCELLANEOUS ISSUES**

3 The Court may amend this Order upon good cause shown. Any party, upon application to
4 the Court and a showing of good cause, may seek relief from the Court from any provision of this
5 Order.

6 Dated this 2nd day of July, 2020.

7
8 
9 Elizabeth Gonzalez, District Court Judge
10
11
12
13

14 **Certificate of Service**

15 I hereby certify that on the date filed, this Order was electronically served, pursuant to
16 N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing
Program.

17 
18 Jill Hawkins
19
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EXHIBIT 1

Exhibit List

CASE NO:

DEPT NO:

TRIAL DATE:

JUDGE:

CLERK:

REPORTER:

JURY FEES:

COUNSEL FOR PLAINTIFF: _____

PLAINTIFF

COUNSEL FOR DEFENDANT: _____

DEFENDANT

[illegible]

EXHIBIT 2

Proposed Administrative Order Regarding Electronic Exhibits for Trial

1. Whenever a party determines and the Court orders that the submission of documentary and/or photographic evidence will be made in electronic format in a particular case, the submission of the proposed exhibits will be made pursuant to this order.
2. The proposed electronic exhibits shall be submitted in portable document format (.PDF).
3. Photographs must have at least a 1 inch border at the top of the page for the clerk to be able to affix the indicator documenting the admission of the photo. If the court deems the quality of the photograph is not of sufficient quality for demonstrative purposes, the photo shall be re-submitted in traditional format.
4. Prior to trial each party will be assigned a range of exhibit numbers for use in naming exhibits. The file name for each proposed electronic exhibit shall be numerical, i.e. 1047.pdf. Each page within the proposed exhibit will be internally and sequentially numbered beginning with the trial exhibit number and the page number will be placed on each page of the proposed electronic exhibit in the lower right hand corner in the following format "1047-001". No letters will be used as exhibit numbers for identifying proposed electronic exhibits.
5. The proposed electronic exhibits shall be submitted on a single electronic storage device, except when the integrity of the proposed electronic exhibit would be corrupted by being on a single electronic storage device or the volume of the proposed electronic exhibit(s) cannot practically be stored on a single electronic storage device. The electronic storage device must have space available for additional storage of electronic data in at least an amount equal to the storage required for the proposed electronic exhibit(s). External hard drives must have a minimum read speed of 33 MBps and minimum write speed of 25 MBps.
6. An exhibit list in substantially the same form as the attachment hereto shall be provided in paper form as well as electronic in Excel format. The electronic (Excel) version of the exhibit list is to be named "Exhibit List" and is to be located on the master electronic storage device only. The font size shall be 12 and the font style to be used is Times New Roman. The list must include the following information in tabular format for each proposed electronic exhibit (please note that traditional "physical" evidence is not to be listed on the electronic exhibit list and should be submitted on a separate exhibit list):
 - a. The exhibit number for the proposed electronic exhibit consistent with paragraph 4 above
 - b. The identification of the electronic storage device on which the proposed exhibit is stored or a space for the clerk to make notation in the event the Exhibit was submitted in traditional form
 - c. A description of the proposed electronic exhibit
 - d. Any numeric or alphanumeric designation used on the proposed electronic exhibit during discovery or other pretrial proceedings

- e. Whether a stipulation to the admission of the proposed electronic exhibit exists
 - f. A space for the clerk to make notation on the date the proposed electronic exhibits is offered
 - g. A space for the clerk to make notation on objections made to the proposed electronic exhibits at the time it is offered for admission
 - h. A space for the clerk to make notation on the admission of the proposed electronic exhibits
7. Absent good cause shown, no exhibits not included in the proffered electronic storage device will be accepted electronically.
 8. The proposed electronic exhibit shall exactly match the admitted electronic exhibit. Any change between the proposed electronic exhibit and the admitted electronic exhibit will require the submission of the exhibit as a supplemental proposed electronic exhibit by offering counsel with a new proposed exhibit number in conformance with paragraph 4.
 9. The party offering the proposed electronic exhibits shall provide the clerk with two identical sets of the proposed electronic exhibits on separate electronic storage devices. In the event of a jury trial, an additional blank electronic storage device will be required to copy all of the admitted electronic exhibits onto for use by the jury (see paragraph 12). The clerk will maintain one of the electronic storage devices as a master without modification.
 10. Prior to the clerk admitting the electronic storage devices, the clerk will perform a virus check on each device in the presence of counsel or their designee.
 11. Following admission of a proposed electronic exhibit, the clerk will electronically move the admitted electronic exhibit to a subfolder for all admitted exhibits wherein the clerk will electronically affix an indicator documenting the admission of the proposed electronic exhibit in the case and identifying the case number and date of admission. The admitted electronic exhibit will be protected from any additional attempts to modify the admitted electronic exhibit.
 12. Prior to the commencement of deliberations by a jury, if the trial is a jury trial, the party proffering the electronic exhibits will provide a laptop computer and additional monitor with only an operating system and associated programs, an adobe program to permit viewing of the admitted exhibits, and no internet or other research capability. The laptop will be subject to inspection by Court I.T. staff and counsel for compliance prior to it being provided to the deliberating jury.
 13. Upon completion of the trial, the clerk will transmit the electronic storage device to the vault for retention in accordance with Part XI of the Supreme Court Rules.

2018 Retail Marijuana Store Application Scores and Rankings

Revised 4 pm 5/14/2019

CARSON CITY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.66	Yes
3	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	No
4	TRNVP098, LLC	GRASSROOTS	196.49	No
5	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
6	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
7	BIONEVA INNOVATIONS OF CARSON CITY, LLC	BIONEVA INNOVATIONS	188.00	No
8	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
9	D LUX, LLC	D LUX	150.49	No
10	CN LICENSECO I, INC	CANA NEVADA	139.01	No
11	CARSON CITY AGENCY SOLUTIONS, LLC	CARSON CITY AGENCY SOLUTIONS	128.67	No

CHURCHILL COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
NO APPLICATIONS RECEIVED				

CLARK COUNTY- HENDERSON				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
5	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.33	Yes
6	CLEAR RIVER, LLC	KABUNKY	210.16	Yes
7	QUALCAN, LLC	QUALCAN	209.66	No
8	CIRCLE S FARMS, LLC	CIRCLE S	208.00	No
9	WSCC, INC	SIERRA WELL	201.50	No
10	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	197.83	No
11	TRNVP098, LLC	GRASSROOTS	196.49	No
12	HARVEST of NEVADA, LLC	HARVEST	195.01	No
13	RED EARTH, LLC	RED EARTH	194.67	No
14	GRAVITAS NEVADA, LTD	THE APOTHECARIUM	194.66	No
15	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
16	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
17	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190.66	No
18	GREEN THERAPEUTICS, LLC	PROVISIONS	188.34	No
19	NV 3480 PARTNERS, LLC	EVERGEEN ORGANIX	188.00	No
20	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
21	GBS NEVADA PARTNERS, LLC	SHOW GROW	180.17	No
22	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
23	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178.83	No
24	NEVADA GROUP WELLNESS, LLC	PRIME	178.18	No
25	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172.16	No
26	GOOD CHEMISTRY NEVADA, LLC	GOOD CHEMISTRY	167.17	No
27	TWELVE TWELVE, LLC	12/12 DISPENSARY	166.67	No
28	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
29	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163.83	No
30	ETW MANAGEMENT GROUP, LLC	GASSERS	158.17	No
31	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	148.51	No
32	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134.17	No
33	NYE FARM TECH, LTD	URBN LEAF	133.34	No
34	GREENLEAF WELLNESS, INC	GREENLEAF WELLNESS	114.83	No
35	GREENWAY HEALTH COMMUNITY, LLC	GREENWAY HEALTH COMMUNITY	87.33	No

CLARK COUNTY- LAS VEGAS				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.66	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	HELPING HANDS WELLNESS CENTER, INC	HELPING HANDS WELLNESS CENTER	218.50	Yes
5	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
6	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
7	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	212.33	Yes
8	CLEAR RIVER, LLC	KABUNKY	210.16	Yes
9	WELLNESS CONNECTION OF NEVADA, LLC	CULTIVATE	208.67	Yes
10	CIRCLE S FARMS, LLC	CIRCLE S	208.00	Yes
11	QUALCAN, LLC	QUALCAN	207.33	No
12	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204.01	No
13	3AP, INC	NATURE'S CHEMISTRY	202.83	No
14	WSCC, INC	SIERRA WELL	200.83	No
15	ACRES MEDICAL, LLC	ACRES DISPENSARY	199.84	No
16	LAS VEGAS WELLNESS & COMPASSION CENTER	PEGASUS NV	199.83	No
17	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	197.83	No
18	NATURAL MEDICINE, LLC	NATURAL MEDICINE	197.17	No
19	TGIG, LLC	THE GROVE	196.67	No
20	TRNVP098, LLC	GRASSROOTS	196.49	No
21	TRNVP098, LLC	GRASSROOTS	196.49	No
22	GRAVITAS HENDERSON, LLC	BETTER BUDS	196.01	No
23	D H FLAMINGO, INC	THE APOTHECARY SHOPPE	196.00	No
24	HARVEST of NEVADA, LLC	HARVEST	195.01	No
25	RED EARTH, LLC	RED EARTH	194.67	No
26	STRIVE WELLNESS OF NEVADA, LLC	STRIVE	194.00	No
27	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
28	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
29	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190.66	No
30	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.17	No
31	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189.68	No
32	TRYKE COMPANIES SO NV, LLC	REEF	189.33	No
33	NV 3480 PARTNERS, LLC	EVERGEEN ORGANIX	188.00	No
34	AGUA STREET, LLC	CURALEAF	188.00	No
35	GREEN THERAPEUTICS, LLC	PROVISIONS	187.67	No
36	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	184.84	No
37	HIGH SIERRA HOLISTICS, LLC	HSH	184.83	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
38	GTI NEVADA, LLC	RISE	184 33	No
39	GTI NEVADA, LLC	RISE	184 33	No
40	GTI NEVADA, LLC	RISE	184 33	No
41	TRYKE COMPANIES RENO, LLC	REEF	182 00	No
42	SILVER SAGE WELLNESS, LLC	+ VIBES	181 99	No
43	CW NEVADA, LLC	CANOPI	181 67	No
44	TRYKE COMPANIES RENO, LLC	REEF	181 33	No
45	MATRIX NV, LLC	MATRIX NV	180 67	No
46	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180 17	No
47	GBS NEVADA PARTNERS, LLC	SHOW GROW	180 17	No
48	GBS NEVADA PARTNERS, LLC	SHOW GROW	180 17	No
49	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	179 83	No
50	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178 84	No
51	NEVADA GROUP WELLNESS, LLC	PRIME	178 18	No
52	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	176 34	No
53	NLVG, LLC	DESERT BLOOM WELLNESS CENTER	173 83	No
54	MEDI FARM IV, LLC	BLUM	173 50	No
55	NEVADA HOLISTIC MEDICINE, LLC	NHM	172 50	No
56	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172 16	No
57	LUFF ENTERPRISES NV, INC	SWEET CANNABIS	171 33	No
58	THC NEVADA, LLC	CANNA VIBE	170 99	No
59	THE HARVEST FOUNDATION, LLC	THE HARVEST FOUNDATION	170 50	No
60	MALANA LV, LLC	MALANA LV	168 66	No
61	WEST COST DEVELOPMENT NEVADA, LLC	SWEET GOLDY	168 17	No
62	GOOD CHEMISTRY NEVADA, LLC	GOOD CHEMISTRY	167 17	No
63	TWELVE TWELVE, LLC	12/12 DISPENSARY	166 67	No
64	GLOBAL HARMONY, LLC	TOP NOTCH	166 34	No
65	NEVADA PURE, LLC	SHANGO LAS VEGAS	164 83	No
66	FSWFL, LLC	GREEN HARVEST (Have A Heart)	164 83	No
67	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164 32	No
68	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163 83	No
69	SOUTHERN NEVADA GROWERS, LLC	BOWTIE CANNABIS	163 17	No
70	GREENPOINT NEVADA, INC	CHALICE FARMS	160 84	No
71	ETW MANAGEMENT GROUP, LLC	GASSERS	158 17	No
72	NEVADA WELLNESS CENTER, LLC	NWC	156 51	No
73	ALTERNATIVE MEDICINE ASSOCIATION, LLC	ALTERNATIVE WELLNESS	154 67	No
74	YMY VENTURES, LLC	STEM	154 16	No
75	SOLACE ENTERPRISES	THALLO	153 67	No
76	MMOF VEGAS RETAIL, INC	MEDMEN	152 67	No
77	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152 50	No
78	YMY VENTURES, LLC	STEM	152 16	No
79	NEVCANN, LLC	NEVCANN	150 67	No
80	NEVCANN, LLC	NEVCANN	150 67	No
81	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	150 51	No
82	WENDOVERA, LLC	WENDOVERA	145 66	No
83	FOREVER GREEN, LLC	FOREVER GREEN	144 01	No
84	RELEAF CULTIVATION, LLC	RELEAF CULTIVATION	143 83	No
85	HERBAL CHOICE, INC	HERBAL CHOICE	143 51	No
86	PARADISE WELLNESS CENTER, LLC	LAS VEGAS RELEAF	142 99	No
87	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	141 83	No
88	CN LICENSECO I, INC	CANA NEVADA	139 01	No
89	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138 66	No
90	ECONEVADA LLC	MARAPHARM LAS VEGAS	137 33	No
91	ECONEVADA LLC	MARAPHARM LAS VEGAS	137 33	No
92	PHENOFARM NV LLC	MARAPHARM LAS VEGAS	137 33	No
93	DP HOLDINGS, INC	COMPASSIONATE TEAM OF LAS VEGAS	134 82	No
94	DP HOLDINGS, INC	COMPASSIONATE TEAM OF LAS VEGAS	134 82	No
95	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134 17	No
96	NYE FARM TECH, LTD	URBN LEAF	133 34	No
97	NYE FARM TECH, LTD	URBN LEAF	133 34	No
98	BLOSSUM GROUP, LLC	HEALING HERB	125 50	No
99	GB SCIENCES NEVADA, LL	GB SCIENCES	125 00	No
100	RURAL REMEDIES, LLC	DOC'S APOTHECARY	119 16	No
101	GREENLEAF WELLNESS, INC	GREENLEAF WELLNESS	115 16	No
102	RG HIGHLAND	TWEEDLEAF	113 00	No
103	NLV WELLNESS, LLC	ETHCX	109 67	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
CLARK COUNTY- MESQUITE				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
NO ALLOCATION				

CLARK COUNTY- NORTH LAS VEGAS				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	HELPING HANDS WELLNESS CENTER, INC	HELPING HANDS WELLNESS CENTER	218.50	Yes
5	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
6	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213 33	No
7	COMMERCE PARK MEDICAL, LLC	THRIVE	212 33	No
8	CLEAR RIVER, LLC	KABUNKY	209 83	No
9	QUALCAN, LLC	QUALCAN	209 00	No
10	CIRCLE S FARMS, LLC	CIRCLE S	208 00	No
11	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204 01	No
12	3AP, INC	NATURE'S CHEMISTRY	202 83	No
13	WSCC, INC	SIERRA WELL	201 50	No
14	ACRES MEDICAL, LLC	ACRES DISPENSARY	199 84	No
15	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	198 50	No
16	NATURAL MEDICINE, LLC	NATURAL MEDICINE	197 17	No
17	TGIG, LLC	THE GROVE	196 67	No
18	TRNVP098, LLC	GRASSROOTS	196 49	No
19	GRAVITAS HENDERSON, LLC	BETTER BUDS	196 01	No
20	HARVEST of NEVADA, LLC	HARVEST	195 68	No
21	D H FLAMINGO, INC	THE APOTHECARY SHOPPE	195 67	No
22	RED EARTH, LLC	RED EARTH	194 67	No
23	ZION GARDENS, LLC	ZION GARDENS	194 17	No
24	GREENSCAPE PRODUCTIONS, LLC	HERBAL WELLNESS CENTER	192 83	No
25	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
26	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
27	LIVFREE WELLNESS, LLC	THE DISPENSARY	190 54	No
28	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190 33	No
29	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189 68	No
30	TRYKE COMPANIES SO NV, LLC	REEF	189 33	No
31	FIDELIS HOLDINGS, LLC	PISOS	189 00	No
32	FIDELIS HOLDINGS, LLC	PISOS	189 00	No
33	GREEN THERAPEUTICS, LLC	PROVISIONS	188 67	No
34	NV 3480 PARTNERS, LLC	EVERGEEN ORGANIX	188 00	No
35	AGUA STREET, LLC	CURALEAF	185 50	No
36	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	185 17	No
37	GTI NEVADA, LLC	RISE	184 33	No
38	MATRIX NV, LLC	MATRIX NV	181 00	No
39	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180 17	No
40	GBS NEVADA PARTNERS, LLC	SHOW GROW	180 17	No
41	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178 83	No
42	NEVADA GROUP WELLNESS, LLC	PRIME	178 18	No
43	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	176 34	No
44	NLVG, LLC	DESERT BLOOM WELLNESS CENTER	173 83	No
45	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172 16	No
46	THC NEVADA, LLC	CANNA VIBE	170 99	No
47	MALANA LV, LLC	MALANA LV	169 00	No
48	TWELVE TWELVE, LLC	12/12 DISPENSARY	166 67	No
49	GLOBAL HARMONY, LLC	TOP NOTCH	166 34	No
50	EUPHORIA WELLNESS, LLC	EUPHORIA WELLNESS	165 16	No
51	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164 32	No
52	SOUTHERN NEVADA GROWERS, LLC	BOWTIE CANNABIS	163 17	No
53	GREENPOINT NEVADA, INC	CHALICE FARMS	161 84	No
54	NEVADA WELLNESS CENTER, LLC	NWC	156 51	No
55	SOLACE ENTERPRISES	THALLO	153 67	No
56	PHYSIS ONE, LLC	LV FORTRESS	153 00	No
57	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152 50	No
58	NEVCANN, LLC	NEVCANN	150 67	No
59	HEALTHCARE OPTIONS for PATIENTS ENTERPRISES, LLC	SHANG0	150 33	No
60	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146 99	No
61	WENDOVERA, LLC	WENDOVERA	145 66	No
62	RELEAF CULTIVATION, LLC	RELEAF CULTIVATION	143 83	No
63	HERBAL CHOICE, INC	HERBAL CHOICE	143 51	No
64	FOREVER GREEN, LLC	FOREVER GREEN	141 34	No
65	CN LICENSECO I, INC	CANA NEVADA	139 01	No
66	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138 66	No
67	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	137 51	No
68	EONEVADA LLC	MARAPHARM LAS VEGAS	137 33	No
69	PHENOFARM NV LLC	MARAPHARM LAS VEGAS	137 33	No
70	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134 17	No
71	BLOSSUM GROUP, LLC	HEALING HERB	125 50	No
72	LYNCH NATURAL PRODUCTS, LLC	LNP	124 00	No
73	RURAL REMEDIES, LLC	DOC'S APOTHECARY	120 16	No
74	NLV WELLNESS, LLC	ETHCX	109 67	No
75	MM R&D, LLC	SUNSHINE CANNABIS	64 66	No
76	THOMPSON FARM ONE, LLC	GREEN ZONE	49 66	No

CLARK COUNTY- UNINCORPORATED CLARK COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
3	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.66	Yes
4	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
5	HELPING HANDS WELLNESS CENTER, INC	HELPING HANDS WELLNESS CENTER	218.50	Yes
6	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
7	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	214.66	Yes
8	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
9	COMMERCE PARK MEDICAL, LLC	THRIVE	212.16	Yes
10	CLEAR RIVER, LLC	KABUNKY	210.16	Yes
11	WELLNESS CONNECTION OF NEVADA, LLC	CULTIVATE	208 50	No
12	CIRCLE S FARMS, LLC	CIRCLE S	208 00	No
13	QUALCAN, LLC	QUALCAN	207 66	No
14	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	205 67	No
15	3AP, INC	NATURE'S CHEMISTRY	202 83	No
16	WSCC, INC	SIERRA WELL	200 83	No
17	LAS VEGAS WELLNESS & COMPASSION CENTER	PEGASUS NV	200 16	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
18	ACRES MEDICAL, LLC	ACRES DISPENSARY	198 67	No
19	NATURAL MEDICINE, LLC	NATURAL MEDICINE	197 17	No
20	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	197 17	No
21	TGIG, LLC	THE GROVE	196 67	No
22	TRNVP098, LLC	GRASSROOTS	196 49	No
23	GRAVITAS HENDERSON, LLC	BETTER BUDS	196 01	No
24	D H FLAMINGO, INC	THE APOTHECARY SHOPPE	195 67	No
25	HARVEST of NEVADA, LLC	HARVEST	195 01	No
26	RED EARTH, LLC	RED EARTH	195 00	No
27	GRAVITAS NV	THE APOTHECARIUM	194 66	No
28	ZION GARDENS, LLC	ZION GARDENS	194 17	No
29	GREENSCAPE PRODUCTIONS, LLC	HERBAL WELLNESS CENTER	192 83	No
30	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
31	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
32	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
33	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
34	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190 66	No
35	LIVFREE WELLNESS, LLC	THE DISPENSARY	190 17	No
36	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189 68	No
37	TRYKE COMPANIES SO NV, LLC	REEF	189 33	No
38	FIDELIS HOLDINGS, LLC	PISOS	189 33	No
39	FIDELIS HOLDINGS, LLC	PISOS	189 00	No
40	LVMC C&P, LLC	CANNA COPIA	188 50	No
41	GREEN THERAPEUTICS, LLC	PROVISIONS	187 67	No
42	AGUA STREET, LLC	CURALEAF	187 17	No
43	AGUA STREET, LLC	CURALEAF	186 50	No
44	CWNEVADA, LLC	CANOPI	184 34	No
45	TRYKE COMPANIES RENO, LLC	REEF	181 33	No
46	MATRIX NV, LLC	MATRIX NV	180 33	No
47	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180 17	No
48	GBS NEVADA PARTNERS, LLC	SHOW GROW	180 17	No
49	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	179 50	No
50	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178 84	No
51	NEVADA GROUP WELLNESS, LLC	PRIME	178 18	No
52	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	176 34	No
53	NLVG, LLC	DESERT BLOOM WELLNESS CENTER	173 83	No
54	MEDI FARM IV, LLC	BLUM	173 50	No
55	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172 16	No
56	LUFF ENTERPRISES NV, INC	SWEET CANNABIS	171 33	No
57	WEST COST DEVELOPMENT NEVADA, LLC	SWEET GOLDY	168 17	No
58	GOOD CHEMISTRY NEVADA, LLC	GOOD CHEMISTRY	167 17	No
59	TWELVE TWELVE, LLC	12/12 DISPENSARY	166 67	No
60	GLOBAL HARMONY, LLC	TOP NOTCH	166 34	No
61	NEVADA PURE, LLC	SHANGO LAS VEGAS	165 83	No
62	EUPHORIA WELLNESS, LLC	EUPHORIA WELLNESS	165 16	No
63	FSWFL, LLC	GREEN HARVEST (Have A Heart)	164 83	No
64	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164 32	No
65	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163 83	No
66	SOUTHERN NEVADA GROWERS, LLC	BOWTIE CANNABIS	163 17	No
67	GREENPOINT NEVADA, INC	CHALICE FARMS	160 84	No
68	ETW MANAGEMENT GROUP, LLC	GASSERS	158 17	No
69	NEVADA WELLNESS CENTER, LLC	NWC	155 18	No
70	YMY VENTURES, LLC	STEM	153 83	No
71	MMOF VEGAS RETAIL, INC	MEDMEN	152 67	No
72	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152 50	No
73	NEVCANN, LLC	NEVCANN	150 67	No
74	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146 99	No
75	WENDOVERA, LLC	WENDOVERA	145 66	No
76	NCMM, LLC	NCMM	144 16	No
77	NCMM, LLC	NCMM	144 16	No
78	RELEAF CULTIVATION, LLC	RELEAF CULTIVATION	143 83	No
79	HERBAL CHOICE, INC	HERBAL CHOICE	143 51	No
80	CN LICENSECO I, INC	CANA NEVADA	139 01	No
81	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138 66	No
82	PHENOFARM NV LLC	MARAPHARM LAS VEGAS	137 33	No
83	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	135 84	No
84	DP HOLDINGS, INC	COMPASSIONATE TEAM OF LAS VEGAS	134 82	No
85	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134 17	No
86	NYE FARM TECH, LTD	URBN LEAF	133 34	No
87	GFIVE DISPENSARY, LLC	G5	128 83	No
88	BLOSSUM GROUP, LLC	HEALING HERB	125 50	No
89	GB SCIENCES NEVADA, LL	GB SCIENCES	125 00	No
90	KINDIBLES, LLC	AREA 51	117 50	No
91	KINDIBLES, LLC	AREA 51	117 50	No
92	KINDIBLES, LLC	AREA 51	117 50	No
93	KINDIBLES, LLC	AREA 51	117 50	No
94	NLV WELLNESS, LLC	ETHCX	109 67	No
95	GREENWAY MEDICAL, LLC	GREENWAY MEDICAL	101 00	No
96	MILLER FARMS, LLC	LUCID	88 66	No
97	MM R&D, LLC	SUNSHINE CANNABIS	64 66	No

DOUGLAS COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	GREEN THERAPEUTICS, LLC	PROVISIONS	188.34	Yes
3	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	184 84	No
4	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	148 51	No
5	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146 99	No
6	WENDOVERA, LLC	WENDOVERA	145 66	No
7	NCMM, LLC	NCMM	144 16	No

ELKO COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
2	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213 53	No
3	QUALCAN, LLC	QUALCAN	209 66	No
4	HARVEST of NEVADA, LLC	HARVEST	195 01	No
5	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163 83	No
6	WENDOVERA, LLC	WENDOVERA	145 66	No
7	H&K GROWERS, CORP	H&K GROWERS	125 83	No
8	LYNCH NATURAL PRODUCTS, LLC	LNP	124 00	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
ESMERALDA COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	185.17	Yes
3	BLUE COYOTE RANCH, LLC	BLUE COYOTE RANCH	100.83	No
EUREKA COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	EUREKA NEWGEN FARMS, LLC	EUREKA NEWGEN FARMS	97.67	Yes
HUMBOLDT COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes
2	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146.99	Yes
3	LYNCH NATURAL PRODUCTS, LLC	LNP	124.00	No
4	RURAL REMEDIES, LLC	DOC'S APOTHECARY	119.16	No
5	MILLER FARMS, LLC	LUCID	88.66	No
LANDER COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	TRNVP098, LLC	GRASSROOTS	196.49	Yes
3	HARVEST of NEVADA, LLC	HARVEST	195.01	No
4	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138.66	No
5	RURAL REMEDIES, LLC	DOC'S APOTHECARY	119.16	No
LINCOLN COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
LYON COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes
2	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.17	No
3	HIGH SIERRA HOLISTICS, LLC	HSH	184.83	No
4	5SEAT INVESTMENTS, LLC	KANNA	162.00	No
5	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	143.17	No
6	FOREVER GREEN, LLC	FOREVER GREEN	141.01	No
7	LYNCH NATURAL PRODUCTS, LLC	LNP	124.00	No
8	MILLER FARMS, LLC	LUCID	88.66	No
9	INTERNATIONAL SERVICES AND REBUILDING, INC	VOODOO WELLNESS	56.00	No

MINERAL COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	TRNVP098, LLC	GRASSROOTS	196.49	Yes

NYE COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
2	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.33	No
3	COMMERCE PARK MEDICAL, LLC	THRIVE	212.16	No
4	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204.01	No
5	TGIG, LLC	THE GROVE	196.67	No
6	TRNVP098, LLC	GRASSROOTS	196.49	No
7	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
8	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
9	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.50	No
10	GREEN LIFE PRODUCTIONS, LLC	GREEN LIFE PRODUCTIONS	180.68	No
11	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
12	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
13	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
14	5SEAT INVESTMENTS, LLC	KANNA	161.67	No
15	NYE FARM TECH, LTD	URBN LEAF	133.34	No
16	NLV WELLNESS, LLC	ETHCX	109.67	No
17	MILLER FARMS, LLC	LUCID	88.66	No
18	MM R&D, LLC	SUNSHINE CANNABIS	64.66	No

PERSHING COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes

STOREY COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes
2	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146.99	Yes

WHITE PINE COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	TRNVP098, LLC	GRASSROOTS	196.49	Yes
3	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138.66	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
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WASHOE COUNTY- RENO				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
5	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
6	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.66	Yes
7	COMMERCE PARK MEDICAL, LLC	THRIVE	212 16	No
8	QUALCAN, LLC	QUALCAN	209 66	No
9	WELLNESS CONNECTION OF NEVADA, LLC	CULTIVATE	208 33	No
10	CIRCLE S FARMS, LLC	CIRCLE S	208 00	No
11	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204 01	No
12	WSCC, INC	SIERRA WELL	201 50	No
13	ACRES MEDICAL, LLC	ACRES DISPENSARY	199 84	No
14	TGIG, LLC	THE GROVE	196 67	No
15	TRNVP098, LLC	GRASSROOTS	196 49	No
16	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
17	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
18	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190 66	No
19	LIVFREE WELLNESS, LLC	THE DISPENSARY	190 50	No
20	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189 68	No
21	GREEN THERAPEUTICS, LLC	PROVISIONS	188 34	No
22	BIONEVA INNOVATIONS OF CARSON CITY, LLC	BIONEVA INNOVATIONS	187 67	No
23	HIGH SIERRA HOLISTICS, LLC	HSH	184 83	No
24	GTI NEVADA, LLC	RISE	184 33	No
25	HIGH SIERRA CULTIVATION, LLC	HIGH SIERRA	183 33	No
26	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180 17	No
27	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178 84	No
28	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178 50	No
29	NEVADA GROUP WELLNESS, LLC	PRIME	178 18	No
30	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	175 67	No
31	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172 16	No
32	THC NEVADA, LLC	CANNA VIBE	170 99	No
33	HELIOS NV, LLC	HYDROVIZE	167 17	No
34	MMNV2 HOLDINGS I, LLC	MEDMEN	166 83	No
35	GLOBAL HARMONY, LLC	TOP NOTCH	166 34	No
36	FSWFL, LLC	GREEN HARVEST (Have A Heart)	164 83	No
37	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164 32	No
38	GREENPOINT NEVADA, INC	CHALICE FARMS	159 84	No
39	NEVADA WELLNESS CENTER, LLC	NWC	155 18	No
40	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152 50	No
41	NEVCANN, LLC	NEVCANN	150 67	No
42	D LUX, LLC	D LUX	149 83	No
43	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	141 83	No
44	CN LICENSECO I, INC	CANA NEVADA	139 01	No
45	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134 17	No
46	H&K GROWERS, CORP	H&K GROWERS	126 50	No
47	BLOSSUM GROUP, LLC	HEALING HERB	125 50	No
48	LYNCH NATURAL PRODUCTS, LLC	LNP	124 00	No
49	RURAL REMEDIES, LLC	DOC'S APOTHECARY	120 16	No
50	NEVADA BOTANICAL SCIENCE, INC	VIGOR DISPENSARIES	115 34	No
51	NV GREEN, INC	NV GREEN	105 84	No
52	MILLER FARMS, LLC	LUCID	88 66	No
53	MM R&D, LLC	SUNSHINE CANNABIS	64 66	No

WASHOE COUNTY- SPARKS				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222 99	No
3	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214 50	No
4	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213 33	No
5	TGIG, LLC	THE GROVE	196 67	No
6	TRNVP098, LLC	GRASSROOTS	196 49	No
7	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	192 01	No
8	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191 67	No
9	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180 17	No
10	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178 84	No
11	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178 83	No
12	GREENPOINT NEVADA, INC	CHALICE FARMS	161 17	No
13	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152 33	No
14	D LUX, LLC	D LUX	149 83	No
15	CN LICENSECO I, INC	CANA NEVADA	139 01	No
16	RURAL REMEDIES, LLC	DOC'S APOTHECARY	120 16	No

WASHOE COUNTY- UNINCORPORATED WASHOE				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
NO ALLOCATION				



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

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

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

*** AMENDED ***

August 16, 2018

To All Nevada Local Jurisdictions,

Pursuant to Section 80 subsection 3 of LCB File No. R092-17, The Department will allocate the licenses for retail marijuana stores described in paragraph (d) of subsection 5 of NRS 453D.210 to jurisdictions within each county and to the unincorporated area of the county proportionally based on the population of each jurisdiction and of the unincorporated area of the county. The Division has amended the allocation allotted to Nye County from 2 to 1.

The chart below outlines the allocation of the remaining retail marijuana store licenses. The allocation took into account the statutorily set number of stores to be allowed in each county and also the recreational retail marijuana store licenses already issued to current medical marijuana dispensary certificate holders. The county and jurisdiction population numbers were pulled from the Governors population estimates for 2017.

Licensing Authority	Remaining Licenses to be Allocated
Clark County	
Henderson	6
Las Vegas	10
Mesquite	0
North Las Vegas	5
Unincorporated Clark	10
Washoe County	
Reno	6
Sparks	1
Unincorporated Washoe	0
Carson City County	
Carson City	2

Licensing Authority	Remaining Licenses to be Allocated
Remaining Counties	
Churchill	1
Douglas	2
Elko	1
Esmeralda	2
Eureka	2
Humboldt	2
Lander	2
Lincoln	2
Lyon	1
Mineral	2
Nye	1
Pershing	2
Storey	2
White Pine	2

The Department issued a notice for an application period on July 5, 2018. The application period will open on September 7, 2018 and close September 20, 2018. No later than December 5, 2018, the Department will issue conditional licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one of the allocated licenses. Pursuant to Section 83 of R092-17, the licenses will remain conditional and not an approval to begin operations until such time as the applicant successfully completes all local jurisdictional requirements and passes a final state inspection. Conditional licenses holders have 12 months to become operational.

Sincerely,

Jorge L. Pupo
Deputy Executive Director
Marijuana Enforcement Division

State of Nevada Department of Taxation
Marijuana Enforcement Division
Marijuana Establishment
Licensing, Certification & Regulation
Train the Trainer



August 2018

Crash course

Cover two weeks of instruction in 1 hour

Instruction is built to move through quickly

Heavily geared toward application familiarization

Timed activities

Questions & feedback

Important process beyond the application evaluation

New to me.

In this training we will examine

Instructors.

Timeline.

2-weeks worth of instruction.

- Brief description of activities.

Where we are facing challenges.

Help fill in perceived gaps.

Instructors & Key Personnel

Who is doing what?

Program Manager

Steve Gilbert

- Assign all duties
 - Room preparation, instruction materials.
- Primary instructor for application evaluation
 - Oversees all evaluators
- Process management
- Quality assurance



Education Information Officer

Kyril Plaskon

- Room preparation coordination.
- Adjusting and adapting instruction from 2014.
- Ensuring materials are placed.
- Assisting others and filling in where necessary.

Program Officer III

Diane O'Connor, In contractor room every day.

- Monitor staff, attendance, supervision & security.
- **Fingerprint verification.**
- Track time & project completion date
- Main point of contact for all evaluators.
- Review instruction.
- Refine process for efficiency and accuracy.

Program Officer III

Jeannine Sherrick-Warner

- **Ownership verification.**
- Location review assistance.
- Review instruction.
- Refine process for efficiency and accuracy

Program Supervisor

Karalin Cronkhite

- Assist with instruction.
- Quality assurance.
- Check scores.

Chief Compliance/Auditor

Damon Hernandez

- Assist with instruction.
- Quality assurance.
- Check scores.

Marijuana Inspector II

David Witowski

- Historical perspective.
- Assist with instruction.
- Quality assurance
- Check scores.

Administrative Assistants

Marilyn Gray, Kirstee McCleary, Amber & Andrea

- To receive, log and transport applications and cash collection sheets.
- Must be notified of process.

Other Key Personnel

Josh Markhevda, Front Desk Tax Examiners

- Receive applications and call MED Administrative Assistants to log receipt of applications.
- Must be notified of the process.

Training Timeline

What is happening when?

Presentations & Activities Week 1

1. **Monday** - AM Orientation, 1 PM introductions start. History, MED Dept overview. Teams. (Ky & Steve)
2. **Tuesday** - 201, 202, 203 & 204 (Ky & Steve)
3. **Wednesday** - AM Application & Review score sheet (Steve).
Indiv. app review. (Dave) MED Intake process meeting.
4. **Thursday** - Reviewing applications as a group. (Dave).
Develop questions
5. **Friday** - Reviewing applications as a group (Dave)

Presentations & Activities Week 2

1. Tuesday - Re-cap, application review & materials. (Ky)
 - a. AM Score sheet & application (Kara & Damon)
 - b. PM Individual work on new application.
 - c. Group work on same application.
2. Wednesday - AM Individual completion. PM Group
3. Thursday - Thumb Drive, AM individual & group. Groups discuss challenges with entire class.
4. Friday - Thumb Drive AM Timed & PM Timed

Application Review Week 3

Monday

- Applications begin to arrive.
- MED process is practiced. Intake & **complete**
- Contractors continue practice until a real application is ready for review.
- Real application review begins
- Staff support for contractors.

Daily activity during app period

1. Sign-in sheet.
2. 10-20 min daily presentation optional.
 - a. Common questions.
 - b. Progress report from staff and group.
3. Daily application master tracking sheet.
4. Question & concern period at end of day for ID & Non ID.

Presentations

What are we teaching?

Over 300 slides

1,000 pages of training materials

Contractor Process

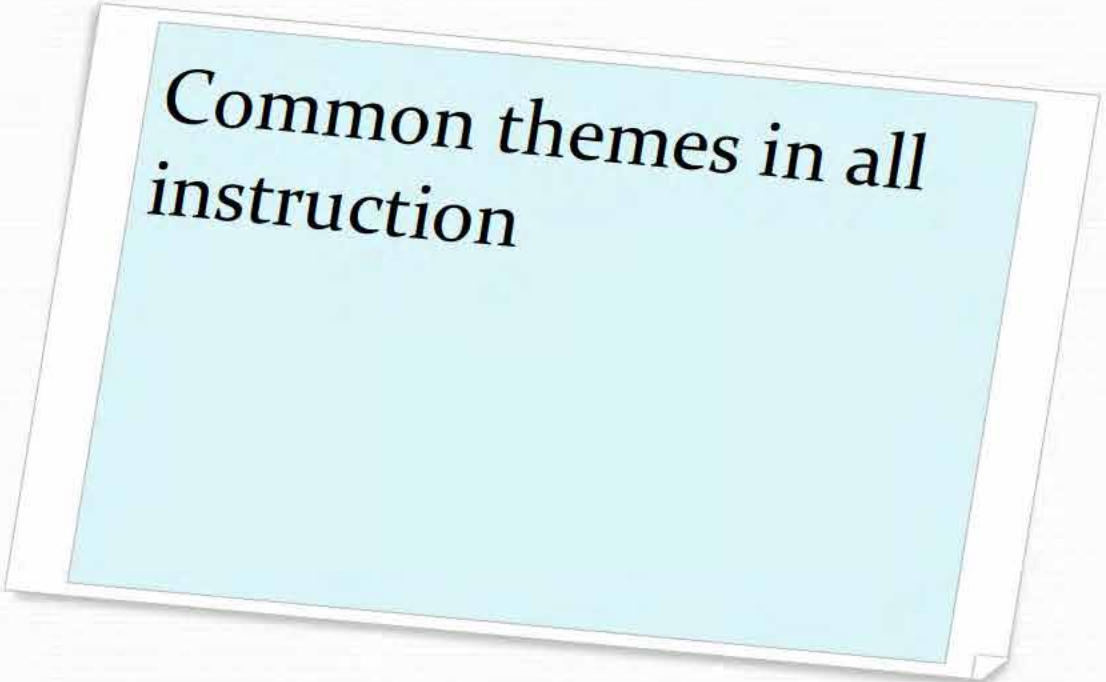
1. Contractors review moc applications, regulation quiz until applications or group is ready.
1. MED staff supplies contractors with real application.
2. Contractors review individually & score.
3. Contractor completes scoring notifies group members, participates in activities under step 1 until all group members are ready.
4. Contractors meet as group for score consensus.
5. Contractors notify MED that scoring is complete.
6. Contractors repeat at step 1.

Materials for evaluators

1. Scratch paper.
2. Evaluation forms.
3. Computers.
4. Blank applications for reference.
5. Moc applications
6. Scoring sheets

Crash course

Two weeks of instruction in
45 minutes



Common themes in all
instruction

General Instructional Timeline

1. INTRO - 8-9:30 am (90 min)
2. Break - 9:30-9:45 am (15 min)
3. ACTIVITY - 9:45-10:45 am (60 min)
4. Break - 10:45-11:00 am (15 min)
5. ACTIVITY - 11:00-12:00 pm (60 min)
6. Lunch - 12:00-1:00 (60 min)
7. ACTIVITY - 1:00-2:00 (90 min)
8. Break - 2:00-2:15 (15 min)
9. ACTIVITY - 2:15-4:15
10. Tomorrow Preview. Know the law. 4:15-5:00 (45 min)

Instructors

Steve Gilbert - Program Manager II

Diane Oconnor - Program Officer III

Jeannine Sherrick-Warner - Program Officer III

Kyril Plaskon - Education Information Officer

Kara Cronkhite - Marijuana Program Supervisor

Damon Hernandez - Chief Compliance/Audit Investigator

1. Cell phones off.
2. Paper and writing utensil.
3. Materials.

Application Evaluation – Administrative Team Class 202

- Confidentiality
- Application Evaluation Overview
- Application Eligibility Activities
- Management of Daily Evaluation Process
- Verification Activities
- Q & A

Welcome to the Administrative Team

- You have been assigned to the Administrative Team
- This class will give you an in-depth look at the activities you will be involved with and the functions you will be responsible for during the Application Evaluation Process

Confidentiality

**The application evaluation process is
STRICTLY CONFIDENTIAL!**

Confidentiality is required

- You signed a confidentiality agreement when hired.
- You cannot discuss the details of the application evaluation process unless actively involved with the process and with your evaluation team and Division management.

Do not:

- Discuss on social media
- Attempt to contact applicants directly
- Speak to media
- Discuss **any** details with **anyone** outside of your evaluation team (including your friends, family, strangers and other State of Nevada Staff)

Confidentiality!

When can you discuss the Evaluation Process?

- With your Evaluation Team in the Evaluation Room
- Formal Meetings with the Division Management or State Executives

Confidentiality

This process is extremely important to the
State of Nevada

Breaches in confidentiality will be
prosecuted.

Consequences for breach of confidentiality

- Termination of Employment
- Lawsuits
- Halting or invalidating the entire process

Reminder about Confidentiality

If you have any concerns regarding confidentiality please speak with Marijuana Enforcement Division

Program Manager Steve Gilbert
immediately.



Contact Steve Gilbert Immediately

- If someone from industry approaches you.
- If you suspect someone has been approached in this room regarding this work.
- If something suspicious happens.
- If you reveal you inadvertently reveal your work to someone.
- If you have questions regarding confidentiality.

Room contents

1. Room remains locked, only authorized personnel.
2. “A” room (windows) for Identified, “B” for non-ID
3. Door between A & B must remain closed.
4. Completed and to-be evaluated applications remain in supervisors office “C.”
5. Unauthorized access must be immediately logged and a supervisor notified.



Time fillers

Review regulations.

Complete quiz.

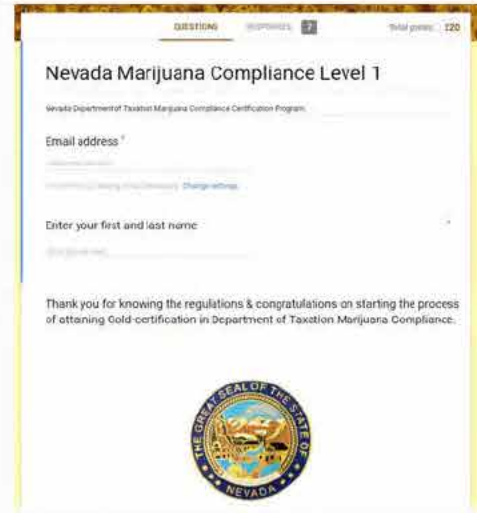
Can watch videos about history of marijuana (with headphones)

Know the Law

- Reviewing regulations on-line & applicable sections to application
- Regulation quiz.
- Re-take.
- Certification.

Link will be posted.

[Go to Certification Link](#)



The screenshot shows a web-based quiz interface for the Nevada Department of Taxation Marijuana Compliance Certification Program. At the top, there are tabs for 'QUESTIONS', 'RESPONSES', and 'Total points: 120'. The main heading is 'Nevada Marijuana Compliance Level 1'. Below this, it says 'Nevada Department of Taxation Marijuana Compliance Certification Program'. There is a field for 'Email address *' with a dropdown menu and a 'Change settings' link. Below that is a field for 'Enter your first and last name' with a 'Go forward' button. At the bottom, there is a message: 'Thank you for knowing the regulations & congratulations on starting the process of attaining Gold certification in Department of Taxation Marijuana Compliance.' and the Great Seal of the State of Nevada.

Crash course

Two weeks of instruction in
45 minutes

Let's look at the
presentations
101, 201, 202, 203, 204

101 Introductions

State of Nevada Department of Taxation
Marijuana Enforcement Division
Marijuana Establishment
Licensing, Certification & Regulation
Day 1 - Sign In & Complete Icebreaker



August 2018

Day one AM breaddown

8-9 - Sign in, introductions of MED staff. Icebreaker sheet.

10 min break

9:10-10 - Photos for badges (Tiffany).

10 min break

10:10-11 - IT Security training. Computer log in.

10 min break

11:10-12:00 - Manpower time cards & background checks (Marilyn)

12:00-1:00 - Computer, bookmarks on regs, download the application & review. When badges come in, take lunch.

Day one PM Breakdown

1-2 pm introduction activities

10 min break

2:10-3:10 Power Points 101 - 204

10 min break

3:20-4:20 Power points

10 min break

4:30 - 5 Power points

The background is a solid blue color with subtle, wavy, lighter blue lines near the top edge, creating a sense of movement or a horizon line.

202

Application Evaluation Administrative Team

Application Evaluation Overview

Class 201

- Class Details
- Application Overview
- Application Evaluation Process Overview
- Final Scores and Issuance of Provisional Certificates
- Q & A

The Basics

- Application Evaluation Process Overview
- Mandatory for all involved in evaluating Medical Marijuana Establishment (MME) Applications.
 - Permanent and temporary staff

What You've Already Learned

- Medical Marijuana in the US
- History of Medical Marijuana in Nevada
- Legislation – SB 374 & NRS 453A
- Regulations – LCB File No. Roo4-14A
- New Nevada Medical Marijuana Program

Application & Scoring

Reviewing the blank application, scoring & relationship to regulation

Application & Scoring

- Page by page
- Matching regs with app

The image shows the cover page of a form titled "Recreational Marijuana Establishment License Application" for the State of Nevada. At the top, it features the Nevada state seal and the Department of Taxation logo. The header includes the state name, department name, website URL (<https://tax.nv.gov>), and contact information for Carson City, Nevada. The main title of the form is "Recreational Marijuana Establishment License Application" with a subtitle "Recreational Retail Marijuana Store Only". Below this, it specifies the release date as July 6, 2018, and the application period from September 1, 2018, to September 20, 2018, on business days from 9:00 A.M. to 5:00 P.M. A section for additional information provides contact details for the Marijuana Enforcement Division, including the address (1550 College Parkway, Suite 115, Carson City, NV 89706) and the website (<https://tax.nv.gov>).

STATE OF NEVADA
DEPARTMENT OF TAXATION
Web Site: <https://tax.nv.gov>
1550 College Parkway, Suite 115
Carson City, Nevada 89706
Phone: (775) 688-8800 Fax: (775) 688-2200

NEVADA OFFICE
4000 Kietz Lane
Reno, NV 89502
Phone: (775) 335-0000
Fax: (775) 335-7827

RECREATION OFFICE
2200 Carson City Parkway, Suite 100
Carson City, Nevada 89706
Phone: (775) 688-2200
Fax: (775) 688-2277

Recreational Marijuana Establishment License Application
Recreational Retail Marijuana Store Only

Release Date: July 6, 2018
Application Period: September 1, 2018 through September 20, 2018
(Business Days 9:00 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
<https://tax.nv.gov>

203 Application Evaluation Overview

Application Evaluation – Identified Team Class 203

- Confidentiality
- Team Roles and Responsibilities
- Application Evaluation Overview
- Administrative Review
- First Four Criteria
- Individual Review
- Team Meeting
- Overview of Remaining Processes
- Mock Review

Welcome to the Identified Team

- You have been assigned to the Identified Team
- This class will give you an in-depth look at the activities you will be involved with and the functions you will be responsible for during the Application Evaluation Process

Identified Teams

Evaluate merit based criteria in the applications that includes identified information (names, dates, titles and so on)

- Sections will be scored
- Evaluation Sheets will be provided with guidelines on scoring

204

Application Evaluation Non-Identified Team

Application Evaluation – Non-Identified Team Class 204

- Confidentiality
- Team Roles and Responsibilities
- Application Evaluation Overview
- Individual Review
- Team Meeting
- Overview of Remaining Processes
- Mock Review

Non-Identified Team

- This class will give you an in-depth look at the activities you will be involved with.
- Functions you will be responsible for during the Application Evaluation Process.

Non-Identified Criteria Teams

Evaluate merit based criteria in the applications that does not have any identified information - names, dates, titles and so on replaced with generic terms

- Sections will be scored
- Evaluation Sheets will be provided with guidelines on scoring

Mock Applications

Goal: Try to get through two-three applications a day

Mock Application Training

- Wednesday (8/29) - Thurs
- Blank Application & Score sheet
- Thursday Mock Application Individual
- Friday Mock Application Group
- Developing questions each step of the way.

Mock Application Training

- Monday Mock Application guided
- Tuesday Mock Application teams
- Wednesday Mock Applications indiv & group
- Thursday Mock Applications Thumb Drive
- Friday Timed Thumb Drive

Application & Eval Period

Sept 7-20th Putting knowledge to the test

Daily Preparation

1. Review what we have accomplished
2. What is in store for tomorrow.
3. Where we are in a status update. Diane
 - a. Number completed.
 - b. Number to go.
 - c. Anticipated completion date.

Application Tracking sheet

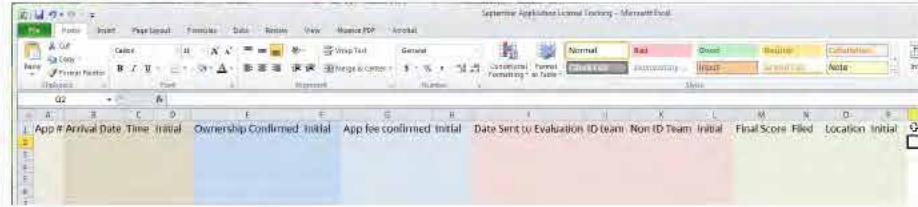
The tracker has had the next available 100 consecutive dispensary establishment ID numbers added and it has been saved as “REC 09.07-20.18 Application Period – License Tracking” in the folder created for this upcoming application period – G drive : Div Marijuana : MME Application Periods

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	App #	Arrival Date	Time	Initial	Ownership Confirmed	Initial	App fee confirmed	Initial	Date Sent to Evaluation	ID team	Non ID Team	Initial	Final Score	Filed	Location	Initial
2																
3																
4																
5																
6																
7																

Application Tracking sheet

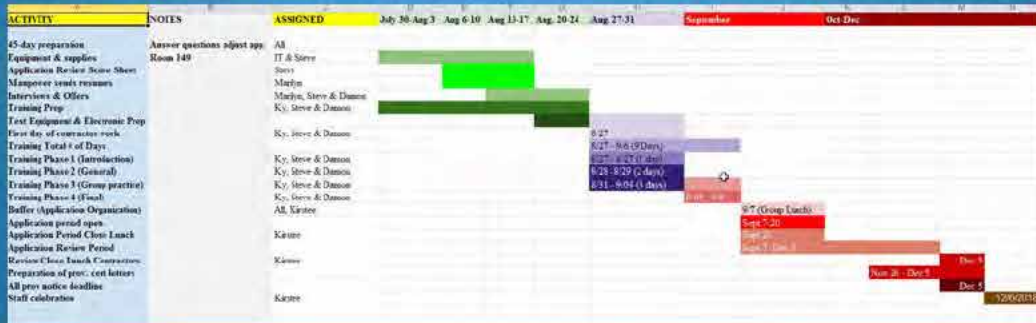
Each day staff:

1. Put in App # & time
2. Check ownership
3. Confirm Fingerprinting, Confirm fee
4. Assign to teams (ID & Non-ID) in order of arrival.
5. Monitor if teams are ready for new applications.
6. Enter scores.
7. File materials in appropriate location.



Complete

12/5/2018 - 90-day evaluation period ends



APPLICATION EVALUATION – Evaluator's Guidelines - ORGANIZATIONAL STRUCTURE (IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17.

TOTAL POSSIBLE POINTS = 60 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score If applicable	Comments
<p>R092-17 Sec. 80 (a) Whether the owners, officers or board members have experience operating another kind of business that has given them experience which is applicable to the operation of a marijuana establishment</p> <p>R092-17 Sec. 80 (b) The diversity of the owners, officers or board members of the proposed marijuana establishment</p> <p>R092-17 Sec. 80 (c) The educational achievements of the owners, officers or board members of the proposed marijuana establishment</p> <p>R092-17 Sec. 80 (g) Whether the owners, officers or board members of the proposed marijuana establishment have direct experience with the operation of a medical marijuana establishment or marijuana establishment in this State</p> <p>and have demonstrated a record of operating such an establishment in compliance with the laws and regulations of this State for an adequate period of time to demonstrate success</p>	<p>An organizational chart showing all owners, officers and board members, and key personnel of the marijuana establishment, including percentages of ownership for each individual and a short description of the proposed organizational structure.</p> <p>The organizational chart clearly demonstrates the following:</p> <ul style="list-style-type: none"> -Defines the roles and responsibilities that will make up the company's functioning and shows how everything fits together as a whole. -Demonstrates groupings of functions to ensure they are overseen and performed by a member of the organization -Position job descriptions demonstrate the scope, function and limits of their roles, and for what tasks and outcomes they will be held responsible for -Organizational structure shows efficiency between roles <p>An excellent response would include all the following elements: The organizational chart and position descriptions demonstrate all or most of the above expectations, are reasonable, and the rationale for the structure appears reasonable and logical. For each key personell, their experience, roles and duties are included.</p>				

EVALUATOR NAME _____

ORGANIZATIONAL STRUCTURE (IDENTIFIED)

ME ID# _____

<p>R092-17 Sec. 80 (h) The experience of key personnel that the applicant intends to employ in operating the type of marijuana establishment for which the applicant seeks a license; and</p>	<p>An average response would include the following: The organizational chart and position descriptions demonstrate few of the above expectations and needed positions appear to be missing.</p>				
	<p>An inadequate response would include the following: The organizational chart and position descriptions do not demonstrate the above expectations and needed positions appear to be missing.</p>				
	<p>Range 0 - 15 points</p>				
<p>Merit Criteria Per NRS and R092-17</p>	<p>Evaluation Elements</p>	<p>Individual Scores</p>	<p>Comments</p>	<p>Revised Score if applicable</p>	<p>Comments</p>
	<p>A narrative description not to exceed 750 words, and a resume, including educational achievements, for each owner, officer and board member, demonstrating the following:</p> <p>Any previous experience at operating other businesses or non-profit organizations.</p> <p>An excellent response would include the following: Owners, officers and board members can each demonstrate business experience running other businesses or non-profits. Each individual has the knowledge and experience relevant to the roles and responsibilities outlined.</p> <p>A average response would include the following: Some owners, officers and board members can demonstrate business experience running other businesses or non-profits. Some individual has some knowledge and experience relevant to the roles and responsibilities outlined.</p> <p>A inadequate response would include the following: Owners, officers and board members demonstrates little to no prior business experience.</p>				
	<p>Range 0 - 10 points</p>				

EVALUATOR NAME _____

ORGANIZATIONAL STRUCTURE (IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score If applicable	Comments
	A narrative description not to exceed 750 words; and a resume, including educational achievements, for each owner, officer and board member, demonstrating the following:				
	<p>The educational achievements of the persons who are proposed to be owners, officers or board members of the proposed marijuana establishment</p> <p>An excellent response would include the following: The resumes demonstrate college degrees or higher.</p> <p>An average response would include the following: The resumes demonstrate some college degrees or higher.</p> <p>An inadequate response would include the following: The resumes do not demonstrate college degrees or higher. Some course work in related fields may be indicated.</p>				
	Range 0 - 5 points				

EVALUATOR NAME _____

ORGANIZATIONAL STRUCTURE (IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>A narrative description not to exceed 750 words; and a resume, including educational achievements, for each owner, officer and board member, demonstrating the following:</p> <p>Any demonstrated knowledge or expertise with respect to direct experience with the operation of a medical marijuana establishment or marijuana establishment in this State and have demonstrated a record of operating such an establishment in compliance with the laws and regulations of this State for an adequate period of time to demonstrate success the compassionate use of marijuana to treat conditions</p> <p>An excellent response would include the following: Extensive knowledge of the marijuana industry is demonstrated, and prior experience running marijuana establishments is indicated.</p> <p>An average response would include the following: Some knowledge of the marijuana industry is demonstrated, but no prior experience running marijuana establishments is indicated.</p>				
	An inadequate response would include the following: Little to no knowledge of the marijuana industry is demonstrated.				
	Range 0 - 10 points				

EVALUATOR NAME _____

ORGANIZATIONAL STRUCTURE (IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score If applicable	Comments
	<p>Diversity on the basis of race, ethnicity or gender of the persons proposed to be owners, officers or board members.</p> <p>Diversity demographic information from the owner, officer and board member information forms. Diversity factors include race, gender and ethnicity. Points awarded for % of principals which are non-caucasian, female and non-anglo/European American. Must provide proof, may check in portal.</p> <p>0% = 0 points 0-10% = 2 point 11-20% = 4 points 21-30% = 6 points 31-40% = 8 points 41-50% = 10 points 51-60% = 12 point 61-70% = 14 points 71-80% = 16 points 81-90% = 18 points 91-100% = 20 points</p>				
	Range 0-20 points				

Time Tracking for Evaluation Process	
Evaluator Name	
Start Time:	
End Time:	
Total Time to be charged to applicant:	

Instructions to Evaluators:

- 1) Evaluators enter start time for evaluation
- 2) Evaluator individually scores criteria
- 3) Evaluators completes evaluation and enters end time

EVALUATOR NAME _____

ORGANIZATIONAL STRUCTURE (IDENTIFIED)

ME ID# _____

5) Time calculated is time which will be charged to the applicant

APPLICATION EVALUATION – Evaluator's Guidelines - CARE, QUALITY AND SAFEKEEPING (NON-IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17.

TOTAL POSSIBLE POINTS = 90 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
R092-17 Sec. 80 (a) Whether the applicant has an integrated plan for the care, quality and safekeeping of marijuana from seed to sale	<p>Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including, without limitation:</p> <p>A plan for testing, verifying and promoting marijuana</p> <p>Evaluators - use the specific criteria for recreational marijuana retail store.</p> <p>Each recreational marijuana retail store shall ensure that :</p> <ul style="list-style-type: none"> -marijuana product has been tested for content, quality and potency and that product is in Metrc and passed all testing requirements and is logged and verified in Metrc. -Demonstrates that no product will be sold until all required quality assurance testing has been completed -Demonstrates responsibility for the content and quality of any product sold or dispensed by the establishment -Demonstrates responsibility that all screening or testing has been performed -Demonstrates that it must disclose the name of the independent testing lab which performed the required quality assurance tests 				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<ul style="list-style-type: none">-Demonstrates the proper labeling requirements as necessary to be included in addition to the label from the independent testing results and / or cultivation or production facility-Defines processes for receipt, identification, storage, handling, segregation of marijuana product before sale.-Defines procedures describing in sufficient detail the receipt, identification, storage, handling, sampling, examination and testing of labeling and packaging materials, containers and closures and that it follows those procedures-Defines that each container or grouping of containers for components, product containers or closures is identified with a metric package number and lot or production run number.Each lot must be appropriately identified as to its status such as quarantined, approved or rejected.-Processes for the disposal or remediation of product.-Defines processes for how the facilities will train employees on how to respond, upon the request of the Department, on providing a sample of marijuana or a marijuana product for random quality assurance compliance checks in a secure manner.-Demonstrates the promotion of marijuana or marijuana product through marketing the laboratory results only on the label and will not promote any other attributes of the products-Demonstration of any other value added services the recreational retail store will offer to consumers.				
	Range 0 - 5 points				

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>A Transportation Plan:</p> <p>The following regulatory requirements should be reflected in the applicant's transportation plan:</p> <ul style="list-style-type: none"> -Demonstrating how marijuana products, paraphernalia, marijuana infused products or marijuana edible products will be transported from the applicant's facility to a consumer or to another recreational marijuana retail store. -Demonstrate that no more than 5 ounces (or equivalent) of marijuana, edible marijuana products or marijuana-infused products, or any combination thereof, may be transported at any one time from an establishment to consumers within a single trip. -Demonstrate before transportation, that the establishment will confirm verbally with the consumer by telephone that the consumer ordered the marijuana or marijuana products -Provide documentation of the sample log which will be made available for inspection by the appropriate law enforcement agency, including customer signatures for delivery -Provide documentation of a sample trip plan which will be used by the facility for deliveries 				
	<ul style="list-style-type: none"> -Provide a description all vehicles which will be used in the transport of marijuana products, ensuring that they contain no identification, and products will not be visible during transportation -Demonstrate what means of communication and communication strategy will be used in the transportation of marijuana products -Identify processes for reporting accidents and any loss or theft of marijuana that occurs during transportation to the appropriate law enforcement agency and the department -Identifies a transportation plan that will deter the loss, theft or diversion of marijuana products 				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>An excellent response would include the following: The criteria response clearly demonstrates how the establishment intends to provide transportation of marijuana products, including any necessary information regarding agents who are authorized to transport marijuana products.</p> <p>An average response would include the following: The criteria somewhat demonstrates how the establishment intends to provide transportation of marijuana products, but only somewhat includes any necessary information regarding agents who are authorized to transport marijuana products.</p> <p>An inadequate response would include the following: The criteria does not demonstrate how the establishment intends to provide transportation of marijuana products, and may reference outside delivery services as the transportation plan of choice, which will not be authorized to transport marijuana products</p>				
	Range 0 - 10 points				

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>Procedures to ensure adequate security measures including, without limitation, for building security</p> <p>Documentation that the marijuana establishment has a single customer entrance and shall implement strict security measures including security equipment to deter and prevent unauthorized entrance into limited access areas, which should include:</p> <ul style="list-style-type: none"> -Devices to detect unauthorized intrusion -Exterior lighting to facilitate surveillance -24 hour Electronic monitoring, including one call-up monitor, a video printer and video cameras with recording resolution of at least 1920 x 1080 or the equivalent, at a rate of at least 15 frames per second which provides coverage of all areas -A video camera at each point of sale -A method for storing video recordings for at least 30 days -A failure notification system -Sufficient battery backup for video cameras and recording equipment -Immediate notification for law enforcement agencies for unauthorized breach <p>-Procedures for building security, including requirements for the protection by a fully operational security alarm system installed by a professional security firm</p> <p>-Processes for permission for entry for reasonable inspection and authorized access. An inspector conducting an inspection pursuant to this section does not need to be accompanied during the inspection</p> <p>-Demonstrates how the building security plan will describe in detail the enclosed locked facility where marijuana will be stored, including when the location is closed for business, and its security measures, including steps taken to ensure that marijuana is not visible to the public</p>				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>-Documentation of the storage requirements-Must be stored in a secure, locked device, display case, cabinet or room within the enclosed, locked facility, which must be protected by a lock or locking mechanism that meets at least the security rating established by Underwriters Laboratories for key locks</p> <p>An excellent plan would include the following: The plan fully demonstrates the building security features and procedures demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the department . Should include a detailed budget for the proposed establishment that fully shows pre-opening, construction and first year operating expenses.</p> <p>An average plan would include the following: The plan simply demonstrates the building security features and procedures may demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the department .</p> <p>An inadequate plan would include the following: The plan does not fully demonstrates the building security features and procedures do not fully demonstrate the applicant's ability to prevent the theft or diversion of marijuana or are not addressed in the response. Does not have a detailed budget for the proposed establishment that adequately shows shows pre-opening, construction and first year operating expenses.</p>				
	Range 0 - 10 points				

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>Procedures to ensure adequate security measures including, without limitation, for product security</p> <p>-The response demonstrates a plan for recordkeeping, tracking and monitoring inventory, quality control and security and other policies and procedures that will discourage unlawful activity</p> <p>-The response demonstrates how the establishment intends to prevent diversion of marijuana and the procedures for preventing minors from purchasing marijuana</p>				
	<p>-Demonstration of how the applicant plan to accept delivery of marijuana to the facility, including procedures on how it is received and documented</p> <p>-Documentation on the proper use of security measures and controls that have been adopted by the marijuana establishment for the prevention of diversion, theft or loss of marijuana</p> <p>An excellent plan would include the following: The plan fully demonstrates the product security plans and the security measures fully demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the department</p> <p>An average plan would include the following: The plan somewhat demonstrates the product security plans and the security measures somewhat demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the Department</p> <p>An inadequate plan would include the following: The plan does not fully demonstrate the product security plans and little to no security measures are demonstrated in the response.</p>				
	Range 0 - 15 points				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>A detailed budget for the proposed establishment, including pre-opening, construction and first-year operating expenses</p> <p>An excellent response would demonstrate expenses and projected revenue as clearly delineated, reasonable and cover all expenses, including regulatory requirements as follows:</p> <ul style="list-style-type: none"> -An annual financial statement -A report of an audit by a certified public accountant -Excise taxes -Agent card fees -Initial certification fee/renewal -Application evaluation fee -Fee for time and effort for inspection over-sight -Provision for annual physical inventories 				
	<p>An average response would demonstrate expenses and revenue appearing to be reasonable and cover major categories of expenses for a start up operation; a small contingency may or may not be contemplated; some regulatory requirements are missing</p> <p>An inadequate response would demonstrate expenses and revenue are somewhat defined; start up expenses are un-reasonable; no contingency fund; most regulatory requirements are missing</p>				
	Range 0 - 10 points				

	<p>An operations manual that demonstrates compliance with applicable statutes and regulations</p> <p>Each recreational marijuana retail store shall ensure that :</p> <p>Governing Documents -Mission and Vision Statement, Bylaws, Core Values, Goals and Action Plans</p>				
	<p>Oversight -Job Descriptions and Responsibilities, Training and Education, Organizational Chart, Contact Information, Safety Policies, Attendance and Workplace Policies, Wage and Hour Policies and Over-time, Confidentiality, Disciplinary policies, Holidays, Insurance and Benefits</p> <p>Standard Operating Procedures Recordkeeping -Electronic verification system, inventory control system and control, testing and verification procedures, notification of agent status to the department , business records and retention, product acquisition and reporting, sales and dispensing processes and reporting, including recognition of non-resident cards, patient records, and confidentiality and retention</p> <p>Safety and Security -Product and Building safety procedures, transportation procedures, public consumption, storage and handling, product disposal, reporting of suspected criminal activity, salvage procedures, building maintenance and cleaning procedures</p> <p>Inspection -Procedures on inspection activities, visitor and establishment authorized access, responding to deficiencies, and quality control unit</p> <p>Packaging and Labeling -Processes and procedures for packaging and labeling, requirements for edibles, sampling procedures, packaging material examination and contamination procedures</p> <p>Forms -Either included as its own section, or incorporated into the relevant sections</p>				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>An excellent response would include all the following elements: The operations manual of the applicant reflect all or most of the requirements for a marijuana establishment. The manual has been developed and included.</p> <p>An average response would include all the following elements: The operations manual of the applicant reflect some but not all of the requirements for a marijuana establishment</p> <p>An inadequate response would include the following: The operations manual of the applicant reflect few or none of the requirements for a marijuana establishment</p>				
	Range 0 - 15 points				
Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments

	<p>An education plan which must include, without limitation, providing educational materials to the staff of the proposed establishment</p> <p>The education plans should include the following educational regulatory requirements: Documentation that training for all employees will include the following</p> <ul style="list-style-type: none"> -Training will be provided to a marijuana establishment agent before that person begins work or volunteers -Proper use of security measures and controls which have been adopted by the establishment for the prevention of diversion, theft or loss -Procedures and instructions for responding to an emergency 				
	<p>-State and federal statutes and regulations regarding confidentiality of information</p> <p>-Health and cleanliness standards, including the person who will address health conditions</p> <p>The following requirements must be reflected in the education plans of each type of establishment:</p> <p>Marijuana Retail Store:</p> <ul style="list-style-type: none"> -The different strains of marijuana -The different methods of using marijuana -Recognizing signs of abuse or instability in a consumer -Consumer education and support, including: <ul style="list-style-type: none"> -Availability of different strains -Information on effectiveness of methods, forms and routes of administration -Prohibition of smoking in public places <p>An excellent response would include all the following elements: The education plan of the applicant reflects all of the requirements for the marijuana establishment type, and appropriate demonstration or reference to an outside resource to supply the appropriate training is provided. The plan has been developed and included.</p>				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>An average response would include all the following elements: The education plan of the applicant reflects some of the requirements for the marijuana establishment type, and appropriate demonstration or reference to an outside resource to supply the appropriate training may be referenced but not provided</p> <p>An inadequate response would include all the following elements: The education plan of the applicant does not reflect the requirements for the marijuana establishment type, and appropriate demonstration or reference to an outside resource to supply the appropriate training is not provided</p>				
	Range 0 - 2.5 points				
Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments

	<p>A plan to minimize the environmental impact of the proposed establishment</p> <p>A plan to minimize the environmental impact of an establishment could include the following:</p>				
	<p>-Demonstration that focused energy management is a key strategic initiative for the facility and it is committed to operating a facility that maximizes energy performance while conserving consumption.</p> <p>-Demonstration that the facility will use a clean energy supply, including renewable energy and clean distributed generation, such as combined heat and power to control energy use.</p> <p>-Demonstration of post-consumer waste reduction including a plan to execute the use of recycled-content material, maximization of plastic and paper recycling, reducing paper use by means of electronic data transfer and online document storage.</p> <p>-Demonstration of environmentally friendly product choices, focusing on the way these products are manufactured, the raw materials they utilize, or the way they can be disposed of or recycled.</p> <p>-Inclusion of organic and natural offerings to meet the marijuana needs of their customers</p> <p>-Demonstration of sustainable sources of supply and collaboration that demonstrate strong sustainable practices which minimize the depletion of natural resources. The applicant supports local sources of supply when product availability, food safety, and quality are not compromised.</p> <p>-Documentation that distribution of safe products is a principal objective and commitment to provide high-quality products that meet regulatory specifications and customer expectations is demonstrated.</p> <p>-Demonstration of solutions that enable people who will work for the facility to improve their livelihoods and make environmentally conscious choices.</p>				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>An excellent response would include all the following elements: The environmental impact plan of the applicant reflects many elements for reducing waste and maximizing sustainability in the proposed establishment.</p> <p>An average response would include all the following elements: The environmental impact plan of the applicant reflects addresses some elements for reducing waste and maximizing sustainability in the proposed establishment.</p> <p>An inadequate response would include all the following elements: The environmental impact plan of the applicant reflects few elements for reducing waste and maximizing sustainability in the proposed establishment.</p>				
	Range 0 - 2.5 points				
Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

APPLICATION EVALUATION – Evaluator's Guidelines - ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17

TOTAL POSSIBLE POINTS = 20 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
R092-17 Sec. 78 (f) Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details	Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to purchase recreational marijuana. Building Plans with supporting Details				
	Effective and efficient building planning is demonstrated in the response. An excellent response would include all the following elements: The building plan demonstrates a clear definition of work tasks, estimation of required resources and duration for individual tasks. The planning of scheduled activities along with the estimated resources and duration are realistic and achievable within the required 12 months to be fully operational				

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

	<p>An average response would include the following elements: The building plan does not demonstrate a clear definition of work tasks, estimation of required resources and duration for individual tasks. The planning of scheduled activities along with the estimated resources and duration appear unrealistic and unachievable.</p> <p>An inadequate response would demonstrate no planning in the criteria response</p>				
	Range 0 - 10 points				

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>Building Plans demonstrate necessary regulatory requirements</p> <p>Regulatory requirements include:</p> <ul style="list-style-type: none"> -Have an appearance, both as to the interior and exterior, that is professional, orderly, dignified and consistent with the traditional Nevada retail marijuana stores -Have professional signage that meets the advertising guidelines established by the department. -Have a single, public entrance and demonstrate strict security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana -Is of suitable size, construction and location to facilitate cleaning, maintenance and proper operations -Has adequate space for the orderly placement of equipment and materials to prevent misuse of any component and to prevent contamination 				
	<p>-Demonstration that adequate lighting is provided in all areas of the establishment</p> <p>-Operations of the establishment are performed within separate or defined areas or such other control systems as are necessary to prevent contamination, miscalculation or misuse of any component in any step</p> <p>Evaluators - use the specific criteria by establishment type as follows:</p> <p><u>Marijuana Retail Store:</u></p>				

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

	-Within the product showroom space, plans must reflect that all marijuana products must be stored behind a counter or other barrier to ensure customers have no direct access				
	Range 0 - 10 points				

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

Time Tracking for Evaluation Process	
Evaluator Name	
Start Time:	
End Time:	
Total Time to be charged to applicant:	

Instructions to Evaluators:

- 1) Evaluators enter start time for evaluation
- 2) Evaluator individually scores criteria
- 3) Evaluators completes evaluation and enters end time
- 5) Time calculated is time which will be charged to the applicant

Case No. 82014

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

TGIG, LLC; NEVADA HOLISTIC MEDICINE, LLC; GBS NEVADA PARTNERS, LLC; FIDELIS HOLDINGS, LLC; GRAVITAS NEVADA, LLC; NEVADA PURE, LLC; MEDIFARM, LLC; MEDIFARM IV LLC; THC NEVADA, LLC; HERBAL CHOICE, INC.; RED EARTH LLC; NEVCANN LLC, GREEN THERAPEUTICS LLC; AND GREEN LEAF FARMS HOLDINGS LLC,

Appellants,

v.

THE STATE OF NEVADA DEPARTMENT OF TAXATION

Respondent.

**RESPONDENTS' APPENDIX IN SUPPORT
OF ANSWERING BRIEF
Volume III of III**

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Cannabis Compliance Board

INDEX

Volume	Document	Page Nos
II.	Amended Trial Protocol No. 2, filed 7/2/20	381-401
III.	Department of Taxation's Brief in Support of its Motion for Directed Verdict, filed 8/11/20	571-581
II.	Department of Taxation's Joinder to Essence Entities' Motion to Dismiss or, Alternatively, Motion for Judgment on the Pleadings, filed 2/12/20	374-375
I.	Department of Taxation's Opposition to Motion for Preliminary Injunction, filed 5/9/19.....	1-250
II.	Department of Taxations' Opposition to Motion for Preliminary Injunction, filed 5/9/19.....	251-262
II.	Essence Entities' Motion to Dismiss or Alternatively, for Judgment on the Pleadings, filed 2/11/20.....	359-373
II.	ETW Plaintiffs' Third Amended Complaint, filed 1/29/20	263-358
II.	Record on Review in Accordance with the Nevada Administrative Procedure Act, filed 6/12/20.....	376-380
III.	Transcript of Proceedings, Bench Trial – Day 9, Volume II, dated 7/29/20	512-569
II.	Trial Exhibit 84 (2018 Retail Marijuana Store Application Scores and Rankings) admitted 7/10/2020.....	402-408
II.	Trial Exhibit 1007 (Department of letter regarding allocation of licenses for retail marijuana stores) admitted 7/20/2020.....	409-410

II.	Trial Exhibit 1008 (Scoring tool for Organizational Structure (identified)) admitted 7/21/2020.....	475-480
II.	Trial Exhibit 1009 (Scoring tool for care, quality safekeeping (non-identified)) admitted 7/21/2020	481-494
II.	Trial Exhibit 1010 (Scoring tool for adequacy of size-building plans (non-identified)) admitted 7/21/2020	495-499
III.	Trial Exhibit 1011 (Scoring tool likely impact on the community (non-identified)) admitted 7/21/2020	500-503
III.	Trial Exhibit 1012 (Scoring tool for taxes beneficial financial contributions (identified)) admitted 7/21/202	504-507
III.	Trial Exhibit 1013 (Scoring tool for financial resources (identified)) admitted 7/21/2020.....	508-511
II.	Trial Exhibit 1125 (Train the Trainer Training PowerPoint presentation) admitted 7/20/2020.....	411-474
III.	Trial Exhibit 1259 (Department of Taxation's letter to THC, Nevada, LLC denying application for marijuana distributor license) admitted 8/5/2020	570

DATED this 29th day of March, 2022.

AARON D. FORD
Attorney General

By: /s/ Akke Levin
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Akke Levin (Bar No. 9102)
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 29th day of March, 2022, and e-served the same on all parties listed on the Court's Master Service List.

/s/ *Lucas Combs*

Lucas Combs, an employee of
the office of the Nevada Attorney General

EVALUATOR NAME _____

LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

ME ID# _____

APPLICATION EVALUATION – Evaluator's Guidelines - LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17

TOTAL POSSIBLE POINTS = 15 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score If applicable	Comments
R092-17 Sec. 78 (1) (I) 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	The likely impact of the proposed marijuana establishment in which it is proposed to be located.				
	An excellent response would include the following: The criteria response clearly demonstrates how the establishment intends to provide their local community with community benefits and mitigate any nuisance and/or negative impacts that the facility's existence may cause, including any safety related concerns. Applicants demonstrate a commitment to the community and to improving the quality of life of their neighbors through sustainable practices which can be maintained and supported over time.				

EVALUATOR NAME _____

LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>An average response would include the following: The criteria response demonstrates how the establishment intends to provide their local community with community benefits and addresses how they will mitigate any negative impacts.</p> <p>An inadequate response would include the following: The criteria response does not demonstrate how the establishment intends to provide their local community with community benefits and does not address any negative impacts.</p>				
	Range 0 - 5 points				

EVALUATOR NAME _____

LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to purchase marijuana				
	<p>The establishment will provide information to persons authorized to engage in the use of marijuana in the following ways in order increase education, awareness, and positive community involvement:</p> <ul style="list-style-type: none"> -Providing relevant and appropriate educational materials -Educational materials regarding various strains of marijuana -Fair and consistent costs for the authorized persons -Selling strategies, which could include discounts for volume or combination of product sales -Low income sales strategy -Demonstration of a community program <p>An excellent response will demonstrate the following: The applicant has a comprehensive plan with a timeline that is clear, reasonable and achievable. Materials are included, not just mentioned.</p> <p>An average response will demonstrate the following: The applicant has some of the above attributes of a comprehensive plan with a timeline that is clear, reasonable and achievable.</p> <p>An inadequate response will demonstrate the following: The applicant has no plan with any of the above attributes of a comprehensive plan with a timeline that is clear, reasonable and achievable.</p>				
	Range 0 - 10 points				

EVALUATOR NAME _____

LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

ME ID# _____

Time Tracking for Evaluation Process	
Evaluator Name	
Start Time:	
End Time:	
Total Time to be charged to applicant:	

Instructions to Evaluators:

- 1) Evaluators enter start time for evaluation
- 2) Evaluator individually scores criteria
- 3) Evaluators completes evaluation and enters end time
- 5) Time calculated is time which will be charged to the applicant

EVALUATOR NAME _____

TAXES BENEFICIAL FINANCIAL CONTRIBUTIONS

ME ID# _____

APPLICATION EVALUATION – Evaluator's Guidelines - TAXES PAID and BENEFICIAL FINANCIAL CONTRIBUTIONS (IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17.

TOTAL POSSIBLE POINTS = 25 Points

The following is intended to assist evaluators in scoring responses to the request for applications for medical marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Score	Comments	Revised Score If applicable	Comments
R092-17 Sec. 80 (f) The amount of taxes paid and other beneficial financial contributions, including, without limitation, civic or philanthropic involvement with this State or its political subdivisions, by the applicant or the owners, officers or board members of the proposed marijuana establishment	1. Evidence of taxes paid to the State of Nevada within the last five years.				
	Taxes paid to the NV Employment Security Division				
	Taxes paid to the NV Department of Taxation				
	State and Local General Sales and use Taxes				
	State and Local Personal Property Taxes				
	Excise/Wholesale taxes				
	\$0 - \$499,999 = 1 point				
	\$500,000 - \$999,000 = 2 points				
	\$1,000,000 - \$2,999,999 = 4 points				
	\$3,000,000 - 4,999,000 = 6 points				
	\$5,000,000 - \$7,999,999 = 8 points				
	> 8 M = 10 points				
	0 - 10 points				

EVALUATOR NAME _____

TAXES BENEFICIAL FINANCIAL CONTRIBUTIONS

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Score	Comments	Revised Score if applicable	Comments
	2. Evidence of other beneficial contributions made to the State of Nevada or its political subdivisions a) Tax-exempt organizations, including public charities and private foundations Arts, Culture and Humanities Education Environment and Animals Health Human Services International and Foreign Affairs Public, Societal Benefit Religion related Mutual/Member Benefit Other				
	b) Contributions made to political subdivisions Counties Cities Towns Villages Special districts, including: School districts/ schools Water districts Park districts Airport districts Any entity administered by individuals who are controlled by public officials and responsible to such officials or to the general electorate ≤\$50,000 = 1 point \$50,001 - \$100,000 = 2 points \$100,001 - \$250,000 = 4 points \$250,001 - \$500,000 = 6 points \$500,001 - \$1 M = 8 points ≥ \$1 M = 10 points				
	0 - 10 points				

EVALUATOR NAME _____

TAXES BENEFICIAL FINANCIAL CONTRIBUTIONS

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Score	Comments	Revised Score If applicable	Comments
	3. Evidence of other beneficial contributions made to the State of Nevada or its political subdivisions a) Support in the form of time and energy that a volunteer has put into working for non-profit organizations An excellent response shows significant support in the form of time and energy that a volunteer has put in working for non-profit organizations An average response shows some instances of support in the form of time and energy that a volunteer has put in working for non-profit organizations An inadequate response shows no volunteer support				
	Range 0-5 points				

Time Tracking for Evaluation Process	
Evaluator Name	
Start Time:	
End Time:	
Total Time to be charged to applicant:	

Instructions to Evaluators:

- 1) Evaluators enter start time for evaluation
- 2) Evaluator individually scores criteria
- 3) Evaluators completes evaluation and enters end time
- 5) Time calculated is time which will be charged to the applicant

EVALUATOR NAME _____

FINANCIAL RESOURCES (IDENTIFIED)

ME ID# _____

APPLICATION EVALUATION – Evaluator's Guidelines – FINANCIAL RESOURCES (IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17.

TOTAL POSSIBLE POINTS = 40 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Score	Comments	Revised Score if applicable	Comments
R092-17 Sec. 88 (d) The financial plan and resources of the applicant, both liquid and illiquid	Financial statements showing the resources of the applicant(s), both liquid and illiquid Documentation to be considered include: In-state and Out-of-State documentation from: -State or Federal Banks -Savings Banks -Savings and Loan Associations -Holding Companies -Real Estate Holdings -Large assets, including cars, boats, etc. Liquid Assets, including: -Stocks -Bonds Personal belongings, including: -Jewelry -Furniture, etc. Balance sheets with liabilities Total Assets ≤ \$250,000 = 1 points Total Assets - \$250,000 - \$500,000 = 3 points Total Assets = \$500,001 - \$1.5 M = 5 points Total Assets = \$1.51 M - \$2.5 M = 7 points Total Assets = \$2.51 M - \$3.5 M = 8 points Total Assets ≥ \$3.51M = 10 points				
	0 - 10 points *May or may not include \$250,000 in liquid assets required				

EVALUATOR NAME _____

FINANCIAL RESOURCES (IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Score	Comments	Revised Score If applicable	Comments
	Proof that the applicant has adequate money to cover all expenses and costs of the start up and the first year of operations.				
	<p>An excellent response would demonstrate comparison of the operating budget to the funds guaranteed, including confirmation of committed funds from all owners, officers, board member and other sources, to confirm that there are sufficient funds to easily cover all expenses if sales do not meet the revenue projections. And demonstrate expenses and revenue appearing to be more than adequate to cover major categories of expenses for a start up operation; a small contingency may or may not be contemplated; some regulatory requirements are missing, list of line items included, unconditional use commitment included (1-2).</p> <p>An average response would demonstrate comparison of the operating budget to the funds guaranteed, including confirmation of committed funds from all owners, officers, board member and other sources, to shows that there are adequate funds to cover the first year of operations and demonstrate expenses and revenue appearing to be reasonable and cover major categories of expenses for a start up operation; a small contingency may or may not be contemplated; some regulatory requirements are missing</p> <p>An inadequate response would demonstrate comparison of the operating budget to the funds guaranteed, including confirmation of committed funds from all owners, officers, board members ad other sources insufficient to cover the first year of operations. An inadequate response would demonstrate expenses and revenue are somewhat defined; start up expenses are un-reasonable; no contingency fund; most regulatory requirements are missing</p>				
	Range 0 - 20 points				

EVALUATOR NAME _____

FINANCIAL RESOURCES (IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Score	Comments	Revised Score if applicable	Comments
	Liquid assets and the source of those assets Documentation from a financial institution of this state or another state or District of Columbia the applicant has at least \$250k in liquid assets, and the source of those assets. < \$250,000 = 0 points > \$250,000 = 10 points				
	Range 0 - 10 points				

Time Tracking for Evaluation Process	
Evaluator Name	
Start Time:	
End Time:	
Total Time to be charged to applicant:	

Instructions to Evaluators:

- 1) Evaluators enter start time for evaluation
- 2) Evaluator individually scores criteria
- 3) Evaluators completes evaluation and enters end time
- 5) Time calculated is time which will be charged to the applicant

A P P E A R A N C E S

FOR THE PLAINTIFFS:

ADAM K. BULT, ESQ.
SIGAL CHATTAH, ESQ.
PETER S. CHRISTIANSEN, ESQ.
MARK S. DZARNOSKI, ESQ.
MAXIMILIEN D. FETAZ, ESQ.
WILLIAM S. KEMP, ESQ.
ROSS J. MILLER, ESQ.
THEODORE PARKER, III, ESQ.
JAMES W. PUZEY, ESQ.
NATHANAEL R. RULIS, ESQ.
CRAIG D. SLATER, ESQ.
STEPHANIE J. SMITH, ESQ.
AMY L. SUGDEN, ESQ.

FOR THE DEFENSE:

STEVEN G. SHEVORSKI, ESQ.
AKKE LEVIN, ESQ.
TODD L. BICE, ESQ.
CLARENCE E. GAMBLE, ESQ.
J. RUSTY GRAF, ESQ.
JOSEPH A. GUTIERREZ, ESQ.
RICK R. HSU, ESQ.
JARED B. KAHN, ESQ.
DAVID R. KOCH, ESQ.
KIRILL V. MIKHAYLOV, ESQ.
DENNIS M. PRINCE, ESQ.
JOEL Z. SCHWARZ, ESQ.
ANDREW J. SHARPLES, ESQ.
JORDAN T. SMITH, ESQ.
RICHARD D. WILLIAMSON, ESQ.

ALSO PRESENT:

DIANE L. WELCH, ESQ.
For Jorge Pupo

I N D E X
W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

DUANE LEMONS

Examination by Mr. Parker	4
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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JULY 29, 2020, 3:26 P.M.**

2 * * * * *

3 (Video deposition of DUANE LEMONS played as follows:)

4 **DUANE LEMONS**

5 [having been called as a witness and being first duly sworn,
6 testified as follows:]

7 EXAMINATION

8 BY MR. PARKER:

9 Q I told you before that I represent Nevada Wellness
10 Center. There are numerous lawyers in the -- with me here who
11 represent other parties who will also have an opportunity to
12 ask you questions.

13 Have you ever had your deposition taken before?

14 A Yes, sir.

15 Q All right. When was the most recent time?

16 A I believe it would have been last October.

17 Q Okay. Was it due to any cases involving the
18 Department of Taxation or the State of Nevada?

19 A I've had one with this case where I had come in here
20 and answered two or three questions.

21 And then I'm also a private investigator, certified
22 fire investigator, and I've done depositions as an expert
23 witness on that.

24 Q Okay. So the most important thing I'd like to remind
25 you of is the obligation to testify truthfully. Are you aware

 JD Reporting, Inc.

1 of that?

2 A Yes, sir.

3 Q And you understand the penalties of perjury if you
4 were to testify untruthfully or inaccurately intentionally.
5 You understand that?

6 A Yes, sir.

7 Q All right. So I trust that you will give us your
8 most honest and accurate answers today. Is that a fair
9 assumption on my part?

10 A That's a fair assumption. I'm still a Boy Scout.
11 I'm an Eagle Scout ,and I'll never veer from that oath that I
12 took as a Boy Scout. So...

13 Q Well, we can all appreciate that. And we're sorry
14 for the bankruptcy issues that the Boy Scouts are suffering
15 from, but we certainly understand and appreciate your
16 commitment to honesty.

17 Mr. Lemons, the deposition I think you're referring
18 to involving this case that you participated in last year was a
19 very short deposition that only allowed questions related to
20 the status of your phone. Am I correct?

21 A That's correct, sir.

22 Q Did you preserve that phone, Mr. Lemons?

23 A Yes, sir.

24 Q Okay. Have you been asked by the Department of
25 Taxation to provide that phone?

1 A No, I have not.

2 Q All right. And you have the same telephone number
3 and the same phone that you've used since 2018, sir?

4 MS. LEVIN: Relevance.

5 THE WITNESS: I have the phone.

6 THE COURT: Overruled.

7 THE WITNESS: I have a new phone, but I do still have
8 the same phone number, yes.

9 BY MR. PARKER:

10 Q And for purposes of being able to extract information
11 from the phone that you had in 2018, would that -- would you
12 have all the information preserved on that phone, or have you
13 done anything to delete any information from that phone?

14 A I have not done anything to delete anything off that
15 phone, no, sir.

16 Q All right. So if --

17 A I preserved it.

18 Q So if we were to perform an extraction report on that
19 phone, analyzing only -- seeking to analyze the information
20 related potentially to the 2018 application process, that
21 information would still be available on that phone. Is that
22 correct?

23 A Should be, as far as I know.

24 Q Okay. Good enough. And what type of phone was it
25 that you used in 2018?

1 A I believe it was a Droid Maxx II.

2 Q Okay. And what service were you with?

3 A Verizon.

4 Q Okay. Are you still with Verizon?

5 A Yes, sir.

6 MS. LEVIN: Objection. Relevance.

7 THE COURT: Overruled.

8 BY MR. PARKER:

9 Q And do you still -- and I believe you testified you
10 have a different phone now that you use, but that -- the Droid
11 Maxx II that you did use is still available. Is that correct?

12 A Yes, sir.

13 Q Okay. Good enough. All right. Thank you.

14 And if the State were to ask you for that phone, you
15 could make it available to them; is that correct?

16 A With the proper paperwork, yes, sir.

17 Q All right. Good enough. Now, Mr. Lemons, I'd like
18 to discuss with you your role and responsibilities related to
19 the 2018 recreational marijuana application process. Do you
20 understand that?

21 A Yes, sir.

22 Q All right. And can you tell me how you were first
23 approached or whether or not you approached someone at the
24 Department of Taxation regarding being a grader for the
25 recreational marijuana applications.

1 A I was called by a gentleman at the state fire
2 marshal's office and told about the job. And he wanted to be
3 able to recommend me to the division for a plans examiner
4 position, more or less, because of my job as a fire inspector,
5 plans examiner and fire investigator.

6 Q Yes, sir. And can you recall the name of that person
7 who contacted you?

8 A Dennis Pinkerton --

9 Q From the fire marshal's office.

10 A Yes, sir. Dennis Pinkerton.

11 Q Do you have any idea how Dennis Pinkerton learned of
12 this possible assignment with the State?

13 A His fiancée is Melanie with the Division of Taxation,
14 Marijuana Enforcement.

15 Q Would you, by chance, know Melanie's last name?

16 A No, sir. I can't recall.

17 Q Would it be Melanie Young?

18 A I believe it might be, yes.

19 Q Okay.

20 A That sounds familiar.

21 Q So Melanie Young is the fiancée of Dennis Pinkerton,
22 and Dennis Pinkerton was the person who informed you of this
23 possible assignment with the division?

24 A Yes, sir.

25 Q And when you say "the division," you're speaking of

1 the tax division or the Department of Taxation?

2 A Yes, sir.

3 Q Okay. Good enough. Do you know Melanie Young, by
4 chance?

5 A The first time I met her was after I went to work for
6 the department.

7 Q So I'm looking at a document right now that says,
8 Department of Taxation Temporary Employment Requisition. Your
9 name is on this document as a possible hire, and the supervisor
10 is identified as Steve Gilbert.

11 Are you familiar with Steve Gilbert?

12 A Yes, sir.

13 Q All right. And below his name is a person who looks
14 to be Melanie Young. It looks like Melanie Y, and I'm assuming
15 it's Young, but it's Melanie, and then the, certainly, the
16 letter Y.

17 Have you ever seen the Department of Taxation
18 Temporary Employment Requisition?

19 A No, sir.

20 Q Now, tell me how you know -- let me step back a
21 second.

22 You said you are -- you did know Melanie Young; is
23 that correct?

24 A No. I met her when I first went to work for the
25 department.

1 Q Okay. You didn't know -- you hadn't met her before
2 through Dennis Pinkerton?

3 A No, sir.

4 Q All right. How -- did you know Steve Gilbert?

5 A No, sir, not till I met him when I interviewed for
6 the position.

7 Q So when you met Ms. Melanie Young, did you make the
8 connection between her and Dennis Pinkerton prior to being
9 selected as a grader?

10 A I was told by Mr. Pinkerton that his fiancée,
11 Melanie, was working, and they needed a person with my
12 profession.

13 Q Okay. And was Melanie Young on a selection panel
14 that approved you to be a grader?

15 A No, sir.

16 Q To your knowledge, how were you selected as a grader?

17 A Steve Gilbert, Ky Plaskon, I believe his name is, and
18 then Marilyn -- and I cannot think of her name. She's with the
19 Division of Marijuana Enforcement -- were in the interview room
20 with me.

21 Q Okay. All right. And prior to this process, you'd
22 never met any of these three people; is that correct?

23 A No, sir, I'd never met them before.

24 Q Good enough. Now, Mr. Lemons, based upon the
25 documentation I have, it appears that you may have provided a

1 resume to the Department of Taxation; is that correct?

2 A Yes, sir.

3 Q And based upon my review of your resume, you -- after
4 high school, which was in Texas --

5 I believe you went to high school in Odessa; is that
6 correct?

7 A No, sir. I went to high school in Reno. I was born
8 and raised in Reno.

9 Q Okay.

10 A I did live in Texas for a while, yes.

11 Q Okay. It says here, Education. Odessa Trade School.
12 Did you do any trade school work in Odessa, Texas?

13 A Yes, sir. A welding school.

14 Q Okay. And then it says you also have a certificate
15 of technology in heating and air conditioning. Is that
16 correct?

17 A That's correct.

18 Q And then there's an indication that you went to
19 Truckee Meadows Community College and participated in the
20 heating and air conditioning curriculum. Is that correct?

21 A Heating and air conditioning, and fire science, yes.

22 Q All right. And then finally it says, Western Nevada
23 Community College, Carson City, Nevada, participation in the
24 Associate's of Applied Science Degree in Fire Science. Is that
25 correct?

1 A Correct.

2 Q Did you get a -- did any of these colleges provide
3 you with a four-year bachelor of arts or bachelor of science?

4 A No, sir. I do not have a bachelor's degree.

5 Q Did either -- did any of these colleges provide you
6 with an associate's degree that we could review?

7 A No, sir.

8 Q Okay. And you know what a QE is. If I was to use
9 the word -- instead of saying "qualified employee," if I used
10 the abbreviation "QE," you know what that refers to?

11 A Yes, sir.

12 Q Is that correct?

13 A Yes, sir.

14 Q Okay. And so it seems like you have a significant
15 career in Reno starting from 1978 and then to Texas and then
16 back to Reno, it appears, and Carson City. Is that correct?

17 A That's correct.

18 Q And in addition to having worked as a fire
19 investigator, you've done fire inspection work as well. Is
20 that correct?

21 A That's correct.

22 Q And it appears that you've also been a building
23 inspector. Is that correct?

24 A Yes, sir.

25 Q Have you ever had the obligation to inspect a

1 recreational marijuana facility?

2 A No, sir.

3 Q Were you given any training -- strike that.

4 I want to -- before we get there, have you -- did you
5 ever have the opportunity to inspect any medical marijuana
6 facilities?

7 A No, sir.

8 Q Okay. Is it fair to say, sir, that prior to taking
9 on this role as a grader that you did not have any experience
10 in the inspection, be it as a building inspector or as a fire
11 inspector, of marijuana facilities?

12 A Marijuana facilities did not exist when I was an
13 inspector employed by Carson City.

14 Q Yes, sir.

15 A I will state that my profession would include
16 hazardous materials and combustible fuels and such, which I
17 believe marijuana probably is.

18 Q Yes. When do you recall actually being hired or
19 selected to be a grader for this 2018 recreational application
20 process?

21 A I believe we started on August 26th. So it would
22 have probably been the week prior to that.

23 Q Okay. And tell me how this process started. Did you
24 agree, for example, prior to August 26th, to a certain hourly
25 rate? Did you agree to a certain number of hours per week?

1 What was your understanding of what your commitment was when
2 you were hired?

3 A Our commitment was going to be, I believe, 32 to 40
4 hours a week, and we did agree upon an hourly salary.

5 Q Do you recall -- can you describe how the interview
6 went and how long it took.

7 A The interview was -- they asked me about my
8 background. I explained to them the plan review process that
9 I'd been a part of and that I've inspected thousands of plans,
10 thousands of buildings through my career. Told them about my
11 experience as fire inspector and investigator. And the process
12 probably took 20 minutes.

13 At that time they made an offer, and I turned it
14 down. They were offering \$25 an hour. And I told them, Well,
15 you know, it's going to take \$45 an hour to get me because
16 that's what I make on the side with other jobs for the State
17 fire marshal's office. And I got a call that afternoon and was
18 hired.

19 Q Sounds good. Did they ask you any information that
20 would be able to -- where you would be able to demonstrate your
21 experience in reading plans?

22 So, for example, did they ask you anything regarding
23 regulatory compliance, anything dealing with sheer walls,
24 structural walls, anything electrical, mechanical, anything?

25 A No, they didn't ask any of that.

1 Q All right. Did they ask you anything dealing with
2 any familiarity you had with the environmental impact a
3 marijuana facility may have on a community?

4 A No.

5 Q Did they ask you any questions with regards to your
6 familiarity with the various jurisdictions or communities in
7 the state of Nevada?

8 A No, sir.

9 Q Did they ask you whether or not you had any
10 experience in terms of the care, quality, and safekeeping of
11 marijuana?

12 A No.

13 Q Did they ask you about any familiarity with the
14 Nevada Revised Statutes or Nevada Administrative Code relative
15 to medical or recreational marijuana?

16 A No, they did not.

17 Q Okay. What do you recall telling them in the 20
18 minutes you were there other than what your hourly rate of pay
19 would need to be and your history in terms of reviewing plans
20 with the State?

21 A I recall talking about how to read codes, interpret
22 codes, which is what I do each and every day in the job I was
23 in. I still have a consulting business doing that. So we
24 talked a little bit about that.

25 But we did not get into, oh, shall we say how I

1 interpret because it's very obvious that, even here today with
2 as many of you down there, we could all read the same law, same
3 code and have 12 different interpretations, and yet the
4 intent's the same.

5 Q I'm sorry. Go ahead.

6 A And yet the intent is the same.

7 Q Yes, sir. Did they ask you any questions or
8 provide -- or provide -- or provide any documents to you to
9 demonstrate your ability to read codes?

10 So, for example, during this interview, did they
11 provide you with any of the codes saying this is what a
12 marijuana dispensary should have and should look like, adequacy
13 of size, safety concerns, lighting concerns, anything like
14 that?

15 A No, sir.

16 Q All right. So after the interview, you said they
17 offered you \$25 an hour. You turned that down. You --
18 eventually they offered you what you needed, which was \$45 an
19 hour, and you were approved to be a grader. Is that correct?

20 A That's correct.

21 Q Did you go through any orientation with Manpower?

22 A Not with Manpower, no, sir.

23 Q Okay. So your direct dealings were always through
24 the Department of Taxation?

25 A Yes, sir. Other than having to fill out the

1 application with Manpower, and I'd already been working for
2 them through the state fire marshal's office for several years.

3 Q Okay. Good enough. The -- as a part of your
4 experience, have you ever reviewed an environmental impact
5 plan?

6 A I've reviewed them, but it wasn't part of my job.

7 Q All right.

8 A And what do you mean by "environmental impact"? Are
9 you talking about the entire impact of development going in, or
10 what are you asking?

11 Q Great question, Mr. Lemons. And it is not explained
12 in the Department of Taxation documentation, and that's why I
13 was going to ask you. That was my next question to you.

14 MS. LEVIN: Objection to the argument by counsel.

15 BY MR. PARKER:

16 Q What is your understanding of what an --

17 THE COURT: Overruled.

18 BY MR. PARKER:

19 Q -- environmental impact plan is, first? And did you
20 receive any training on evaluating environmental impact plans,
21 would be my second question.

22 A I believe that an environmental impact of a marijuana
23 facility, the biggest thing is -- you're going to have two
24 things, actually: the traffic flow; the building, obviously --

25 THE COURT: We lost the video.

1 THE WITNESS: -- and the possibility of --

2 THE COURT: Thanks.

3 THE WITNESS: -- fumigation in the area. So you just
4 want to be sure that they have proper ventilation and such, and
5 that would be like for a production facility, more so, I think,
6 than a retail store.

7 BY MR. PARKER:

8 Q Right. So if it -- in your understanding --

9 First, let me ask it this way: Did you receive or
10 did you have any experience in evaluating environmental plans
11 related to a marijuana facility prior to taking on this
12 responsibility as a grader?

13 A No, sir.

14 Q Did -- did the Department of Taxation provide you
15 with any training specifically related to evaluating an
16 environmental plan for a recreational marijuana facility?

17 A We had some training, but I cannot recall if they
18 specifically brought out environmental impact. And if they
19 did, they did not go into great detail.

20 Q Good enough. And have you ever heard of a Phase 1 as
21 it pertains to development?

22 A Yes, sir.

23 Q Okay. And you would consider a Phase 1 to be
24 different than an environmental impact plan, wouldn't you?

25 A I believe so, yes.

1 Q All right. Did the -- to the best of your
2 recollection, did the Department of Taxation provide you with
3 any information that would allow you to determine the expected
4 quantity of marijuana fumes based on either cultivation or
5 production? Whatever type of facility would create those
6 fumes, did they provide you with any training in that respect?

7 COUNSEL: Objection to form.

8 THE WITNESS: Not that I recall.

9 THE COURT: Overruled.

10 BY MR. PARKER:

11 Q Do you recall the Department of Taxation providing
12 you with any training with regard to traffic flow related to
13 the use of or patronage of a recreational marijuana facility?

14 A No, sir.

15 Q And then, finally, did you provide -- receive any
16 training from the Department of Taxation related to evaluating
17 a ventilation system attendant to a marijuana -- recreational
18 marijuana facility?

19 A No, sir. But I've got training in ventilation
20 systems for all kinds of stuff, hazardous materials and
21 everything else. So marijuana would fall into that category.

22 Q Understood. I'm asking it for the benefit of knowing
23 whether or not a uniform set of evaluation tools would have
24 been provided to you and your colleagues who also acted as
25 graders for the nonidentified portion of the 2018 applications.

1 THE COURT: Can you pause for a second.

2 BY MR. PARKER:

3 Q Do you know -- you've told me --

4 (Video deposition paused.)

5 THE COURT: Can you put us on mute, please.

6 THE CLERK: It ended because it said there was only
7 one participant for the last little bit.

8 THE COURT: Apparently nobody else is on the phone
9 but us. So keep playing. Sorry.

10 (Video deposition resumed.)

11 BY MR. PARKER:

12 Q -- now that they did not provide you training in the
13 other aspects you mentioned. Did they provide any standardized
14 training for all three of you in terms of evaluating
15 ventilation systems used by a marijuana establishment?

16 A No.

17 COUNSEL: Objection to form.

18 COUNSEL: Join.

19 COUNSEL: Join.

20 THE COURT: Overruled.

21 BY MR. PARKER:

22 Q You can answer, sir.

23 A No, sir.

24 Q Thank you. All right. So in terms of environmental
25 impact, the Department of Taxation did not provide you with --

1 provide you or your colleagues with any uniform or standardized
2 training relative to the components that you mentioned for
3 evaluating environmental plans, which would be traffic flow,
4 building, fumigation and ventilation. Is that correct?

5 COUNSEL: Objection to form.

6 COUNSEL: Join.

7 THE COURT: Overruled.

8 THE WITNESS: That's correct.

9 BY MR. PARKER:

10 Q Is that correct -- thank you so much.

11 Now, let's talk about what training they may have
12 actually done. You indicated you believed the training started
13 August 26th, 2018. Is that correct?

14 A Correct.

15 Q What do you recall about the first day or first few
16 days of the training? Can you tell me to the best of your
17 recollection what training you received or what indoctrination
18 you received at that point forward.

19 A Training that we received was -- I thought it was
20 very good. They went over the applications, swore us to
21 secrecy. We could not even tell our spouses what we were
22 doing, which I thought was a good thing for this process. You
23 don't want anybody having any extra influence on you.

24 Then some of the training was specific. We had some
25 of the inspectors come up and talk to us about what was on the

1 application and what to look for as far as securitywise, you
2 know, how to protect your product, what they did as inspectors
3 when they go in.

4 It was a two-week training period that we went
5 through, and it was pretty intense. I can't recall everything
6 that we did. It's been a couple years.

7 Q Yes, sir. Do you -- you said they went over the
8 applications. What applications are you speaking of?

9 A The recreational marijuana license application.

10 Q So was there one form of application that they went
11 over with you?

12 A Yes, sir, I believe there was.

13 Q And do you recall whether or not at sometime during
14 the training that they created a second application for you to
15 review, or was it always the same one application that you used
16 throughout the training?

17 A We used one application throughout the training.

18 Q All right. Was the application a blank form, or was
19 it a -- an application that had already been filled out that
20 they were using to train you?

21 A Well, we had both, one that was blank so we could
22 know what was on there, and then we had -- at one point later
23 in the training they had, like, three or four scenario where we
24 had to go through and evaluate as practice and see what we
25 would come up with and give some idea of what we were supposed

1 to be doing during the evaluation process.

2 Q Now, would those three or so applications that were
3 filled out, were those related to medical marijuana?

4 A I believe they probably -- they had to be because we
5 didn't have any recreational licenses at the time.

6 Q Okay. That makes sense.

7 And did you notice any differences between the
8 applications for medical marijuana versus the form application
9 for recreational marijuana?

10 A I can't recall if there was or not at this point.

11 Q Yes, sir. And prior to this process, had you ever
12 been in a medical marijuana facility for purposes of inspection
13 or for any other reason?

14 A No, I had not.

15 Q Okay. And during this process, did the Department of
16 Taxation take you as a grader and your colleague -- colleagues,
17 your fellow graders, to view or see the inside of a marijuana
18 dispensary or marijuana cultivation facility or any other type
19 of marijuana facility?

20 A No, sir, they did not.

21 Q All right. So do you recall during this training
22 period whether or not the Department of Taxation provided you
23 with any form building plans that you could use for purposes of
24 evaluating the actual applications?

25

1 A We did have forms to use throughout the process of
2 the evaluation.

3 Q Okay. Let me ask it a little more precisely.

4 Do you recall whether or not the Department of
5 Taxation actually provided you with a building plan, an
6 operational recreational marijuana dispensary or cultivation
7 facility or production facility and say this is how it should
8 be done, you can use this as a guide for purposes of evaluating
9 these applications that will be forthcoming?

10 A No, sir.

11 Q All right. Would the same -- would your answer be
12 the same in terms of any lighting requirements for a
13 recreational marijuana facility, that you were not given any
14 exemplars that said this is the lighting package that would be
15 an excellent example of what should be provided, and you can
16 use this for purposes of evaluating the applications as they
17 come in?

18 A They did not, no.

19 Q Perfect. And let me -- just for purposes of the
20 record, the Marilyn you were speaking of, would that have been
21 Marilyn Gray?

22 A That's it, yes, sir.

23 Q All right. And the reason I'm saying this to you is
24 because within the documents we have the Taxpayer Visit Report
25 from the Department of Taxation. And it shows you interviewing

1 with -- it says "marijuana" but I'm sure it means Marilyn Gray,
2 at 8:51 a.m, on August 23rd, 2018. Does that seem appropriate
3 to you, or does that comport with your recollection?

4 A That -- that should be exactly right, yes, sir.

5 MS. LEVIN: Your Honor, can I just --

6 BY MR. PARKER:

7 Q And it says that you met with --

8 MS. LEVIN: -- make an objection here?

9 (Video deposition paused.)

10 THE COURT: You may.

11 MS. LEVIN: I believe that there's a portion that has
12 been cut out that had been selected by the parties. And it was
13 cut out from when he said -- it was on page 33, line 20 -- when
14 he said, Again, and he was interrupted, and he actually went on
15 to say what he was going to say, and that whole next portion
16 was cut out.

17 THE COURT: Okay. So at the end of the playing the
18 deposition tomorrow, I'll ask if there any parts that you'd
19 like added in. And so if you'll let us know, we'll play that.

20 MS. LEVIN: Okay. And this was again -- and this was
21 selected previously, I believe, even by the plaintiffs, and --

22 THE COURT: I got no idea.

23 MS. LEVIN: I know. I'm just making a record.

24 THE COURT: Okay. Let's go.

25 MS. LEVIN: Thank you.

1 THE COURT: We're going to play for another
2 45 minutes, and then we're going to break.

3 (Video deposition resumed.)

4 BY MR. PARKER:

5 Q -- her at approximately 9:07, and your total visit
6 time was roughly 16 minutes?

7 A Pretty close.

8 Q Okay. Good enough. Now, in terms of your training,
9 you have a form application; you have some previously graded
10 medical marijuana applications; and then I think you said you
11 also have a scoring sheet. Is that correct?

12 A Yes, sir.

13 Q Now, did you or were you provided with the Nevada
14 Administrative Code related to recreational marijuana in the
15 state of Nevada?

16 A We were provided with a computer which had access to
17 it, yes, sir.

18 Q Okay. Were you also provided with the same access
19 with regards to the Nevada Revised Statutes?

20 A Yes, sir.

21 Q And were you asked by your trainer to review the code
22 as well as the statutes?

23 A Yes, sir.

24 Q Do you recall the name of your trainer or trainers?

25 A Ky Plaskon. That's the only one I really -- Steve

1 was in there, Steve Gilbert.

2 Then they brought some people up out of Las Vegas,
3 and I do not recall their names.

4 There was also a couple inspectors that were here in
5 Carson City, and they brought them in to speak to us as well.
6 I do not recall the names.

7 Q All right. But the person who spent the majority of
8 time training you, would that have been Mr. Plaskon?

9 A Yes, sir.

10 Q In terms of Steve Gilbert, did you see him every day,
11 once a day, once out of two weeks? How often do you recall
12 seeing Mr. Gilbert?

13 A During the two-week training, we see him, I believe,
14 every day. After we started doing the applications, he
15 would -- he did not come down and visit with us as he tried to
16 stay -- he -- what was explained to us was he was trying to
17 stay away from us so there wasn't any interconnection there,
18 and he wasn't trying to influence our process.

19 Q So in terms of Mr. Gilbert, you said during this
20 first two-week period you would see him every day. Was he
21 actually doing the training, or was he sitting there observing?

22 A A little bit of both.

23 Q All right. Do you recall whether or not any of the
24 people from Vegas provided training, or were they just
25 observing?

1 A They were training.

2 Q Okay. They were training.

3 So tell me, if you can recall, what these people from
4 Vegas trained you on.

5 A They were speaking on the medical marijuana
6 facilities that they inspect and some of the problems that they
7 see and how to evaluate it as far as the application process.
8 This is why we're doing it. So some of the -- not to go back
9 on what I've already said, but some of it was pretty intense
10 training as far as what they do, how they do it, and why they
11 do it.

12 Q So can you tell me or do you recall any of the
13 problems or examples of problems that the Vegas trainers
14 revealed to you?

15 A Some of the biggest issues, I believe, at one point
16 was just what I found interesting, was how they keep up with
17 each plant from seed to sale. And, you know, that was one of
18 the big things that we were concerned with, is the process
19 following that product from the time it's put in the ground to
20 the time that it's consumed by the consumer out here. So they
21 spoke on that highly.

22 They did -- I can't recall any real problems that
23 they mentioned at this point, but I'm sure that they did.

24 Q And from your -- from your recollection, sir, the
25 problems they were discussing with you, they were admitting

1 those problems so that they could assist you in evaluating
2 applications to prevent those problems from happening in the
3 future. Is that correct?

4 COUNSEL: Objection to the form of the question.

5 MS. LEVIN: Objection. Foundation.

6 COUNSEL: Join.

7 COUNSEL: Join.

8 THE COURT: Overruled.

9 THE WITNESS: That's correct.

10 BY MR. PARKER:

11 Q So, for example, if you were looking at the elements
12 of the nonidentified portions of the applications, you did so
13 with an eye towards trying to prevent scoring or giving higher
14 scores to an applicant that may eventually sell to a minor or
15 not document seed to sale of the flower?

16 COUNSEL: Object to the form. Foundation.

17 COUNSEL: Join.

18 MS. LEVIN: Join.

19 THE COURT: Overruled.

20 BY MR. PARKER:

21 Q And I'm using "flower" to mean the marijuana product,
22 just in case that's confusing.

23 (Indiscernible colloquy.)

24 THE COURT: Overruled.

1 BY MR. PARKER:

2 Q Is that a fair statement, sir?

3 A Yes, sir.

4 Q Thank you. And so compliance was a -- was a concern
5 in terms of how you believed the application review should be
6 done. Is that correct?

7 A That's correct.

8 Q And when we talk about compliance, from your review
9 of the Nevada Administrative Code, which I sometimes will refer
10 to the regulation, you had an understanding that marijuana --
11 sale of marijuana to those below the age of 21 was a violation
12 of the code. Is that correct?

13 COUNSEL: Objection to the form. Foundation.

14 COUNSEL: Join.

15 THE COURT: Overruled.

16 COUNSEL: Join.

17 THE WITNESS: That's correct.

18 BY MR. PARKER:

19 Q You also were of the understanding that the marijuana
20 plant had to be tagged from coming out of the earth until it
21 was sold for purposes of documenting and keeping track of those
22 marijuana plants. Is that correct?

23 A Yes, sir.

24 (Indiscernible colloquy.)

25 THE COURT: Overruled.

1 BY MR. PARKER:

2 Q And so as a grader your goal would have been to try
3 to prevent giving higher scores to applicants that had a
4 propensity to sell to minors or fail to tag their marijuana
5 product. Is that correct?

6 COUNSEL: Objection to the form. Foundation.

7 COUNSEL: Join.

8 THE COURT: Overruled.

9 THE WITNESS: I believe that the -- all we looked for
10 was a security system that would tie into the Nevada system to
11 allow the identification of these clients, I guess we would
12 call them. That would be what we were looking for as well as
13 compliance with the building for adequacy of exits, how many
14 people you could get into a facility and items of that nature.

15 BY MR. PARKER:

16 Q Yes, sir. Tell me, how would you be able to -- and
17 I'm trying to -- I'm paraphrasing just because I don't remember
18 the exact words you used. But how would you be able to ensure
19 that the building as you were inspecting it as a grader would
20 tie into the compliance obligations required by the Department
21 of Taxation?

22 A There were a few basic items that you looked for.
23 You're going to look at your building exits, security of that
24 building, do they have the proper security cameras. These are
25 all items that are listed in our RO 92, which is the code for

1 marijuana compliance for recreation.

2 Q Did the Department of Taxation make available to you
3 the compliance history of any of the applicants?

4 A No, sir.

5 Q So if applicant ABC or applicant, you know, 151,
6 whatever the RD -- let's say RD 151. I don't know who that is,
7 but --

8 A Okay.

9 Q -- if RD 151 had a history of selling to minors and a
10 history of not tagging appropriately the marijuana plant or
11 plants within its facility, would that -- you would not have
12 been provided with that information. Is that correct?

13 A That's correct.

14 Q And you had no access to the Department of Taxation's
15 records to look it up for yourselves. Is that correct?

16 A That's correct. Our --

17 Q So --

18 A Excuse me. Our evaluation was based solely on the
19 application, and we were the nonidentified team, Richard, Tina,
20 and I. So we were not even supposed to know who it was, where
21 they were, or anything of that nature. We weren't even
22 supposed to know if it was in Las Vegas, Reno, Carson City, or
23 Winnemucca.

24 Q So if you saw information -- strike that.

25 Let me ask it this way: In terms of the community

1 and the environment, you said you weren't supposed to know what
2 community or jurisdiction the applicant was in or seeking to
3 be -- seeking to establish a marijuana location in. Is that
4 correct?

5 A Correct.

6 Q Now, as a former or as a current inspector of
7 building and plans reviewer, you -- and I mentioned the Phase 1
8 earlier -- you are aware that certain buildings and certain
9 jurisdictions have certain code requirements?

10 A Yes, sir.

11 Q Do you understand that, for example, the IRC or the
12 UBC is a national code, but certain jurisdictions will adopt
13 certain portions of the UBC or IRC? Is that correct?

14 MS. LEVIN: Objection. Relevance.

15 THE WITNESS: Well, we don't use the UBC.

16 THE COURT: Overruled.

17 THE WITNESS: We don't use the IRC in this particular
18 setting. We would be using the International Building Code.

19 BY MR. PARKER:

20 Q The IBC? That's the IBC.

21 A Yeah, the International Building Code, International
22 Fire Code, yes, sir. We would be using those.

23 Q All right. Okay. So let's go with the IBC.

24 And you understand that various jurisdictions will
25 adopt the IBC or portions of the IBC. Is that correct?

1 A Yes, sir.

2 Q So in terms of jurisdictions and communities,
3 depending on where you are, certain adoptions of the IBC will
4 apply. Is that correct?

5 A Yes, sir.

6 Q And so it does -- there is a reason for considering
7 the community or jurisdiction because there's an obligation to
8 be code compliant within those jurisdictions or communities.
9 Is that correct?

10 COUNSEL: Object to the form.

11 THE COURT: Overruled.

12 THE WITNESS: That was not part of the application
13 process.

14 BY MR. PARKER:

15 Q I'm not asking you that at this point.

16 Isn't that a correct statement, sir?

17 A I would think so, yes, sir.

18 Q All right. And so you would agree with me that you
19 received no training as a group in terms of the code compliance
20 of a marijuana facility for each jurisdiction which would
21 relate to each application; is that a true statement?

22 A That's a true statement.

23 Q All right. So now if you are not given the location
24 of the proposed facility, you as a building inspector can't
25 determine whether or not that building plan will actually be

1 compliant with that jurisdiction. Isn't that a fair statement?

2 A No, sir.

3 COUNSEL: Object to foundation.

4 THE COURT: Overruled.

5 COUNSEL: Join.

6 BY MR. PARKER:

7 Q I'm sorry, sir. I couldn't hear you over the
8 objections. What did you say?

9 A No, sir.

10 Q So let me make sure I asked the question correctly
11 and make sure I have the right answer.

12 In terms of a jurisdiction, be it Clark County,
13 Washoe County, the City of Sparks, each of those municipalities
14 will adopt, however they decide, the IBC or portions of the
15 IBC. Is that correct?

16 A That's correct.

17 Q And for your building to be approved in that
18 jurisdiction, it has to be in compliance with the adopted
19 portion of the IBC for that community or jurisdiction. Is that
20 correct?

21 A That is up to the jurisdiction.

22 Q That's right. It's dependent upon the jurisdiction
23 and what portions of the IBC it has adopted. Is that correct?

24 A Yes, sir.

25 Q All right. Now, in terms of drilling down a little

1 bit on the marijuana establishments, would you agree with me
2 that a marijuana facility may have a different impact depending
3 on the community it is being located in?

4 COUNSEL: Object to form. Foundation as well.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, sir.

7 BY MR. PARKER:

8 Q All right. Now, back to the training, so the first
9 two weeks you said are virtually the same. Do you recall
10 whether or not during the first two weeks you were with the
11 identified graders as well, or was that just one week, one day?
12 Tell me your recollection of how much time was spent receiving
13 training with also the identified graders.

14 A The first two weeks were with both groups.

15 Q And your training was how many weeks?

16 A Two. Ten days.

17 Q All right. And do you remember them being eight-hour
18 days, or were they some days varied?

19 A Varied a little bit, but mostly eight hours, yes,
20 sir.

21 Q Okay. Do you recall seeing any slide show
22 presentations?

23 A Yes, sir.

24 Q And how many slide show presentations do you recall
25 reviewing or seeing?

1 A I am guessing here. I'm gonna say probably 10, maybe
2 14, something like that. I can't recall exactly. I know we
3 had one or two a day.

4 Q All right. And was most of the time spent with these
5 slide shows being presented to you?

6 A Yes.

7 Q All right. I'm more concerned with any type of
8 quality assurance or quality control exercised by the
9 Department of Taxation representatives. Were you given any
10 information about that?

11 A No, sir.

12 COUNSEL: [Indiscernible.]

13 THE COURT: Overruled.

14 BY MR. PARKER:

15 Q All right. To your knowledge did -- did any of the
16 D.O.T. or Department of Taxation representatives check your
17 scores or the scores of the other graders within the -- within
18 the nonidentified section?

19 A As far as what and when?

20 Q [Indiscernible]. Any time. I'm talking after
21 training.

22 A After training?

23 Q Yes, sir.

24 A What we did is we turned them in to our secretary.
25 We had a couple secretaries out there. They were both named

1 Pam at first. And we would turn those in to Pam, and she would
2 then work her magic with them.

3 Q Okay. Do you know what magic she was working?

4 A She was supposed to be logging those and then turning
5 them in to the team management, I guess.

6 Q Okay. You really don't know what happened after you
7 turned them in to Pam?

8 A Once I turned them in to Pam, they were gone, in my
9 opinion. Move on to the next one.

10 Q Did you, on a daily basis, and this is after training
11 when you're actually reviewing the real applications, did you
12 and your two fellow graders in the nonidentified section, did
13 you discuss your scores even if there were no, you know,
14 three-point-or-greater differential?

15 A Yes, sir. We discussed every application and every
16 score.

17 Q Okay. Good enough. And do you recall prior to the
18 real applications being received any of the Vegas Department of
19 Taxation employees going over the form application or your
20 scoring or any scoring you may have done during that training
21 process?

22 A Yes, sir, I do.

23 COUNSEL: Objection. Compound.

24 THE COURT: Overruled.

25 MR. PARKER: Okay. I'm sorry?

1 COUNSEL: It was compound.

2 BY MR. PARKER:

3 Q Okay. Let me ask you more about that. Do you
4 remember any of the names of the Department of Taxation
5 representatives from Vegas?

6 A I don't, unfortunately.

7 Q Does Damon Hernandez ring a bell?

8 A Not really, but it could be.

9 Q How about Kara or Kara Cronkhite? Does that name
10 ring a bell?

11 A That does ring a bell, yes, sir.

12 Q All right. I'm more concerned with any type of
13 quality assurance or quality control exercised by the
14 Department of Taxation representatives. Were you -- do you
15 have any information about that?

16 A No, sir.

17 COUNSEL: Objection. Foundation.

18 THE COURT: Overruled.

19 BY MR. PARKER:

20 Q To your knowledge, did -- did any of the D.O.T. or
21 Department of Taxation representatives check your scores or the
22 scores of the other graders within the -- within the
23 nonidentified section?

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1 training.

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5 We had a couple secretaries out there. They were both named
6 Pam at first. And we would turn those in to Pam, and she would
7 then work her magic.

8 THE COURT: We -- we moved backwards. Are we okay?

9 (Pause in the proceedings.)

10 BY MR. PARKER:

11 Q -- with any type of quality assurance or quality
12 control exercised by the Department of Taxation
13 representatives. Were you -- do you have any information about
14 that?

15 A No, sir.

16 COUNSEL: Objection. Foundation.

17 BY MR. PARKER:

18 Q All right. To your knowledge, did -- did any of the
19 D.O.T. or Department of Taxation representatives check your
20 scores or the scores of the other graders within the -- within
21 the nonidentified section?

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24 training.

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1 Q Yes, sir.

2 A What we did is we turned them in to our secretaries.
3 We had a couple secretaries out there. They were both named
4 Pam at first. And we would turn those in to Pam, and she would
5 then work her magic with them.

6 THE COURT: But we don't know what the magic was.

7 BY MR. PARKER:

8 Q Okay. Do you know -- do you know what magic she was
9 working?

10 THE COURT: Nope.

11 THE WITNESS: She was supposed to be logging those
12 and then turning them into the team management, I guess.

13 BY MR. PARKER:

14 Q Okay. You really don't know what happened after you
15 turned them into Pam?

16 A Once I turned them into Pam, they were gone, in my
17 opinion. Move on to the next one.

18 Q Did you, on a daily basis, and this is after training
19 when you're actually reviewing the real applications, did you
20 and your two fellow graders in the nonidentified section, did
21 you discuss your scores even if there were no, you know,
22 three-point-or-greater differentials?

23 A Yes, sir. We discussed every application and every
24 score.

25 Q Okay. Good enough. And do you recall prior to the

1 real applications being received any of the Vegas Department of
2 Taxation employees going over the form application or your
3 scoring or any scoring you may have done during that training
4 process?

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15 Q Does Damon Hernandez ring a bell?

16 A Not really, but it could be.

17 Q How about -- how about Kara or Kara Cronkhite? Does
18 that name ring a bell?

19 A That -- that does ring a bell, yes, sir.

20 Q All right. I'm more concerned with any type of
21 quality assurance or quality control exercised by the
22 Department of Taxation representatives. Were you -- do you
23 have any information about that?

24 A No, sir.

25 THE COURT: Overruled.

1 TECH SHANE: Your Honor, I'm not sure what the issue
2 is.

3 THE COURT: Yeah. We'll worry about it tomorrow
4 though, huh?

5 TECH SHANE: The tech is broke.

6 THE COURT: 8:30. All right. I guess since we're
7 having a technical problem with the same clip being played over
8 and over and over again, and I don't need to know about the two
9 Pams again, we'll just all go home.

10 Have a nice evening, everyone.

11 (Proceedings recessed at 4:23 p.m. until 4:24 p.m.)

12 MR. PRINCE: We're trying to figure out what's
13 happening tomorrow.

14 THE COURT: I'm going to finish this fine gentleman's
15 depo if we can get rid of the loop.

16 MR. PRINCE: Well, we understand that. I just need
17 to know who's -- what to do after that.

18 THE COURT: What day is tomorrow?

19 MR. PRINCE: Wednesday -- Thursday. Excuse me.

20 THE COURT: Thursday.

21 MR. PRINCE: Thursday. Excuse me.

22 THE COURT: We're going to hear a motion maybe
23 tomorrow. We are hearing a motion tomorrow. Ms. Welch's
24 motion is tomorrow.

25 MR. BICE: I think that's Friday morning.

1 THE COURT: No, Ms. Welch's is tomorrow.

2 MR. PRINCE: Well, that's just on the Zoom --

3 THE COURT: Oh, no. Is it Friday?

4 THE CLERK: No. Welch's is tomorrow.

5 THE COURT: Okay.

6 THE CLERK: And then the Zoom --

7 THE COURT: Okay. So we are not hearing any motions
8 tomorrow. We're just finishing this depo.

9 MR. PRINCE: Okay.

10 THE COURT: And then what?

11 MR. PRINCE: Well, that's what I'm trying to find out
12 from Mr. Miller.

13 MR. MILLER: I understood from this morning that you
14 were hearing the motion regarding our intent to call Mr. Pupo
15 tomorrow.

16 THE COURT: There are two motions. One is a Zoom
17 motion, and one is a protective order motion. The protective
18 order motion is on Friday, and I believe the Zoom motion is on
19 Friday too.

20 MR. MILLER: Okay. We had anticipated --

21 THE COURT: Because there was an objection to moving
22 it to Thursday because of the short time to do an opposition.
23 So I left them all on Friday. And I did say if everybody
24 reaches an agreement I'd be happy to do it on Friday, but -- or
25 Thursday, but I need the oppositions so I can read them.

1 The TRO is on Friday.

2 MR. BICE: So I think, Your Honor --

3 THE COURT: Somebody tell me what you want to do
4 tomorrow.

5 THE CLERK: There is a protective order tomorrow.
6 That's Ms. Welch's.

7 THE COURT: Right. Ms. Welch is tomorrow.

8 THE CLERK: Friday -- Friday is --

9 THE COURT: So Ms. Welch's motion is tomorrow?

10 THE CLERK: Yes.

11 THE COURT: Okay. At 8:30?

12 THE CLERK: Yes.

13 THE COURT: Ms. Welch has a motion tomorrow about
14 Mr. Pupo tomorrow at 8:30.

15 MR. MILLER: Right. So depending upon how the --

16 THE COURT: Is that you're asking?

17 MR. MILLER: Depending upon how the Court rules, we
18 had anticipated calling Mr. Pupo tomorrow.

19 THE COURT: Okay. So that -- before you got here
20 today, when Mr. Dzarnoski came --

21 MR. MILLER: Oh, I see.

22 THE COURT: -- that was the first item of business on
23 our housekeeping. And I think the agreement was that he wasn't
24 going to come tomorrow because there were depositions that were going
25 to be played.

1 MR. MILLER: Right. I think we have a number of
2 depos, but it wouldn't certainly last the remainder of the day.
3 Given Ms. Cronkhite's unavailability, you know, I think we --

4 THE COURT: Well, and her unavailability may last
5 longer than we think from what we heard this morning.

6 MR. MILLER: Yes. We understand that as well.

7 THE COURT: So what the objection was this morning
8 that you missed was that there wasn't 24 hour's notice for who
9 the witnesses were. And because Mr. Pupo had been crossed off
10 the list on Sunday, as I recall, they weren't anticipating him
11 being called this week. And so there was an inquiry, and we
12 were told it wasn't going to be tomorrow.

13 MR. MILLER: Well, I know the 24 hour's notice was
14 given as of last night as to Mr. Pupo testifying for on
15 Thursday.

16 THE COURT: Who gave -- who gave that notice to
17 everybody in the room except me?

18 MR. MILLER: Mr. Gentile.

19 THE COURT: Did everybody get that notice?

20 MR. PRINCE: We saw an email from him which Mr. Bice
21 and I objected to that because they took him off the list for
22 the week. And so, yeah, we do have an issue with that order.
23 Yes.

24 THE COURT: Okay. So what's the plan tomorrow if I
25 don't let Mr. Pupo testify tomorrow?

1 MR. MILLER: We have some videotaped depositions that
2 we can play.

3 THE COURT: We have this depo, and we have another
4 depo after that that's about an hour and a half to two hours.

5 MR. MILLER: Two more, I believe. We have
6 Mr. Anderson and Ms. Contine.

7 THE COURT: And Mr. Dzarnoski said he was going back
8 to the office to work on one more depo so he could fill the
9 day.

10 MR. MILLER: That's a very short. It looks like
11 about --

12 THE COURT: Yeah, well, that's what he told me when
13 he left.

14 MR. MILLER: -- 30 minutes of designated testimony,
15 I'd say.

16 THE COURT: So are you going to call Mr. Pupo on
17 Friday then if we don't have him tomorrow?

18 MR. MILLER: Sure. We can put Mr. Pupo on. We also
19 have another expert witness that we could put on Friday that's
20 flying in from out of town on Friday.

21 THE COURT: You have an expert witness on Friday.

22 MR. MILLER: On Friday, right.

23 THE COURT: I anticipate Mr. Pupo might take more
24 than a day.

25 MR. MILLER: I would agree with that.

1 UNIDENTIFIED SPEAKER: They have that Tax Commission
2 thing on Friday too.

3 THE COURT: We're breaking early on Friday.

4 MR. PRINCE: Yeah. So we're, like, out of here by
5 1:00 or so.

6 THE COURT: I am breaking at lunch.

7 MR. PRINCE: Very good.

8 THE COURT: Okay.

9 MR. PRINCE: You make the --

10 THE COURT: Well.

11 MR. BICE: So this is what I guess I'm trying to
12 figure out. It sounds like they have an expert for Friday
13 morning.

14 THE COURT: Will you finish in the morning?

15 MR. MILLER: Yeah. I wouldn't anticipate he would
16 take very long, a couple hours at most.

17 THE COURT: Okay.

18 MR. MILLER: A few hours.

19 MR. BICE: So I don't -- so I'm again --

20 THE COURT: Ms. Welch is not here.

21 MR. BICE: Right.

22 THE COURT: So planning for her is difficult. She'll
23 be here in the morning. So I'm okay with Pupo going on Friday
24 until noon when we break.

25 I have not said I will grant the Zoom motion. I have

1 significant technical concerns about it, which I guess we'll
2 talk about, but we'll talk about that in the morning.

3 MR. SCHWARZ: So you think Mr. Holyfield is going on
4 Friday?

5 MR. MILLER: Mr. Holyfield will be a scheduled
6 witness on Friday. Right.

7 MR. PRINCE: Well, then -- okay. So then we won't
8 have -- I'm not anticipating tomorrow Mr. Pupo going. And then
9 if the expert is going Friday, then there's no time for
10 Mr. Pupo Friday.

11 THE COURT: Why not? How long is the expert going to
12 take? Because we start at 8:30. I have a TRO motion.

13 MR. PRINCE: Oh, we can start him. Understood.

14 THE COURT: We've got a TRO motion.

15 MR. PRINCE: I understand. I understand.

16 THE COURT: I have got a short expert.

17 MR. PRINCE: And that's fine.

18 THE COURT: And then I've got somebody else
19 testifying before I break at lunch.

20 MR. PRINCE: Understood.

21 THE COURT: So if we run out of depositions tomorrow, we
22 run out of depositions.

23 MR. PRINCE: Your Honor, I'm fine.

24 THE COURT: Okay?

25 MR. PRINCE: Fair enough.

1 MR. MILLER: Okay. Thank you, Your Honor.

2 THE COURT: So we will discuss with Ms. Welch then
3 her client testifying Friday after the expert.

4 (Proceedings recessed for the evening at 4:29 p.m.)
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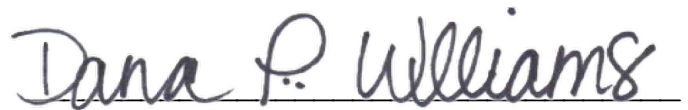
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

07/30/2020

DATE

BY MR. PARKER: [31] 4/8 6/9 7/8 17/15 17/18 18/7 19/10 20/2 20/11 20/21 21/9 25/6 26/4 29/10 29/20 30/1 30/18 31/1 31/15 33/19 34/14 35/6 36/7 37/14 39/2 39/19 40/10 40/17 41/7 41/13 42/10 COUNSEL: [27] 19/7 20/17 20/18 20/19 21/5 21/6 29/4 29/6 29/7 29/16 29/17 30/13 30/14 30/16 31/6 31/7 34/10 35/3 35/5 36/4 37/12 38/23 39/1 39/17 40/16 42/6 42/9 MR. BICE: [5] 43/25 45/2 48/11 48/19 48/21 MR. MILLER: [20] 44/13 44/20 45/15 45/17 45/21 46/1 46/6 46/13 46/18 47/1 47/5 47/10 47/14 47/18 47/22 47/25 48/15 48/18 49/5 50/1 MR. PARKER: [2] 38/25 42/8 MR. PRINCE: [18] 43/12 43/16 43/19 43/21 44/2 44/9 44/11 46/20 48/4 48/7 48/9 49/7 49/13 49/15 49/17 49/20 49/23 49/25 MR. SCHWARZ: [1] 49/3 MS. LEVIN: [12] 6/4 7/6 17/14 25/5 25/8 25/11 25/20 25/23 25/25 29/5 29/18 33/14 TECH SHANE: [2] 43/1 43/5 THE CLERK: [7] 20/6 44/4 44/6 45/5 45/8 45/10 45/12 THE COURT: [81] THE WITNESS: [14] 6/5 6/7 18/1 18/3 19/8 21/8 29/9 30/17 31/9 33/15 33/17 34/12 36/6 41/11 UNIDENTIFIED SPEAKER: [1] 48/1 \$ \$25 [2] 14/14 16/17 \$45 [2] 14/15 16/18 , ,and [1] 5/11 0 07/30/2020 [1] 51/18 1 10 [1] 37/1 12 [1] 16/3 14 [1] 37/2	151 [3] 32/5 32/6 32/9 16 [1] 26/6 1978 [1] 12/15 1:00 or [1] 48/5 2 20 [3] 14/12 15/17 25/13 2018 [9] 6/3 6/11 6/20 6/25 7/19 13/19 19/25 21/13 25/2 2020 [3] 1/12 4/1 51/18 21 [1] 30/11 23rd [1] 25/2 24 [2] 46/8 46/13 26th [3] 13/21 13/24 21/13 29 [2] 1/12 4/1 3 30 [1] 47/14 32 [1] 14/3 33 [1] 25/13 3:26 [1] 4/1 4 40 [1] 14/3 45 minutes [1] 26/2 4:23 [1] 43/11 4:24 [1] 43/11 4:29 p.m [1] 50/4 8 89183 [1] 51/12 8:30 [4] 43/6 45/11 45/14 49/12 8:51 [1] 25/2 9 92 [1] 31/25 9:07 [1] 26/5 A a.m [1] 25/2 abbreviation [1] 12/10 ABC [1] 32/5 ability [1] 16/9 able [6] 6/10 8/3 14/20 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30/8 31/13 31/20 32/1 32/3 34/19 35/18</p> <p>compliant [2] 34/8 35/1</p> <p>components [1] 21/2</p> <p>comport [1] 25/3</p> <p>compound [4] 38/23 39/1 42/6 42/9</p> <p>computer [1] 26/16</p> <p>concern [1] 30/4</p> <p>concerned [4] 28/18 37/7 39/12 42/20</p> <p>concerns [3] 16/13 16/13 49/1</p> <p>conditioning [3] 11/15 11/20 11/21</p> <p>confusing [1] 29/22</p> <p>connection [1] 10/8</p>	<p>consider [1] 18/23</p> <p>considering [1] 34/6</p> <p>consulting [1] 15/23</p> <p>consumed [1] 28/20</p> <p>consumer [1] 28/20</p> <p>contacted [1] 8/7</p> <p>CONTAIN [1] 51/9</p> <p>Contine [1] 47/6</p> <p>control [4] 37/8 39/13 40/12 42/21</p> <p>correct [52]</p> <p>correctly [1] 35/10</p> <p>could [12] 7/15 12/6 16/2 21/21 22/21 23/23 29/1 31/14 39/8 42/16 47/8 47/19</p> <p>couldn't [1] 35/7</p> <p>counsel [1] 17/14</p> <p>COUNTY [4] 1/2 4/1 35/12 35/13</p> <p>couple [6] 22/6 27/4 37/25 40/5 41/3 48/16</p> <p>COURT [4] 1/2 1/11 1/24 45/17</p> <p>CRAIG [1] 2/7</p> <p>create [1] 19/5</p> <p>created [1] 22/14</p> <p>Cronkhite [2] 39/9 42/17</p> <p>Cronkhite's [1] 46/3</p> <p>crossed [1] 46/9</p> <p>cultivation [3] 19/4 23/18 24/6</p> <p>current [1] 33/6</p> <p>curriculum [1] 11/20</p> <p>cut [3] 25/12 25/13 25/16</p>	<p>23/22 24/4 24/25 31/20 32/2 32/14 37/9 37/16 38/18 39/4 39/14 39/21 40/12 40/19 42/1 42/12 42/22</p> <p>dependent [1] 35/22</p> <p>depending [4] 34/3 36/2 45/15 45/17</p> <p>depo [5] 43/15 44/8 47/3 47/4 47/8</p> <p>depos [4] 45/24 46/2 49/21 49/22</p> <p>deposition [9] 4/3 4/13 5/17 5/19 20/4 20/10 25/9 25/18 26/3</p> <p>depositions [2] 4/22 47/1</p> <p>DEPT [1] 1/5</p> <p>describe [1] 14/5</p> <p>designated [1] 47/14</p> <p>detail [1] 18/19</p> <p>determine [2] 19/3 34/25</p> <p>development [2] 17/9 18/21</p> <p>DIANE [1] 2/19</p> <p>did [74]</p> <p>didn't [3] 10/1 14/25 23/5</p> <p>differences [1] 23/7</p> <p>different [4] 7/10 16/3 18/24 36/2</p> <p>differential [1] 38/14</p> <p>differentials [1] 41/22</p> <p>difficult [1] 48/22</p> <p>direct [1] 16/23</p> <p>discuss [4] 7/18 38/13 41/21 50/2</p> <p>discussed [2] 38/15 41/23</p> <p>discussing [1] 28/25</p> <p>dispensary [3] 16/12 23/18 24/6</p> <p>DISTRICT [2] 1/2 1/11</p> <p>division [6] 8/3 8/13 8/23 8/25 9/1 10/19</p> <p>do [51] 6/7 7/9 7/19 8/11 9/3 11/12 12/4 13/18 14/5 15/17 15/22 17/8 19/11 20/3 21/15 22/7 22/13 23/21 24/4 26/24 27/3 27/6 27/11 27/23 28/10 28/10 28/11 28/12 31/24 33/11 36/9 36/17 36/21 36/24 38/3 38/17 38/22 39/3 39/14 40/13 41/8 41/8 41/25 42/5 42/11 42/22 43/17 44/22 44/24 45/3 46/22</p> <p>document [3] 9/7 9/9 29/15</p> <p>documentation [2] 10/25 17/12</p> <p>documenting [1] 30/21</p> <p>documents [2] 16/8 24/24</p> <p>does [10] 25/2 25/3 34/6 39/7 39/9 39/11</p>	<p>42/15 42/17 42/19 51/9</p> <p>doing [6] 15/23 21/22 23/1 27/14 27/21 28/8</p> <p>don't [14] 21/23 31/17 32/6 33/15 33/17 38/6 39/6 41/6 41/14 42/14 43/8 46/25 47/17 48/19</p> <p>done [9] 4/22 6/13 6/14 12/19 21/12 24/8 30/6 38/20 42/3</p> <p>down [5] 14/14 16/2 16/17 27/15 35/25</p> <p>drilling [1] 35/25</p> <p>Droid [2] 7/1 7/10</p> <p>DUANE [2] 4/3 4/4</p> <p>due [1] 4/17</p> <p>duly [1] 4/5</p> <p>during [10] 16/10 22/13 23/1 23/15 23/21 27/13 27/19 36/10 38/20 42/3</p> <p>DZARNOSKI [3] 2/3 45/20 47/7</p>
<p>C</p> <p>call [4] 14/17 31/12 44/14 47/16</p> <p>called [3] 4/5 8/1 46/11</p> <p>calling [1] 45/18</p> <p>came [1] 45/20</p> <p>cameras [1] 31/24</p> <p>can [18] 5/13 7/22 8/6 14/5 20/1 20/5 20/22 21/16 24/8 24/15 25/5 28/3 28/12 43/15 44/25 47/2 47/18 49/13</p> <p>can't [6] 8/16 22/5 23/10 28/22 34/24 37/2</p> <p>cannot [2] 10/18 18/17</p> <p>care [1] 15/10</p> <p>career [2] 12/15 14/10</p> <p>Carson [5] 11/23 12/16 13/13 27/5 32/22</p> <p>case [4] 1/5 4/19 5/18 29/22</p> <p>cases [1] 4/17</p> <p>category [1] 19/21</p> <p>Center [1] 4/10</p> <p>certain [8] 13/24 13/25</p>	<p>11/19 11/23 15/3 32/25 33/2 34/7 35/19 36/3</p> <p>compliance [9] 14/23 30/4 30/8 31/13 31/20 32/1 32/3 34/19 35/18</p> <p>compliant [2] 34/8 35/1</p> <p>components [1] 21/2</p> <p>comport [1] 25/3</p> <p>compound [4] 38/23 39/1 42/6 42/9</p> <p>computer [1] 26/16</p> <p>concern [1] 30/4</p> <p>concerned [4] 28/18 37/7 39/12 42/20</p> <p>concerns [3] 16/13 16/13 49/1</p> <p>conditioning [3] 11/15 11/20 11/21</p> <p>confusing [1] 29/22</p> <p>connection [1] 10/8</p>	<p>D</p> <p>D.O.T [4] 1/6 37/16 39/20 40/19</p> <p>daily [2] 38/10 41/18</p> <p>Damon [2] 39/7 42/15</p> <p>DANA [2] 51/12 51/16</p> <p>DATE [1] 51/19</p> <p>DAVID [1] 2/14</p> <p>day [13] 1/13 15/22 21/15 27/10 27/11 27/14 27/20 36/11 37/3 43/18 46/2 47/9 47/24</p> <p>days [4] 21/16 36/16 36/18 36/18</p> <p>dealing [2] 14/23 15/1</p> <p>dealings [1] 16/23</p> <p>decide [1] 35/14</p> <p>DEFENSE [1] 2/10</p> <p>degree [3] 11/24 12/4 12/6</p> <p>delete [2] 6/13 6/14</p> <p>demonstrate [2] 14/20 16/9</p> <p>DENNIS [8] 2/15 8/8 8/10 8/11 8/21 8/22 10/2 10/8</p> <p>department [34] 4/18 5/24 7/24 9/1 9/6 9/8 9/17 9/25 11/1 16/24 17/12 18/14 19/2 19/11 19/16 20/25 23/15</p>	<p>13/18 14/5 15/17 15/22 17/8 19/11 20/3 21/15 22/7 22/13 23/21 24/4 26/24 27/3 27/6 27/11 27/23 28/10 28/10 28/11 28/12 31/24 33/11 36/9 36/17 36/21 36/24 38/3 38/17 38/22 39/3 39/14 40/13 41/8 41/8 41/25 42/5 42/11 42/22 43/17 44/22 44/24 45/3 46/22</p> <p>document [3] 9/7 9/9 29/15</p> <p>documentation [2] 10/25 17/12</p> <p>documenting [1] 30/21</p> <p>documents [2] 16/8 24/24</p> <p>does [10] 25/2 25/3 34/6 39/7 39/9 39/11</p>	<p>E</p> <p>each [5] 15/22 28/17 34/20 34/21 35/13</p> <p>Eagle [1] 5/11</p> <p>earlier [1] 33/8</p> <p>early [1] 48/3</p> <p>earth [1] 30/20</p> <p>Education [1] 11/11</p> <p>eight [2] 36/17 36/19</p> <p>eight-hour [1] 36/17</p> <p>either [2] 12/5 19/4</p> <p>electrical [1] 14/24</p> <p>elements [1] 29/11</p> <p>ELIZABETH [1] 1/11</p> <p>else [3] 19/21 20/8 49/18</p> <p>email [1] 46/20</p> <p>employed [1] 13/13</p> <p>employee [1] 12/9</p> <p>employees [2] 38/19 42/2</p> <p>Employment [2] 9/8 9/18</p> <p>end [1] 25/17</p> <p>ended [1] 20/6</p> <p>Enforcement [2] 8/14 10/19</p> <p>enough [11] 6/24 7/13 7/17 9/3 10/24 17/3 18/20 26/8 38/17 41/25 49/25</p> <p>ensure [1] 31/18</p> <p>entire [1] 17/9</p> <p>ENTITLED [1] 51/4</p> <p>ENTITY [1] 51/10</p> <p>environment [1] 33/1</p> <p>environmental [12] 15/2 17/4 17/8 17/19 17/20 17/22 18/10 18/16 18/18 18/24 20/24 21/3</p> <p>ESQ [29] 2/2 2/2 2/3 2/3 2/4 2/4 2/5 2/5 2/6 2/6 2/7 2/7 2/8 2/10 2/10 2/11 2/11 2/12</p> <p>RA 564</p>

E	13/12 28/6	48/12 48/23 49/4 49/6 49/9 49/10 50/3	H	hour [6] 14/14 14/15 16/17 16/19 36/17 47/4
ESQ... [11] 2/12 2/13 2/13 2/14 2/14 2/15 2/15 2/16 2/16 2/17 2/19	facility [20] 13/1 15/3 17/23 18/5 18/11 18/16 19/5 19/13 19/18 23/12 23/18 23/19 24/7 24/7 24/13 31/14 32/11 34/20 34/24 36/2	fuels [1] 13/16 fumes [2] 19/4 19/6 fumigation [2] 18/3 21/4 future [1] 29/3	had [31] 4/13 4/19 4/19 6/11 12/25 15/2 15/9 18/17 21/24 22/19 22/21 22/22 22/23 22/24 23/4 23/11 23/14 25/12 26/16 30/10 30/20 31/3 32/9 32/14 37/3 37/25 40/5 41/3 44/20 45/18 46/9	hour's [2] 46/8 46/13 hourly [3] 13/24 14/4 15/18 hours [6] 13/25 14/4 36/19 47/4 48/16 48/18 housekeeping [1] 45/23
establish [1] 33/3 establishment [1] 20/15 establishments [1] 36/1	fail [1] 31/4 fair [6] 5/8 5/10 13/8 30/2 35/1 49/25 fall [1] 19/21 familiar [2] 8/20 9/11 familiarity [3] 15/2 15/6 15/13 far [7] 6/23 22/1 28/7 28/10 37/19 39/24 40/22 fellow [3] 23/17 38/12 41/20 FETAZ [1] 2/4 few [3] 21/15 31/22 48/18 fiancee [3] 8/13 8/21 10/10 figure [2] 43/12 48/12 fill [2] 16/25 47/8 filled [2] 22/19 23/3 finally [2] 11/22 19/15 find [1] 44/11 fine [3] 43/14 49/17 49/23 finish [2] 43/14 48/14 finishing [1] 44/8 fire [14] 4/22 8/1 8/4 8/5 8/9 11/21 11/24 12/18 12/19 13/10 14/11 14/17 17/2 33/22 first [16] 4/5 7/22 9/5 9/24 17/19 18/9 21/15 21/15 27/20 36/8 36/10 36/14 38/1 40/6 41/4 45/22 flow [3] 17/24 19/12 21/3 flower [2] 29/15 29/21 flying [1] 47/20 following [1] 28/19 follows [2] 4/3 4/6 FOREGOING [1] 51/3 form [16] 19/7 20/17 21/5 22/10 22/18 23/8 23/23 26/9 29/4 29/16 30/13 31/6 34/10 36/4 38/19 42/2 former [1] 33/6 forms [1] 24/1 forthcoming [1] 24/9 forward [1] 21/18 found [1] 28/16 foundation [8] 29/5 29/16 30/13 31/6 35/3 36/4 39/17 40/16 four [2] 12/3 22/23 four-year [1] 12/3 Friday [23] 43/25 44/3 44/18 44/19 44/23 44/24 45/1 45/8 45/8 47/17 47/19 47/20 47/21 47/22 48/2 48/3	G GAMBLE [1] 2/11 gave [2] 46/16 46/16 Gentile [1] 46/18 gentleman [1] 8/1 gentleman's [1] 43/14 get [7] 12/2 13/4 14/15 15/25 31/14 43/15 46/19 Gilbert [8] 9/10 9/11 10/4 10/17 27/1 27/10 27/12 27/19 give [2] 5/7 22/25 given [6] 13/3 24/13 34/23 37/9 46/3 46/14 giving [2] 29/13 31/3 go [9] 16/5 16/21 18/19 22/3 22/24 25/24 28/8 33/23 43/9 goal [1] 31/2 going [23] 14/3 14/15 17/9 17/13 17/23 25/15 26/1 26/2 31/23 38/19 42/2 43/14 43/22 45/24 45/24 46/12 47/7 47/16 48/23 49/3 49/8 49/9 49/11 gone [2] 38/8 41/16 gonna [1] 37/1 GONZALEZ [1] 1/11 good [14] 6/24 7/13 7/17 9/3 10/24 14/19 17/3 18/20 21/20 21/22 26/8 38/17 41/25 48/7 got [7] 14/17 19/19 25/22 45/19 49/14 49/16 49/18 graded [1] 26/9 grader [11] 7/24 10/9 10/14 10/16 13/9 13/19 16/19 18/12 23/16 31/2 31/19 graders [9] 19/25 23/17 36/11 36/13 37/17 38/12 39/22 40/20 41/20 GRAF [1] 2/12 grant [1] 48/25 Gray [2] 24/21 25/1 great [2] 17/11 18/19 greater [2] 38/14 41/22 ground [1] 28/19 group [1] 34/19 groups [1] 36/14 guess [6] 31/11 38/5 41/12 43/6 48/11 49/1 guessing [1] 37/1 guide [1] 24/8 GUTIERREZ [1] 2/12	happened [2] 38/6 41/14 happening [2] 29/2 43/13 happy [1] 44/24 has [4] 25/11 35/18 35/23 45/13 have [72] having [5] 4/5 12/18 16/25 21/23 43/7 HAWKINS [1] 1/24 hazardous [2] 13/16 19/20 he [20] 8/2 25/13 25/14 25/14 25/14 25/15 27/14 27/15 27/15 27/16 27/16 27/18 27/20 27/21 45/23 47/7 47/8 47/12 47/13 48/15 hear [2] 35/7 43/22 heard [2] 18/20 46/5 hearing [3] 43/23 44/7 44/14 heating [3] 11/15 11/20 11/21 her [12] 9/5 9/24 10/1 10/8 10/18 26/5 38/2 40/7 41/5 46/4 48/22 50/3 here [12] 4/10 4/19 11/11 16/1 25/8 27/4 28/20 37/1 45/19 48/4 48/20 48/23 Hernandez [2] 39/7 42/15 high [3] 11/4 11/5 11/7 higher [2] 29/13 31/3 highly [1] 28/21 him [9] 10/5 27/10 27/13 27/20 46/10 46/20 46/21 47/17 49/13 hire [1] 9/9 hired [3] 13/18 14/2 14/18 his [4] 8/13 9/13 10/10 10/17 history [4] 15/19 32/3 32/9 32/10 Holyfield [2] 49/3 49/5 home [1] 43/9 honest [1] 5/8 honesty [1] 5/16 Honor [5] 25/5 43/1 45/2 49/23 50/1 HONORABLE [1] 1/11	how [29] 7/22 8/11 9/20 10/4 10/16 13/23 14/5 14/6 15/21 15/25 22/2 24/7 27/11 28/7 28/10 28/16 30/5 31/13 31/16 31/18 36/12 36/15 36/24 39/9 42/17 42/17 45/15 45/17 49/11 however [1] 35/14 HSU [1] 2/13 huh [1] 43/4
F	facilities [4] 13/6 13/11		I	I'd [7] 4/24 7/17 10/23 14/9 17/1 44/24 47/15 I'll [2] 5/11 25/18 I'm [33] 4/21 5/10 5/11 9/7 9/14 16/5 19/22 24/23 25/1 25/23 28/23 29/21 31/17 31/17 34/15 35/7 37/1 37/7 37/20 38/25 39/12 39/25 40/23 42/8 42/20 43/1 43/14 44/11 48/11 48/19 48/23 49/8 49/23 I've [7] 4/19 4/22 14/9 17/6 19/19 28/9 49/18 IBC [10] 33/20 33/20 33/23 33/25 33/25 34/3 35/14 35/15 35/19 35/23 idea [3] 8/11 22/25 25/22 identification [2] 31/11 51/10 identified [3] 9/10 36/11 36/13 if [27] 5/3 6/16 6/18 7/14 12/8 12/9 18/8 18/17 18/18 23/10 25/18 25/19 28/3 29/11 32/5 32/9 32/22 32/24 34/23 38/13 41/21 43/15 44/23 46/24 47/17 49/9 49/21 II [3] 1/14 7/1 7/11 III [1] 2/5 impact [11] 15/2 17/4 17/8 17/9 17/19 17/20 17/22 18/18 18/24 20/25 36/2 important [1] 4/24 in [88] inaccurately [1] 5/4 INC [1] 1/25 include [1] 13/15 indicated [1] 21/12 indication [1] 11/18 Indiscernible [6] 29/23 RA 565

I	Indiscernible... [5] 30/24 37/12 37/20 39/25 40/23	JARED [1] 2/13	let's [4] 21/11 25/24 32/6 33/23	marshal's [4] 8/2 8/9 14/17 17/2	49/8 49/10
	indoctrination [1] 21/17	JD [1] 1/25	letter [1] 9/16	materials [2] 13/16 19/20	Mr. Anderson [1] 47/6
	influence [2] 21/23 27/18	JILL [1] 1/24	LEVIN [1] 2/10	MATTER [1] 51/5	Mr. Bice [1] 46/20
	information [13] 6/10 6/12 6/13 6/19 6/21 14/19 19/3 32/12 32/24 37/10 39/15 40/13 42/23	job [4] 8/2 8/4 15/22 17/6	license [1] 22/9	MAXIMILIEN [1] 2/4	Mr. Dzarnoski [2] 45/20 47/7
	informed [1] 8/22	jobs [1] 14/16	licenses [1] 23/5	Maxx [2] 7/1 7/11	Mr. Gentile [1] 46/18
	inquiry [1] 46/11	JOEL [1] 2/15	lighting [3] 16/13 24/12 24/14	may [9] 10/25 15/3 21/11 25/10 29/14 36/2 38/20 42/3 46/4	Mr. Holyfield [2] 49/3 49/5
	inside [1] 23/17	Join [11] 20/18 20/19 21/6 29/6 29/7 29/17 29/18 30/14 30/16 31/7 35/5	like [13] 4/24 7/17 9/14 12/14 16/12 16/13 18/5 22/23 25/19 37/2 47/10 48/4 48/12	maybe [2] 37/1 43/22	Mr. Miller [1] 44/12
	inspect [3] 12/25 13/5 28/6	JORDAN [1] 2/16	list [2] 46/10 46/21	me [30] 4/10 7/22 8/3 9/20 9/20 10/20 13/23 14/7 14/15 18/9 20/3 21/16 24/3 24/19 28/3 28/12 31/16 32/18 32/25 34/18 35/10 36/1 36/12 39/3 42/11 43/19 43/21 45/3 46/17 47/12	Mr. Pupo [11] 44/14 45/14 45/18 46/9 46/14 46/25 47/16 47/18 47/23 49/8 49/10
	inspected [1] 14/9	Jorge [1] 2/19	LITIGATION [1] 1/6	Meadows [1] 11/19	Ms [3] 10/7 47/6 48/20
	inspecting [1] 31/19	JOSEPH [1] 2/12	little [6] 15/24 20/7 24/3 27/22 35/25 36/19	mean [2] 17/8 29/21	Ms. [8] 43/23 44/1 45/6 45/7 45/9 45/13 46/3 50/2
	inspection [3] 12/19 13/10 23/12	JUDGE [1] 1/11	live [1] 11/10	means [1] 25/1	Ms. Cronkhite's [1] 46/3
	inspector [8] 8/4 12/23 13/10 13/11 13/13 14/11 33/6 34/24	JULY [2] 1/12 4/1	located [1] 36/3	mechanical [1] 14/24	Ms. Welch [3] 45/7 45/13 50/2
	inspectors [3] 21/25 22/2 27/4	jurisdiction [9] 33/2 34/7 34/20 35/1 35/12 35/18 35/19 35/21 35/22	location [2] 33/3 34/23	medical [7] 13/5 15/15 23/3 23/8 23/12 26/10 28/5	Ms. Welch's [4] 43/23 44/1 45/6 45/9
	instead [1] 12/9	jurisdictions [6] 15/6 33/9 33/12 33/24 34/2 34/8	logging [2] 38/4 41/11	mentioned [4] 20/13 21/2 28/23 33/7	much [2] 21/10 36/12
	intense [2] 22/5 28/9	just [13] 18/3 24/19 25/5 25/23 27/24 28/16 29/22 31/17 36/11 43/9 43/16 44/2 44/8	long [3] 14/6 48/16 49/11	met [8] 9/5 9/24 10/1 10/5 10/7 10/22 10/23 25/7	municipalities [1] 35/13
	intent [2] 16/6 44/14	K	longer [1] 46/5	might [2] 8/18 47/23	mute [1] 20/5
	intent's [1] 16/4	KAHN [1] 2/13	look [4] 16/12 22/1 31/23 32/15	MIKHAYLOV [1] 2/14	my [13] 5/9 8/4 10/11 11/3 13/15 14/7 14/10 14/10 17/6 17/13 17/21 38/8 41/16
	intentionally [1] 5/4	Kara [4] 39/9 39/9 42/17 42/17	looks [3] 9/13 9/14 47/10	MILLER [2] 2/5 44/12	N
	interconnection [1] 27/17	keep [2] 20/9 28/16	loop [1] 43/15	minor [1] 29/14	name [9] 8/6 8/15 9/9 9/13 10/17 10/18 26/24 39/9 42/18
	interesting [1] 28/16	keeping [1] 30/21	lost [1] 17/25	minutes [5] 14/12 15/18 26/2 26/6 47/14	named [3] 37/25 40/5 41/3
	International [3] 33/18 33/21 33/21	KEMP [1] 2/4	lunch [2] 48/6 49/19	missed [1] 46/8	names [4] 27/3 27/6 39/4 42/12
	interpret [2] 15/21 16/1	kinds [1] 19/20	M	more [11] 8/4 18/5 24/3 37/7 39/3 39/12 42/11 42/20 47/5 47/8 47/23	NATHANAEL [1] 2/6
	interpretations [1] 16/3	KIRILL [1] 2/14	made [1] 14/13	morning [8] 43/25 44/13 46/5 46/7 48/13 48/14 48/23 49/2	national [1] 33/12
	interrupted [1] 25/14	know [34] 6/23 8/15 9/3 9/20 9/22 10/1 10/4 12/8 12/10 14/15 20/3 22/2 22/22 25/19 25/23 28/17 32/5 32/6 32/20 32/22 33/1 37/2 38/3 38/6 38/13 41/6 41/8 41/8 41/14 41/21 43/8 43/17 46/3 46/13	magic [6] 38/2 38/3 40/7 41/5 41/6 41/8	most [5] 4/15 4/24 5/8 37/4 48/16	nature [2] 31/14 32/21
	interview [5] 10/19 14/5 14/7 16/10 16/16	knowing [1] 19/22	majority [1] 27/7	mostly [1] 36/19	need [4] 15/19 43/8 43/16 44/25
	interviewed [1] 10/5	knowledge [4] 10/16 37/15 39/20 40/18	make [8] 7/15 10/7 14/16 25/8 32/2 35/10 35/11 48/9	motion [13] 43/22 43/23 43/24 44/14 44/17 44/17 44/18 44/18 45/9 45/13 48/25 49/12 49/14	needed [2] 10/11 16/18
	interviewing [1] 24/25	KOCH [1] 2/14	makes [1] 23/6	move [2] 38/9 41/17	NEVADA [15] 1/2 4/1 4/9 4/18 11/22 11/23 15/7 15/14 15/14 26/13 26/15 26/19 30/9 31/10 51/12
	into [9] 15/25 18/19 19/21 31/10 31/14 31/20 41/12 41/15 41/16	Ky [2] 10/17 26/25	making [1] 25/23	moving [1] 44/21	never [3] 5/11 10/22 10/23
	investigator [5] 4/21 4/22 8/5 12/19 14/11	L	management [2] 38/5 41/12	Mr [10] 3/5 5/17 5/22 7/17 10/10 10/24 17/11 27/8 27/12 27/19	new [1] 6/7
	involving [2] 4/17 5/18	LAS [4] 3/6 27/2 32/22 51/12	Manpower [3] 16/21 16/22 17/1	Mr. [19] 44/12 44/14 45/14 45/18 45/20 46/9 46/14 46/18 46/20 46/25 47/6 47/7 47/16 47/18 47/23 49/3 49/5	next [5] 1/19 17/13 25/15 38/9 41/17
	IRC [3] 33/11 33/13 33/17	last [7] 4/16 5/18 8/15 20/7 46/2 46/4 46/14	many [4] 16/2 31/13 36/15 36/24	most [5] 4/15 4/24 5/8 37/4 48/16	nice [1] 43/10
	is [96]	later [1] 22/22	marijuana [48] 7/19 7/25 8/14 10/19 13/1 13/5 13/11 13/12 13/17 15/3 15/11 15/15 16/12 17/22 18/11 18/16 19/4 19/13 19/17 19/18 19/21 20/15 22/9 23/3 23/8 23/9 23/12 23/17 23/18 23/19 24/6 24/13 25/1 26/10 26/14 28/5 29/21 30/10 30/11 30/19 30/22 31/4 32/1 32/10 33/3 34/20 36/1 36/2	mostly [1] 36/19	night [1] 46/14
	issue [2] 43/1 46/22	law [1] 16/2	majority [1] 27/7	motion [13] 43/22 43/23 43/24 44/14 44/17 44/17 44/18 44/18 45/9 45/13 48/25 49/12 49/14	no [48] 1/5 1/5 6/1 6/15 8/16 9/19 9/24 10/3 10/5 10/15 10/23 11/7 12/4 12/7 13/2 13/7 14/25 15/4 15/8 15/12 15/16 16/15 16/22 18/13 19/14 19/19 20/16 20/23 23/14 23/20 24/10 24/18 25/22 32/4 32/14 34/19 35/2 35/9 37/11 38/13
	issues [2] 5/14 28/15	lawyers [1] 4/10	making [1] 25/23	mentioned [4] 20/13 21/2 28/23 33/7	RA 566
	it [73]	learned [1] 8/11	lunch [2] 48/6 49/19	met [8] 9/5 9/24 10/1 10/5 10/7 10/22 10/23 25/7	
	it's [8] 9/15 9/15 14/15 16/1 22/6 28/19 28/20 35/22	left [2] 44/23 47/13	look [4] 16/12 22/1 31/23 32/15	might [2] 8/18 47/23	
	item [1] 45/22	LEMONS [7] 4/3 4/4 5/17 5/22 7/17 10/24 17/11	longer [1] 46/5	MIKHAYLOV [1] 2/14	
	items [3] 31/14 31/22 31/25	less [1] 8/4	loop [1] 43/15	MILLER [2] 2/5 44/12	
	its [1] 32/11	let [10] 9/20 18/9 24/3 24/19 25/19 32/25 35/10 39/3 42/11 46/25	lost [1] 17/25	minor [1] 29/14	
J			lunch [2] 48/6 49/19	minutes [5] 14/12 15/18 26/2 26/6 47/14	
JAMES [1] 2/6				missed [1] 46/8	

<p>N</p> <p>no... [8] 39/16 40/15 41/21 42/24 44/1 44/3 44/4 49/9</p> <p>nobody [1] 20/8</p> <p>nonidentified [8] 19/25 29/12 32/19 37/18 38/12 39/23 40/21 41/20</p> <p>noon [1] 48/24</p> <p>Nope [1] 41/10</p> <p>not [49] 6/1 6/14 7/23 10/5 12/4 13/9 13/12 15/9 15/16 15/25 16/22 17/11 18/19 19/8 19/23 20/12 20/25 21/21 22/13 23/10 23/14 23/20 23/22 24/4 24/13 24/18 27/3 27/6 27/15 27/23 28/8 29/15 32/10 32/11 32/20 34/12 34/15 34/23 34/25 36/10 39/8 42/16 43/1 44/7 48/20 48/25 49/8 49/11 51/9</p> <p>notice [5] 23/7 46/8 46/13 46/16 46/19</p> <p>now [14] 7/10 7/17 9/7 9/20 10/24 20/12 21/11 23/2 26/8 26/13 33/6 34/23 35/25 36/8</p> <p>number [5] 6/2 6/8 13/25 46/1 51/10</p> <p>numerous [1] 4/10</p>	<p>38/8 41/16</p> <p>one [18] 4/19 20/7 22/10 22/15 22/17 22/21 22/22 26/25 28/15 28/17 36/11 36/11 37/3 38/9 41/17 44/16 44/17 47/8</p> <p>only [4] 5/19 6/19 20/6 26/25</p> <p>operational [1] 24/6</p> <p>opinion [2] 38/9 41/17</p> <p>opportunity [2] 4/11 13/5</p> <p>opposition [1] 44/22</p> <p>oppositions [1] 44/25</p> <p>or [94]</p> <p>order [4] 44/17 44/18 45/5 46/22</p> <p>orientation [1] 16/21</p> <p>other [10] 4/11 14/16 15/18 16/25 20/13 23/13 23/18 37/17 39/22 40/20</p> <p>our [11] 14/3 21/21 27/18 31/25 32/16 32/18 37/24 40/4 41/2 44/14 45/23</p> <p>out [21] 16/25 18/18 22/19 23/3 25/12 25/13 25/16 27/2 27/11 28/20 30/20 37/25 40/5 41/3 43/12 44/11 47/20 48/4 48/12 49/21 49/22</p> <p>over [9] 21/20 22/7 22/11 35/7 38/19 42/2 43/7 43/8 43/8</p> <p>Overruled [21] 6/6 7/7 17/17 19/9 20/20 21/7 29/8 29/19 29/24 30/15 30/25 31/8 33/16 34/11 35/4 36/5 37/13 38/24 39/18 42/7 42/25</p>	<p>penalties [1] 5/3</p> <p>people [5] 10/22 27/2 27/24 28/3 31/14</p> <p>per [1] 13/25</p> <p>Perfect [1] 24/19</p> <p>perform [1] 6/18</p> <p>period [3] 22/4 23/22 27/20</p> <p>perjury [1] 5/3</p> <p>person [6] 8/6 8/22 9/13 10/11 27/7 51/10</p> <p>pertains [1] 18/21</p> <p>PETER [1] 2/3</p> <p>Phase [3] 18/20 18/23 33/7</p> <p>phone [17] 5/20 5/22 5/25 6/3 6/5 6/7 6/8 6/11 6/12 6/13 6/15 6/19 6/21 6/24 7/10 7/14 20/8</p> <p>Pinkerton [8] 8/8 8/10 8/11 8/21 8/22 10/2 10/8 10/10</p> <p>PLAINTIFF [1] 3/3</p> <p>plaintiffs [2] 2/2 25/21</p> <p>plan [8] 14/8 17/5 17/19 18/16 18/24 24/5 34/25 46/24</p> <p>planning [1] 48/22</p> <p>plans [10] 8/3 8/5 14/9 14/21 15/19 17/20 18/10 21/3 23/23 33/7</p> <p>plant [3] 28/17 30/20 32/10</p> <p>plants [2] 30/22 32/11</p> <p>Plaskon [3] 10/17 26/25 27/8</p> <p>play [3] 25/19 26/1 47/2</p> <p>played [3] 4/3 43/7 45/25</p> <p>playing [2] 20/9 25/17</p> <p>please [1] 20/5</p> <p>point [8] 21/18 22/22 23/10 28/15 28/23 34/15 38/14 41/22</p> <p>portion [4] 19/25 25/11 25/15 35/19</p> <p>portions [5] 29/12 33/13 33/25 35/14 35/23</p> <p>position [2] 8/4 10/6</p> <p>possibility [1] 18/1</p> <p>possible [3] 8/12 8/23 9/9</p> <p>potentially [1] 6/20</p> <p>practice [1] 22/24</p> <p>precisely [1] 24/3</p> <p>PRESENT [1] 2/19</p> <p>presentations [2] 36/22 36/24</p> <p>presented [1] 37/5</p> <p>preserve [1] 5/22</p> <p>preserved [2] 6/12 6/17</p> <p>pretty [3] 22/5 26/7 28/9</p> <p>prevent [3] 29/2 29/13 31/3</p>	<p>previously [2] 25/21 26/9</p> <p>PRINCE [1] 2/15</p> <p>prior [9] 10/8 10/21 13/8 13/22 13/24 18/11 23/11 38/17 41/25</p> <p>private [1] 4/21</p> <p>probably [5] 13/17 13/22 14/12 23/4 37/1</p> <p>problem [1] 43/7</p> <p>problems [7] 28/6 28/13 28/13 28/22 28/25 29/1 29/2</p> <p>proceedings [5] 1/8 40/9 43/11 50/4 51/4</p> <p>process [18] 6/20 7/19 10/21 13/20 13/23 14/8 14/11 21/22 23/1 23/11 23/15 24/1 27/18 28/7 28/18 34/13 38/21 42/4</p> <p>product [4] 22/2 28/19 29/21 31/5</p> <p>production [3] 18/5 19/5 24/7</p> <p>profession [2] 10/12 13/15</p> <p>propensity [1] 31/4</p> <p>proper [3] 7/16 18/4 31/24</p> <p>proposed [1] 34/24</p> <p>protect [1] 22/2</p> <p>protective [3] 44/17 44/17 45/5</p> <p>provide [15] 5/25 12/2 12/5 16/8 16/8 16/8 16/11 18/14 19/2 19/6 19/15 20/12 20/13 20/25 21/1</p> <p>provided [10] 10/25 19/24 23/22 24/5 24/15 26/13 26/16 26/18 27/24 32/12</p> <p>providing [1] 19/11</p> <p>Pupo [13] 2/19 44/14 45/14 45/18 46/9 46/14 46/25 47/16 47/18 47/23 48/23 49/8 49/10</p> <p>purposes [7] 6/10 23/12 23/23 24/8 24/16 24/19 30/21</p> <p>put [4] 20/5 28/19 47/18 47/19</p> <p>PUZEY [1] 2/6</p>	<p>RD [3] 32/6 32/6 32/9</p> <p>RE [1] 1/6</p> <p>reaches [1] 44/24</p> <p>read [4] 15/21 16/2 16/9 44/25</p> <p>reading [1] 14/21</p> <p>real [5] 28/22 38/11 38/18 41/19 42/1</p> <p>really [5] 26/25 38/6 39/8 41/14 42/16</p> <p>reason [3] 23/13 24/23 34/6</p> <p>recall [30] 8/6 8/16 13/18 14/5 15/17 15/21 18/17 19/8 19/11 21/15 22/5 22/13 23/10 23/21 24/4 26/24 27/3 27/6 27/11 27/23 28/3 28/12 28/22 36/9 36/21 36/24 37/2 38/17 41/25 46/10</p> <p>receive [3] 17/20 18/9 19/15</p> <p>received [6] 21/17 21/18 21/19 34/19 38/18 42/1</p> <p>receiving [1] 36/12</p> <p>recent [1] 4/15</p> <p>recessed [2] 43/11 50/4</p> <p>recollection [5] 19/2 21/17 25/3 28/24 36/12</p> <p>recommend [1] 8/3</p> <p>record [2] 24/20 25/23</p> <p>RECORDED [1] 1/24</p> <p>REORDER [1] 1/24</p> <p>RECORDING [1] 51/4</p> <p>records [1] 32/15</p> <p>recreation [1] 32/1</p> <p>recreational [14] 7/19 7/25 13/1 13/19 15/15 18/16 19/13 19/17 22/9 23/5 23/9 24/6 24/13 26/14</p> <p>refer [1] 30/9</p> <p>referring [1] 5/17</p> <p>refers [1] 12/10</p> <p>regard [1] 19/12</p> <p>regarding [3] 7/24 14/22 44/14</p> <p>regards [2] 15/5 26/19</p> <p>regulation [1] 30/10</p> <p>regulatory [1] 14/23</p> <p>relate [1] 34/21</p> <p>related [9] 5/19 6/20 7/18 18/11 18/15 19/12 19/16 23/3 26/14</p> <p>relative [2] 15/14 21/2</p> <p>Relevance [3] 6/4 7/6 33/14</p> <p>remainder [1] 46/2</p> <p>remember [4] 31/17 36/17 39/4 42/12</p> <p>remind [1] 4/24</p> <p>Reno [5] 11/7 11/8 12/15 12/16 32/22</p> <p>report [2] 6/18 24/24</p> <p>REPORTING [1] 1/25</p> <p>represent [2] 4/9 4/11</p> <p>representatives [9]</p> <p>RA 567</p>
<p>O</p> <p>oath [1] 5/11</p> <p>Object [4] 29/16 34/10 35/3 36/4</p> <p>objected [1] 46/21</p> <p>objection [17] 7/6 17/14 19/7 20/17 21/5 25/8 29/4 29/5 30/13 31/6 33/14 38/23 39/17 40/16 42/6 44/21 46/7</p> <p>objections [1] 35/8</p> <p>obligation [3] 4/25 12/25 34/7</p> <p>obligations [1] 31/20</p> <p>observing [2] 27/21 27/25</p> <p>obvious [1] 16/1</p> <p>obviously [1] 17/24</p> <p>October [1] 4/16</p> <p>Odessa [3] 11/5 11/11 11/12</p> <p>off [3] 6/14 46/9 46/21</p> <p>offer [1] 14/13</p> <p>offered [2] 16/17 16/18</p> <p>offering [1] 14/14</p> <p>office [5] 8/2 8/9 14/17 17/2 47/8</p> <p>often [1] 27/11</p> <p>oh [4] 15/25 44/3 45/21 49/13</p> <p>okay [59]</p> <p>on [55]</p> <p>once [4] 27/11 27/11</p>	<p>P</p> <p>p.m [4] 4/1 43/11 43/11 50/4</p> <p>package [1] 24/14</p> <p>page [2] 1/19 25/13</p> <p>Pam [10] 38/1 38/1 38/7 38/8 40/6 40/6 41/4 41/4 41/15 41/16</p> <p>Pams [1] 43/9</p> <p>panel [1] 10/13</p> <p>paperwork [1] 7/16</p> <p>paraphrasing [1] 31/17</p> <p>PARKER [2] 2/5 3/5</p> <p>part [5] 5/9 14/9 17/3 17/6 34/12</p> <p>participant [1] 20/7</p> <p>participated [2] 5/18 11/19</p> <p>participation [1] 11/23</p> <p>particular [1] 33/17</p> <p>parties [2] 4/11 25/12</p> <p>parts [1] 25/18</p> <p>patronage [1] 19/13</p> <p>pause [2] 20/1 40/9</p> <p>paused [2] 20/4 25/9</p> <p>pay [1] 15/18</p>	<p>penalties [1] 5/3</p> <p>people [5] 10/22 27/2 27/24 28/3 31/14</p> <p>per [1] 13/25</p> <p>Perfect [1] 24/19</p> <p>perform [1] 6/18</p> <p>period [3] 22/4 23/22 27/20</p> <p>perjury [1] 5/3</p> <p>person [6] 8/6 8/22 9/13 10/11 27/7 51/10</p> <p>pertains [1] 18/21</p> <p>PETER [1] 2/3</p> <p>Phase [3] 18/20 18/23 33/7</p> <p>phone [17] 5/20 5/22 5/25 6/3 6/5 6/7 6/8 6/11 6/12 6/13 6/15 6/19 6/21 6/24 7/10 7/14 20/8</p> <p>Pinkerton [8] 8/8 8/10 8/11 8/21 8/22 10/2 10/8 10/10</p> <p>PLAINTIFF [1] 3/3</p> <p>plaintiffs [2] 2/2 25/21</p> <p>plan [8] 14/8 17/5 17/19 18/16 18/24 24/5 34/25 46/24</p> <p>planning [1] 48/22</p> <p>plans [10] 8/3 8/5 14/9 14/21 15/19 17/20 18/10 21/3 23/23 33/7</p> <p>plant [3] 28/17 30/20 32/10</p> <p>plants [2] 30/22 32/11</p> <p>Plaskon [3] 10/17 26/25 27/8</p> <p>play [3] 25/19 26/1 47/2</p> <p>played [3] 4/3 43/7 45/25</p> <p>playing [2] 20/9 25/17</p> <p>please [1] 20/5</p> <p>point [8] 21/18 22/22 23/10 28/15 28/23 34/15 38/14 41/22</p> <p>portion [4] 19/25 25/11 25/15 35/19</p> <p>portions [5] 29/12 33/13 33/25 35/14 35/23</p> <p>position [2] 8/4 10/6</p> <p>possibility [1] 18/1</p> <p>possible [3] 8/12 8/23 9/9</p> <p>potentially [1] 6/20</p> <p>practice [1] 22/24</p> <p>precisely [1] 24/3</p> <p>PRESENT [1] 2/19</p> <p>presentations [2] 36/22 36/24</p> <p>presented [1] 37/5</p> <p>preserve [1] 5/22</p> <p>preserved [2] 6/12 6/17</p> <p>pretty [3] 22/5 26/7 28/9</p> <p>prevent [3] 29/2 29/13 31/3</p>	<p>previously [2] 25/21 26/9</p> <p>PRINCE [1] 2/15</p> <p>prior [9] 10/8 10/21 13/8 13/22 13/24 18/11 23/11 38/17 41/25</p> <p>private [1] 4/21</p> <p>probably [5] 13/17 13/22 14/12 23/4 37/1</p> <p>problem [1] 43/7</p> <p>problems [7] 28/6 28/13 28/13 28/22 28/25 29/1 29/2</p> <p>proceedings [5] 1/8 40/9 43/11 50/4 51/4</p> <p>process [18] 6/20 7/19 10/21 13/20 13/23 14/8 14/11 21/22 23/1 23/11 23/15 24/1 27/18 28/7 28/18 34/13 38/21 42/4</p> <p>product [4] 22/2 28/19 29/21 31/5</p> <p>production [3] 18/5 19/5 24/7</p> <p>profession [2] 10/12 13/15</p> <p>propensity [1] 31/4</p> <p>proper [3] 7/16 18/4 31/24</p> <p>proposed [1] 34/24</p> <p>protect [1] 22/2</p> <p>protective [3] 44/17 44/17 45/5</p> <p>provide [15] 5/25 12/2 12/5 16/8 16/8 16/8 16/11 18/14 19/2 19/6 19/15 20/12 20/13 20/25 21/1</p> <p>provided [10] 10/25 19/24 23/22 24/5 24/15 26/13 26/16 26/18 27/24 32/12</p> <p>providing [1] 19/11</p> <p>Pupo [13] 2/19 44/14 45/14 45/18 46/9 46/14 46/25 47/16 47/18 47/23 48/23 49/8 49/10</p> <p>purposes [7] 6/10 23/12 23/23 24/8 24/16 24/19 30/21</p> <p>put [4] 20/5 28/19 47/18 47/19</p> <p>PUZEY [1] 2/6</p>	<p>Q</p> <p>QE [2] 12/8 12/10</p> <p>qualified [1] 12/9</p> <p>quality [9] 15/10 37/8 37/8 39/13 39/13 40/11 40/11 42/21 42/21</p> <p>quantity [1] 19/4</p> <p>question [5] 17/11 17/13 17/21 29/4 35/10</p> <p>questions [5] 4/12 4/20 5/19 15/5 16/7</p> <p>R</p> <p>raised [1] 11/8</p> <p>rate [2] 13/25 15/18</p>

<p>R</p> <p>representatives... [9] 37/9 37/16 39/5 39/14 39/21 40/13 40/19 42/13 42/22</p> <p>required [1] 31/20</p> <p>requirements [2] 24/12 33/9</p> <p>Requisition [2] 9/8 9/18</p> <p>respect [1] 19/6</p> <p>responsibilities [1] 7/18</p> <p>responsibility [1] 18/12</p> <p>resume [2] 11/1 11/3</p> <p>resumed [2] 20/10 26/3</p> <p>retail [1] 18/6</p> <p>revealed [1] 28/14</p> <p>review [7] 11/3 12/6 14/8 22/15 26/21 30/5 30/8</p> <p>reviewed [2] 17/4 17/6</p> <p>reviewer [1] 33/7</p> <p>reviewing [4] 15/19 36/25 38/11 41/19</p> <p>Revised [2] 15/14 26/19</p> <p>RICHARD [2] 2/17 32/19</p> <p>RICK [1] 2/13</p> <p>rid [1] 43/15</p> <p>right [46] 4/15 5/7 6/2 6/16 7/13 7/17 7/22 9/7 9/13 10/4 10/21 11/22 15/1 16/16 17/7 18/8 19/1 20/24 22/18 23/21 24/11 24/23 25/4 27/7 27/23 33/23 34/18 34/23 35/11 35/22 35/25 36/8 36/17 37/4 37/7 37/15 39/12 40/18 42/20 43/6 45/7 45/15 46/1 47/22 48/21 49/6</p> <p>ring [6] 39/7 39/10 39/11 42/15 42/18 42/19</p> <p>RO [1] 31/25</p> <p>role [2] 7/18 13/9</p> <p>room [2] 10/19 46/17</p> <p>ROSS [1] 2/5</p> <p>roughly [1] 26/6</p> <p>rules [1] 45/17</p> <p>RULIS [1] 2/6</p> <p>run [2] 49/21 49/22</p> <p>RUSTY [1] 2/12</p>	<p>same [13] 6/2 6/3 6/8 16/2 16/2 16/4 16/6 22/15 24/11 24/12 26/18 36/9 43/7</p> <p>saw [2] 32/24 46/20</p> <p>say [11] 8/25 13/8 15/25 24/7 25/15 25/15 32/6 35/8 37/1 44/23 47/15</p> <p>saying [3] 12/9 16/11 24/23</p> <p>says [6] 9/7 11/11 11/14 11/22 25/1 25/7</p> <p>scenario [1] 22/23</p> <p>scheduled [1] 49/5</p> <p>school [6] 11/4 11/5 11/7 11/11 11/12 11/13</p> <p>SCHWARZ [1] 2/15</p> <p>science [4] 11/21 11/24 11/24 12/3</p> <p>score [2] 38/16 41/24</p> <p>scores [10] 29/14 31/3 37/17 37/17 38/13 39/21 39/22 40/20 40/20 41/21</p> <p>scoring [6] 26/11 29/13 38/20 38/20 42/3 42/3</p> <p>Scout [3] 5/10 5/11 5/12</p> <p>Scouts [1] 5/14</p> <p>second [4] 9/21 17/21 20/1 22/14</p> <p>secrecy [1] 21/21</p> <p>secretaries [5] 37/25 40/4 40/5 41/2 41/3</p> <p>secretary [1] 37/24</p> <p>section [5] 37/18 38/12 39/23 40/21 41/20</p> <p>security [4] 31/10 31/23 31/24 51/10</p> <p>securitywise [1] 22/1</p> <p>see [8] 1/19 22/24 23/17 27/10 27/13 27/20 28/7 45/21</p> <p>seed [2] 28/17 29/15</p> <p>seeing [3] 27/12 36/21 36/25</p> <p>seeking [3] 6/19 33/2 33/3</p> <p>seem [1] 25/2</p> <p>seems [1] 12/14</p> <p>seen [1] 9/17</p> <p>selected [5] 10/9 10/16 13/19 25/12 25/21</p> <p>selection [1] 10/13</p> <p>sell [2] 29/14 31/4</p> <p>selling [1] 32/9</p> <p>sense [1] 23/6</p> <p>service [1] 7/2</p> <p>set [1] 19/23</p> <p>setting [1] 33/18</p> <p>several [1] 17/2</p> <p>shall [1] 15/25</p> <p>SHARPLES [1] 2/16</p> <p>she [7] 38/1 38/3 38/4 40/6 41/4 41/8 41/11</p> <p>She'll [1] 48/22</p> <p>She's [1] 10/18</p>	<p>sheer [1] 14/23</p> <p>sheet [1] 26/11</p> <p>SHEVORSKI [1] 2/10</p> <p>short [4] 5/19 44/22 47/10 49/16</p> <p>should [7] 6/23 16/12 16/12 24/7 24/15 25/4 30/5</p> <p>show [2] 36/21 36/24</p> <p>shows [2] 24/25 37/5</p> <p>side [1] 14/16</p> <p>SIGAL [1] 2/2</p> <p>significant [2] 12/14 49/1</p> <p>since [2] 6/3 43/6</p> <p>sir [89]</p> <p>sitting [1] 27/21</p> <p>size [1] 16/13</p> <p>SLATER [1] 2/7</p> <p>slide [3] 36/21 36/24 37/5</p> <p>SMITH [2] 2/7 2/16</p> <p>so [76]</p> <p>SOCIAL [1] 51/9</p> <p>sold [1] 30/21</p> <p>solely [1] 32/18</p> <p>some [12] 18/17 21/24 21/24 22/25 26/9 27/2 28/6 28/8 28/9 28/15 36/18 47/1</p> <p>somebody [2] 45/3 49/18</p> <p>someone [1] 7/23</p> <p>something [1] 37/2</p> <p>sometime [1] 22/13</p> <p>sometimes [1] 30/9</p> <p>sorry [6] 5/13 16/5 20/9 35/7 38/25 42/8</p> <p>sounds [3] 8/20 14/19 48/12</p> <p>Sparks [1] 35/13</p> <p>speak [1] 27/5</p> <p>speaking [4] 8/25 22/8 24/20 28/5</p> <p>specific [1] 21/24</p> <p>specifically [2] 18/15 18/18</p> <p>spent [3] 27/7 36/12 37/4</p> <p>spoke [1] 28/21</p> <p>spouses [1] 21/21</p> <p>standardized [2] 20/13 21/1</p> <p>start [2] 49/12 49/13</p> <p>started [4] 13/21 13/23 21/12 27/14</p> <p>starting [1] 12/15</p> <p>state [10] 4/18 7/14 8/1 8/12 13/15 14/16 15/7 15/20 17/2 26/15</p> <p>statement [5] 30/2 34/16 34/21 34/22 35/1</p> <p>status [1] 5/20</p> <p>statutes [3] 15/14 26/19 26/22</p> <p>stay [2] 27/16 27/17</p> <p>step [1] 9/20</p> <p>STEPHANIE [1] 2/7</p> <p>Steve [7] 9/10 9/11</p>	<p>10/4 10/17 26/25 27/1 27/10</p> <p>STEVEN [1] 2/10</p> <p>still [7] 5/10 6/7 6/21 7/4 7/9 7/11 15/23</p> <p>store [1] 18/6</p> <p>strike [2] 13/3 32/24</p> <p>structural [1] 14/24</p> <p>stuff [1] 19/20</p> <p>such [2] 13/16 18/4</p> <p>suffering [1] 5/14</p> <p>SUGDEN [1] 2/8</p> <p>Sunday [1] 46/10</p> <p>supervisor [1] 9/9</p> <p>supposed [6] 22/25 32/20 32/22 33/1 38/4 41/11</p> <p>sure [7] 18/4 25/1 28/23 35/10 35/11 43/1 47/18</p> <p>swore [1] 21/20</p> <p>sworn [1] 4/5</p> <p>system [3] 19/17 31/10 31/10</p> <p>systems [2] 19/20 20/15</p>	<p>testify [3] 4/25 5/4 46/25</p> <p>testifying [3] 46/14 49/19 50/3</p> <p>testimony [1] 47/14</p> <p>Texas [4] 11/4 11/10 11/12 12/15</p> <p>than [6] 15/18 16/25 18/6 18/24 46/5 47/24</p> <p>thank [6] 7/13 20/24 21/10 25/25 30/4 50/1</p> <p>Thanks [1] 18/2</p> <p>that [212]</p> <p>that's [30] 5/10 5/21 11/17 12/17 12/21 14/16 16/20 17/12 21/8 24/22 26/25 29/9 29/22 30/7 30/17 32/13 32/16 33/20 34/22 35/16 35/22 43/25 44/2 44/11 45/6 47/4 47/10 47/12 47/19 49/17</p> <p>their [2] 27/3 31/4</p> <p>them [47] 7/15 10/23 14/8 14/10 14/14 15/17 17/2 17/6 27/5 31/12 36/17 37/24 38/2 38/5 38/7 38/8 40/4 41/2 41/5 41/12 41/15 41/16 44/23 44/25</p> <p>then [28] 4/21 9/15 10/18 11/14 11/18 11/22 12/15 12/15 19/15 21/24 22/22 26/2 26/10 27/2 38/2 38/4 40/7 41/5 41/12 44/6 44/10 47/17 49/7 49/7 49/8 49/9 49/18 50/2</p> <p>THEODORE [1] 2/5</p> <p>there [28] 4/10 13/4 15/18 16/2 20/6 22/10 22/12 22/22 23/10 25/18 27/1 27/4 27/17 27/17 27/21 31/22 34/6 37/25 38/13 40/5 41/3 41/21 44/16 44/21 45/5 45/24 46/8 46/11</p> <p>there's [4] 11/18 25/11 34/7 49/9</p> <p>these [8] 10/22 12/2 12/5 24/9 28/3 31/11 31/24 37/4</p> <p>they [69]</p> <p>thing [4] 4/24 17/23 21/22 48/2</p> <p>things [2] 17/24 28/18</p> <p>think [12] 5/17 10/18 18/5 26/10 34/17 43/25 45/2 45/23 46/1 46/3 46/5 49/3</p> <p>this [42] 4/19 5/18 8/12 8/22 9/9 10/21 13/9 13/19 13/23 16/10 16/11 18/9 18/11 21/22 23/10 23/11 23/15 23/21 24/7 24/8 24/14 24/16 24/23 25/20 25/20 27/19 28/8 28/23 32/25 33/17 34/15</p> <p>RA 568</p>
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<p>T</p> <p>this... [11] 38/10 41/18 43/14 44/8 44/13 46/5 46/7 46/11 47/3 48/11 51/9</p> <p>those [15] 19/5 23/2 23/3 29/1 29/2 30/11 30/21 33/22 34/8 35/13 38/1 38/4 40/6 41/4 41/11</p> <p>though [1] 43/4</p> <p>thought [2] 21/19 21/22</p> <p>thousands [2] 14/9 14/10</p> <p>three [7] 4/20 10/22 20/14 22/23 23/2 38/14 41/22</p> <p>three-point-or-greater [2] 38/14 41/22</p> <p>through [7] 10/2 14/10 16/21 16/23 17/2 22/5 22/24</p> <p>throughout [3] 22/16 22/17 24/1</p> <p>Thursday [6] 43/19 43/20 43/21 44/22 44/25 46/15</p> <p>tie [2] 31/10 31/20</p> <p>till [1] 10/5</p> <p>time [15] 4/15 9/5 14/13 23/5 26/6 27/8 28/19 28/20 36/12 37/4 37/20 39/25 40/23 44/22 49/9</p> <p>Tina [1] 32/19</p> <p>today [3] 5/8 16/1 45/20</p> <p>TODD [1] 2/11</p> <p>told [8] 4/9 8/2 10/10 14/10 14/14 20/3 46/12 47/12</p> <p>tomorrow [25] 25/18 43/3 43/13 43/18 43/23 43/23 43/24 44/1 44/4 44/8 44/15 45/4 45/5 45/7 45/9 45/13 45/14 45/18 45/24 46/12 46/24 46/25 47/17 49/8 49/21</p> <p>too [2] 44/19 48/2</p> <p>took [4] 5/12 14/6 14/12 46/21</p> <p>tools [1] 19/23</p> <p>total [1] 26/5</p> <p>towards [1] 29/13</p> <p>town [1] 47/20</p> <p>track [1] 30/21</p> <p>trade [2] 11/11 11/12</p> <p>traffic [3] 17/24 19/12 21/3</p> <p>train [1] 22/20</p> <p>trained [1] 28/4</p> <p>trainer [2] 26/21 26/24</p> <p>trainers [2] 26/24 28/13</p> <p>training [45] 13/3 17/20 18/15 18/17 19/6</p>	<p>19/12 19/16 19/19 20/12 20/14 21/2 21/11 21/12 21/16 21/17 21/19 21/24 22/4 22/14 22/16 22/17 22/23 23/21 26/8 27/8 27/13 27/21 27/24 28/1 28/2 28/10 34/19 36/8 36/13 36/15 37/21 37/22 38/10 38/20 40/1 40/2 40/24 40/25 41/18 42/3</p> <p>TRAN [1] 1/1</p> <p>TRANSCRIBED [1] 1/25</p> <p>TRANSCRIBER [1] 51/16</p> <p>TRANSCRIPT [3] 1/7 51/3 51/9</p> <p>TRIAL [1] 1/13</p> <p>tried [1] 27/15</p> <p>TRO [3] 45/1 49/12 49/14</p> <p>Truckee [1] 11/19</p> <p>true [2] 34/21 34/22</p> <p>trust [1] 5/7</p> <p>truthfully [1] 4/25</p> <p>try [1] 31/2</p> <p>trying [7] 27/16 27/18 29/13 31/17 43/12 44/11 48/11</p> <p>turn [3] 38/1 40/6 41/4</p> <p>turned [9] 14/13 16/17 37/24 38/7 38/8 40/4 41/2 41/15 41/16</p> <p>turning [2] 38/4 41/12</p> <p>two [17] 4/20 17/23 22/4 27/11 27/13 27/20 36/9 36/10 36/14 36/16 37/3 38/12 41/20 43/8 44/16 47/4 47/5</p> <p>two-week [3] 22/4 27/13 27/20</p> <p>type [7] 6/24 19/5 23/18 37/7 39/12 40/11 42/20</p> <p>U</p> <p>UBC [3] 33/12 33/13 33/15</p> <p>unavailability [2] 46/3 46/4</p> <p>understand [10] 5/3 5/5 5/15 7/20 33/11 33/24 43/16 46/6 49/15 49/15</p> <p>understanding [5] 14/1 17/16 18/8 30/10 30/19</p> <p>understood [4] 19/22 44/13 49/13 49/20</p> <p>unfortunately [2] 39/6 42/14</p> <p>uniform [2] 19/23 21/1</p> <p>until [3] 30/20 43/11 48/24</p> <p>untruthfully [1] 5/4</p> <p>up [6] 21/25 22/25 27/2 28/16 32/15 35/21</p> <p>upon [6] 10/24 11/3</p>	<p>14/4 35/22 45/15 45/17</p> <p>us [10] 5/7 20/5 20/9 21/20 21/25 25/19 27/5 27/15 27/16 27/17</p> <p>use [10] 7/10 7/11 12/8 19/13 23/23 24/1 24/8 24/16 33/15 33/17</p> <p>used [7] 6/3 6/25 12/9 20/15 22/15 22/17 31/18</p> <p>using [4] 22/20 29/21 33/18 33/22</p> <p>V</p> <p>varied [2] 36/18 36/19</p> <p>various [2] 15/6 33/24</p> <p>veer [1] 5/11</p> <p>VEGAS [11] 4/1 27/2 27/24 28/4 28/13 32/22 38/18 39/5 42/1 42/13 51/12</p> <p>ventilation [5] 18/4 19/17 19/19 20/15 21/4</p> <p>Verizon [2] 7/3 7/4</p> <p>versus [1] 23/8</p> <p>very [6] 5/19 16/1 21/20 47/10 48/7 48/16</p> <p>video [6] 4/3 17/25 20/4 20/10 25/9 26/3</p> <p>videotaped [1] 47/1</p> <p>view [1] 23/17</p> <p>violation [1] 30/11</p> <p>virtually [1] 36/9</p> <p>visit [3] 24/24 26/5 27/15</p> <p>VISUAL [1] 51/4</p> <p>VOLUME [1] 1/14</p> <p>W</p> <p>walls [2] 14/23 14/24</p> <p>want [4] 13/4 18/4 21/23 45/3</p> <p>wanted [1] 8/2</p> <p>was [88]</p> <p>Washoe [1] 35/13</p> <p>wasn't [6] 17/6 27/17 27/18 45/23 46/8 46/12</p> <p>way [2] 18/9 32/25</p> <p>we [93]</p> <p>we'll [5] 25/19 43/3 43/9 49/1 49/2</p> <p>we're [10] 5/13 26/1 26/2 28/8 43/6 43/12 43/22 44/8 48/3 48/4</p> <p>We've [1] 49/14</p> <p>WEDNESDAY [2] 1/12 43/19</p> <p>week [9] 13/22 13/25 14/4 22/4 27/13 27/20 36/11 46/11 46/22</p> <p>weeks [5] 27/11 36/9 36/10 36/14 36/15</p> <p>WELCH [5] 2/19 45/7 45/13 48/20 50/2</p> <p>Welch's [5] 43/23 44/1 44/4 45/6 45/9</p> <p>welding [1] 11/13</p> <p>well [19] 5/13 12/19 14/14 22/21 26/22 27/5</p>	<p>31/12 33/15 36/4 36/11 43/16 44/2 44/11 46/4 46/6 46/13 47/12 48/10 49/7</p> <p>Wellness [1] 4/9</p> <p>went [11] 9/5 9/24 11/5 11/7 11/18 14/6 21/20 22/4 22/7 22/10 25/14</p> <p>were [59]</p> <p>weren't [3] 32/21 33/1 46/10</p> <p>Western [1] 11/22</p> <p>what [60]</p> <p>what's [2] 43/12 46/24</p> <p>whatever [2] 19/5 32/6</p> <p>when [20] 4/15 8/25 9/24 10/5 10/7 13/12 13/18 14/1 22/3 25/13 25/13 30/8 37/19 38/11 39/24 40/22 41/19 45/20 47/12 48/24</p> <p>where [5] 4/19 14/20 22/23 32/20 34/3</p> <p>whether [9] 7/23 15/9 19/23 22/13 23/22 24/4 27/23 34/25 36/10</p> <p>which [12] 11/4 13/16 15/22 16/18 21/3 21/22 26/16 30/9 31/25 34/20 46/20 49/1</p> <p>while [1] 11/10</p> <p>who [12] 4/10 4/11 8/7 8/22 9/13 19/24 27/7 32/6 32/20 46/8 46/16 46/16</p> <p>who's [1] 43/17</p> <p>whole [1] 25/15</p> <p>why [4] 17/12 28/8 28/10 49/11</p> <p>will [14] 4/11 5/7 13/15 24/9 30/9 33/12 33/24 34/3 34/25 35/14 48/14 48/25 49/5 50/2</p> <p>WILLIAM [1] 2/4</p> <p>WILLIAMS [2] 51/12 51/16</p> <p>WILLIAMSON [1] 2/17</p> <p>Winnemucca [1] 32/23</p> <p>within [9] 24/24 32/11 34/8 37/17 37/17 39/22 39/22 40/20 40/20</p> <p>witness [5] 4/5 4/23 47/19 47/21 49/6</p> <p>witnesses [2] 3/3 46/9</p> <p>won't [1] 49/7</p> <p>word [1] 12/9</p> <p>words [1] 31/18</p> <p>work [8] 9/5 9/24 11/12 12/19 38/2 40/7 41/5 47/8</p> <p>worked [1] 12/18</p> <p>working [4] 10/11 17/1 38/3 41/9</p> <p>worry [1] 43/3</p> <p>would [51] 4/16 6/11 6/11 6/21 8/15 8/17 13/15 13/21 14/20 14/20 15/19 17/21 18/5 18/23 19/3 19/5 19/21</p>	<p>19/23 21/3 22/25 23/2 24/11 24/11 24/14 24/20 27/8 27/15 27/20 31/2 31/10 31/11 31/12 31/16 31/18 31/19 32/11 32/11 33/18 33/22 34/17 34/18 34/20 36/1 38/1 38/1 40/6 40/6 41/4 41/4 47/25 48/15</p> <p>wouldn't [3] 18/24 46/2 48/15</p> <p>X</p> <p>XI [1] 1/5</p> <p>Y</p> <p>yeah [6] 33/21 43/3 46/22 47/12 48/4 48/15</p> <p>year [2] 5/18 12/3</p> <p>years [2] 17/2 22/6</p> <p>yes [64]</p> <p>yet [2] 16/3 16/6</p> <p>you [270]</p> <p>you'd [2] 10/21 25/18</p> <p>you'll [1] 25/19</p> <p>you're [7] 5/17 8/25 17/23 31/23 38/11 41/19 45/16</p> <p>you've [4] 6/3 12/19 12/22 20/3</p> <p>Young [8] 8/17 8/21 9/3 9/14 9/15 9/22 10/7 10/13</p> <p>your [57]</p> <p>yourselves [1] 32/15</p> <p>Z</p> <p>Zoom [5] 44/2 44/6 44/16 44/18 48/25</p>
RA 569				



BRIAN SANDOVAL
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
DEONNE E. CONTINE
Executive Director

CONFIDENTIAL
STATE OF NEVADA
DEPARTMENT OF TAXATION

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HENDERSON OFFICE
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Fax: (702) 486-3377

August 25, 2017

THC Nevada, LLC
Nicholas Puliz
3840 E. Craig Rd.
North Las Vegas, NV.89030

Re: Application for Marijuana Distributor License
Taxpayer ID No: 1017890269
Location: 3840 E. Craig Rd. North Las Vegas, NV.89030

The Department has reviewed your application for a marijuana distribution facility. We regret to inform you that we are unable to approve your application at this time for the following reason:

- 1) Applicant's submission of false or misleading documents to the Department as part of their marijuana distribution application.

NAC 453A.332- Registration Certificates: Grounds for denial, suspension, or revocation; notice. (3) Provides false or misleading information to the Division.

The Department may reopen the application process and accept additional applications in the near future, at which time you may resubmit your application.

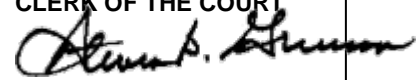
If you have any questions, please feel free to contact Damon Hernandez at 702-486-0630 or via email at Drhernandez@tax.state.nv.us.

Thank you,

Damon Hernandez
Chief Compliance Audit Investigator

CONFIDENTIAL

RA 570



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State of Nevada ex rel. its
Department of Taxation*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In re DOT Litigation,

Case No. A-19-787004-B
Dept. No. XI

Consolidated with:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035 -C
A-19787540-W
A-19-787726-C
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**DEPARTMENT OF TAXATION'S BRIEF IN SUPPORT OF ITS MOTION FOR
DIRECTED VERDICT AGAINST ALL REMAINING PLAINTIFFS**

The State of Nevada ex. rel. the Department of Taxation, by and through counsel,
files this brief supporting its forthcoming motion for directed verdict.¹

I. Introduction

This Court should grant a directed verdict to the Department. Injunctive relief is
not available absent a real, irreparable injury that is particular to the plaintiff resulting

¹ This motion is brought against all plaintiffs except those who entered into the settlement
agreement approved by the Nevada Tax Commission and Nevada's Cannabis Compliance
Board.

1 from the unlawful conduct. *Berryman v. Int’l. Brotherhood of Electrical Workers*, 82 Nev.
2 277, 280, 416 P.2d 387, 388 (1966). Ignoring this straightforward requirement of an actual
3 irreparable injury, the TGIG Plaintiffs and the remaining plaintiffs aligned with them have
4 used this case to improperly audit the Department’s 2018 retail licensing process. By not
5 introducing their unredacted applications, calling their clients as witnesses in their case in
6 chief, and introducing evidence of particularized harm to *them*, the TGIG Plaintiffs have
7 neglected basic justiciability and causation requirements.

8 It avails the TGIG Plaintiffs nothing to pick at discrete alleged procedural flaws such
9 as compliance history, inadequate training of the Manpower Graders, or anti-monopolistic
10 practices issues in Washoe County. There is (i) no evidence that those discrete alleged flaws
11 affected the TGIG Plaintiffs and those aligned with them and (ii) no evidence that those
12 issues afflicted the process as a whole rendering the process for *everyone* unfair.

13 Stripped of all their rhetoric about unequal access to information, the TGIG
14 Plaintiffs’ theory boils down to the physical address issue. The Department’s decision to
15 not require a physical address in the application is wholly consistent with the Nevada
16 Supreme Court’s reasoning in *Nuleaf CLV Dispensary, LLC v. State Dep’t of Health &*
17 *Human Servs., Div. of Pub. & Behavioral Health*, 134 Nev. 129, 414 P.3d 305 (2018).

18 For these reasons, this Court should grant the Department a directed verdict.

19 **II. Background**

20 **A. Unequal access to information theory**

21 **1. Greg Smith’s testimony**

22 The TGIG Plaintiffs offered the testimony of Greg Smith to demonstrate that a “redo”
23 of the 2018 retail marijuana competition should occur. Mr. Smith testified that he thought
24 a fatal flaw in the process was supposed unequal access to information, “...that inability to
25 – to channel all of that information consistently to all of the applicants in my mind is a
26 fatal flaw.” Day 14 at 163:9-11.

27 Mr. Smith then admitted he could not tie his theory of a fatal flaw to any application,
28 let alone the plaintiffs’ applications. He testified as follows:

1 Q. And I'm going to ask it one last time and – what specific
2 information do you contend was provided from –we'll get to who
3 provided information, but my question right now is what specific
4 information went to some applicants but not all of them?

5 A. And at – at this point I can't point to you on page 14 line
6 blah, blah here's where it is.

7 *Id.* at 180:11-19. He testified that he had no evidence that specific information was
8 provided to Ms. Connor that was not provided to other applicants. *Id.* at 181:2-4. He then
9 testified that he had no evidence that an applicant was disadvantaged. *Id.* at 181:21-23.

10 **2. THC Nevada's trial testimony**

11 Allen Puliz, a member of THC Nevada testified at trial. Mr. Puliz testified regarding
12 the issue of including a physical address in THC's application, in particular, its application
13 for a Reno location. Mr. Puliz testified that he listed a physical address for which THC did
14 not have a lease or ownership. Day 15 at 109:23-110:17. Mr. Puliz also testified that THC's
15 attorneys, Messrs. Jay and David Brown, contacted the Department and asked questions
16 about the physical location issue about the 2018 retail applications. *Id.* at 58:10-60:3.

17 **3. No plaintiff testified that it did not receive information given 18 to others, let alone offered testimony that the lack of 19 information harmed them**

20 Apart from THC Nevada, no plaintiff testified. No plaintiff offered written evidence
21 that they lacked access to information given by the Department to other applicants. No
22 plaintiff offered evidence of any kind showing that a lack of access to information given by
23 the Department concerning the application process harmed them.

24 The TGIG Plaintiffs have asserted that the Department amended the application
25 but did not ensure that all applicants received it. No plaintiff testified that they lacked
26 access to the revised application.

27 **B. Incomplete application theory**

28 **1. No plaintiff introduced their unredacted application**

The TGIG Plaintiffs and those aligned with them, have proffered a theory that the
Department has a mandatory duty to dispose of any application that is not "complete"
under NRS 453D.210(5). No plaintiff introduced an unredacted application. Accordingly,

1 there is no evidence that this Court could consider showing that the plaintiffs' applications
2 would be complete if judged by their own standard.

3 **2. No plaintiff demonstrated that they submitted their**
4 **compliance history in their application**

5 The TGIG Plaintiffs have asserted at trial that the regulations, particularly NAC
6 453D.272(1)(g) required the Department to rank applications based on their historical
7 compliance history. However, no Plaintiff offered to show this Court their compliance
8 history. No Plaintiff demonstrated that they submitted their compliance history with their
9 application in the 2018 process.

10 **C. Anti-monopolistic practices theory**

11 The TGIG Plaintiffs and those aligned with them assert that the Department
12 violated NAC 453D.272(5) by awarding conditional licenses to Essence Tropicana, LLC,
13 Essence Henderson, LLC, Cheyenne Medical, LLC, and Commerce Park Medical, LLC in
14 unincorporated Clark County. They make the same argument against Essence in Washoe
15 County. But no Plaintiff offered evidence that they, individually, were harmed by how the
16 Department interpreted NAC 453D.272(5). In other words, no Plaintiff offered evidence
17 that if this Court accepted their legal interpretation, they would receive a license.

18 **III. Legal standards**

19 In a nonjury trial, NRCP 52(c) authorizes the court to enter judgment on partial
20 findings against a party when it "has been fully heard on an issue" and judgment cannot
21 be maintained "without a favorable finding on that issue." *See* NRCP 52(c). "[T]he right to
22 be fully heard does not amount to the right to introduce every shred of evidence that a party
23 wishes, without regard to the probative value of that evidence." *First Va. Banks, Inc. v. BP*
24 *Exploration & Oil, Inc.*, 206 F.3d 404, 407 (4th Cir. 2000); *see also Granite State Ins. Co. v.*
25 *Smart Modular Techs., Inc.*, 76 F.3d 1023, 1031 (9th Cir. 1996). Instead, the court may
26 render a judgment on partial findings at any time during the trial as long as the party has
27 been fully heard on the issue. *Id.*

28 . . .

1 Put simply, once a party has presented its evidence on the necessary elements of its
2 prima facie case, the rule allows the court to enter a judgment on partial findings if the
3 party fails to prove an issue by a preponderance of the evidence. *Certified Fire Prot. Inc. v.*
4 *Precision Constr.*, 128 Nev. 371, 377, 283 P.3d 250, 254 (2012). Moreover, since the court
5 acts as the factfinder when ruling on a motion for judgment on partial findings, it need not
6 consider the evidence (or the lack of evidence) in a light favorable to the nonmoving party.
7 *Id.*

8 **IV. Legal discussion**

9 Phase II of this trial concerns, the “[l]egality of the 2018 recreational marijuana
10 application process...” Trial Protocol #2 at 14:4-7. The fatal flaw in the case that the TGIG
11 Plaintiffs and others attempted to build is there is nexus between them, in particular, and
12 application of their legal theories. This shows up in three distinct ways. **First**, they never
13 offered evidence of actual, concrete harm. **Second**, they never offered evidence showing
14 that anything that the Department did had a nexus to a constitutional injury. **Third**, they
15 never offered evidence that this Court could redress their injury through a favorable ruling,
16 i.e., if this Court ordered a redo of the 2018 application process that the TGIG Plaintiffs
17 would even be eligible to compete if their legal theories about the rules were adopted.

18 **A. The scoring was impartial and numeric – the legality of the 2018** 19 **licensing process is uncontested**

20 Nevada voters passed a ballot initiative known as the Regulation and Taxation of
21 Marijuana Act. NRS 453D.010. The initiative grants the Department plenary power over
22 the competitive application process, except for two requirements. Section 453D.210(6)
23 provides:

24 6. When competing applications are submitted for a proposed
25 retail marijuana store within a single county, the Department
26 shall use an impartial and numerically scored competitive
bidding process to determine which application or applications
among those competing will be approved.

27 . . .

28 . . .

1 NRS 453D.210(6). The competitive bidding process must be impartial and numerically
2 scored. *Id.* The terms “impartial” and numerically scored” are not defined in the initiative.
3 See generally NRS 453D.030. In sum, other than these two requirements, the initiative
4 leaves it up to the Department of Taxation to create regulations that it deems “necessary
5 or convenient to carry out the provisions of [the] chapter.” NRS 453D.200(1).

6 Plaintiffs put on their case in chief. The evidence adduced at trial through the
7 Manpower Graders testimony via deposition was that they did not know who the applicants
8 were. The Manpower Graders were impartial. Jorge Pupo also testified that a reason for
9 hiring the Manpower Graders was to protect impartiality. Day 13 at 210:7-10. Mr. Pupo
10 did not know the graders. *Id.* at 259:21-22. There is also no dispute that the applications
11 were also numerically scored.

12 The Department met the twin requirements of NRS 453D.210(6).

13 **B. TGIG Plaintiffs and other remaining Plaintiffs lack standing**

14 “[I]njunctive relief is not available in the absence of actual or threatened injury, loss
15 or damage.” *Berryman*, 82 Nev. at 280, 416 P.2d at 388. A permanent injunction cannot
16 issue in the absence of a demonstration by the moving party of success on the merits of an
17 underlying cause of action. *State Farm Mut. Auto. Ins. Co. v. Jafbros, Inc.*, 109 Nev. 926,
18 860 P.2d 176 (1993). The TGIG Plaintiffs jettisoned both of these straightforward
19 principles. They never identified an injury to them. The evidence adduced at trial has
20 nothing to do with the constitutional harms alleged in their case.

21 Standing ensures that the proper parties are before the Court. *Schwartz v. Lopez*,
22 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). While it is true that the Nevada Supreme
23 Court could have gone a different way, for declaratory judgments it has in fact adopted the
24 same requirements – “injury, causation, and redressability” – as federal courts. *Fondo v.*
25 *State*, No. 65277, 132 Nev. 969, 2016 WL 207611, at *4 (Nev. Jan. 15, 2016) (unpublished
26 disposition).

27 TGIG Plaintiffs and others have brought facial and as applied challenges to the 2018
28 retail marijuana application process, but this is of no constitutional importance. There is

1 no “facial challenge” exception to standing. *See, e.g., Long Beach Area PeaceNetwork v. City*
2 *of Long Beach*, 574 F.3d 1011, 1019 (9th Cir. 2009) (setting out the requirements for
3 establishing standing in one type of facial challenge). A plaintiff bringing a facial challenge
4 still needs to show that he has standing like any other plaintiff. *See id.*

5 The Nevada Supreme Court’s *Elley* decision also shows that cases “cast[ing] doubt
6 on the validity” of a law fail without a showing of how the law’s alleged defect caused the
7 plaintiff’s injury. In that case the district court had ruled that a statute of repose barred
8 some of the plaintiffs’ claims. *Elley*, 104 Nev. at 415, 760 P.2d at 769-70. On appeal the
9 plaintiffs contended that the statute of repose violated the U.S. Constitution’s Equal
10 Protection Clause because it excluded certain classes from its protection. *Id.* at 416, 760
11 P.2d at 770. The Nevada Supreme Court held that the plaintiffs lacked standing to litigate
12 that contention because they were not “members of one of the classes who are excluded
13 from the protection” of the statute. *Id.* “Their injuries had nothing to do with” the alleged
14 defect in the statute, so the case lacked the “necessary nexus” between injury and violation.
15 *Id.* at 416, 760 P.2d at 771.

16 To do so, they must show that they have suffered “a personal injury” and thus have
17 more than “a general interest that is common to all members of the public.” *Id.* The TGIG
18 Plaintiffs never grapple with the injury in fact requirement that they are required to meet.
19 Even if a physical address was a requirement of the application process (it wasn’t), the
20 TGIG Plaintiffs have never explained how the Department’s decision to not have such a
21 requirement injured the TGIG Plaintiffs.

22 The same is true of Amanda Connor’s communications with Jorge Pupo. Injury in
23 fact means that the plaintiff suffers a “concrete” harm, i.e. it must exist. *Spokeo, Inc. v.*
24 *Robbins*, 136 S.Ct. 1540, 1549 (2016). Throughout this case, the TGIG Plaintiffs have
25 elided over this requirement of a concrete injury. Mr. Smith did the same in his testimony.
26 Tellingly, they never contend with the concept of a concrete injury in fact regarding
27 Amanda Connor and her communications with Jorge Pupo. No plaintiff offered evidence
28 that they were deprived of equal information regarding the 2018 application process, and

1 more importantly, such lack of access to information injured them. To be clear, there is
2 nothing unconstitutional about such communications, let alone untoward. The point is that
3 TGIG and those aligned with TGIG were not, in fact, harmed by those communications.

4 None of the other TGIG Plaintiffs have suffered concrete harm either. They have
5 aligned themselves with TGIG. No plaintiff has argued to this Court that TGIG's
6 application should be stricken because of the physical address issue or Amanda Connor or
7 even David and Jay Brown's communications with the Department. Accordingly, they, like
8 TGIG, do not have a concrete and particularized injury in fact.

9 For the same reasons, the causation requirement of standing is not met. Standing
10 is not met unless the injury is "that is fairly traceable to the challenged conduct of the
11 defendant." *Spokeo*, supra. TGIG cannot use the physical address and putative unequal
12 communication issues to create a case or controversy where none exists. TGIG's application
13 and its communications with the Department, with reference to the case TGIG has built,
14 is identical to Essence and Thrive's, respectively. TGIG admitted as much in its deposition.
15 Accordingly, TGIG cannot build a case for a legally cognizable injury that is fairly traceable
16 to conduct that was identical to its own.

17 Considering the case that the TGIG Plaintiffs have made, the most obvious problem
18 is redressability. Redressability means that it is likely that the putative injury will be
19 redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561(1992).
20 None of the TGIG Plaintiffs presented evidence of complete applications under their own
21 theories.

22 For example, TGIG and those aligned with it, are simply wrong on the law with
23 respect to the physical address issue. This Court could not grant them relief inconsistent
24 with *Nuleaf* decision. Nothing prohibited the Department of Taxation from accepting
25 applications without physical addresses. The language of Nevada Revised Statute
26 453D.210(5)(b) is the like that language interpreted by the court in *Nuleaf*. There is
27 nothing in the initiative that prohibits the Department of Taxation from considering
28 . . .

1 applications that do not list a prospective physical address. Section 453D.210(5)(b)
2 provides:

3 5. The Department shall approve a license application if:

4 ...
5 (b) The physical address where the proposed marijuana
6 establishment will operate is owned by the applicant or the
7 applicant has the written permission of the property owner to
8 operate the proposed marijuana establishment on that property;

9 NRS 453D.210(5)(b).

10 TGIG and those aligned with it do nothing to challenge the Department of Taxation's
11 power to create conditional licensure. Because the Department of Taxation had this power,
12 it necessarily follows that the physical address language in NRS 453D.210(5)(b) was not a
13 mandatory requirement at the application stage since the location of the marijuana
14 establishment was subject to change at the conditional licensee's discretion so long as it
15 was suitable. NRS 453D.200(1)(j). It would be an absurd interpretation to elevate the
16 physical location language in section 453D.210(5)(b) into a prerequisite when another part
17 of the initiative states it is subject to change at any time by the applicant so long as other
18 suitability requirements are met.

19 Injunctive and declaratory relief are prospective in nature, *see City of Fernley v.*
20 *State*, 132 Nev. 32, 42, 366 P.3d 699, 706 (2016) (en banc), so it can only redress an injury
21 in the present or future tense, *see Mayfield v. United States*, 599 F.3d 964, 971-72 (9th Cir.
22 2010). For example, in *Mayfield* the Ninth Circuit held that the plaintiff had not
23 established the requisite "substantial likelihood" that the relief sought would redress his
24 injury. 559 F.3d at 971-72. The court of appeals explained that a declaration that the
25 government had, in the past, violated his Fourth Amendment rights would not redress his
26 injury of having been subject to an illegal search. 599 F.3d at 971-72.

27 Here, other than THC Nevada, no plaintiff has testified. No applicant has put their
28 application in evidence to show that it is superior to any other. A verdict cannot be based
on speculation, but that is what the remaining Plaintiffs are asking for by seeking
prospective relief – a guess that a future competition would create a different result and a

1 result where these remaining plaintiffs win. There is no reason to hypothesize that these
2 plaintiffs would prevail in a future competition when they fell short in 2018.

3 **C. No causal link between the Department and any tortious or**
4 **constitutional deprivation asserted by the TGIG Plaintiffs and others**

5 “Procedural due process requires adequate notice and an opportunity to be heard.”
6 *See Kirk v. I.N.S.*, 927 F.2d 1106, 1107 (9th Cir. 1991). Under substantive due process
7 analysis, the court must defer to the government’s judgment unless it could have no
8 rational basis. *Pace Resources, Inc. v. Shrewsbury Township*, 808 F.2d 1023, 1036 (3d
9 Cir.1987), *cert. denied* 482 U.S. 906, 107 S.Ct. 2482, 96 L.Ed.2d 375 (1987). Regarding the
10 equal protection challenge, the issue is whether all persons similarly situated were treated
11 alike. *City of Cleburne v. Cleburne Living Ctr., Inc.* 473 U.S. 432, 439 (1985).

12 Causation is an essential element of any claim, including a constitutional one.
13 *Johnson v. Duffy*, 588 F.2d 740, 743–44 (9th Cir.1978). That element is not met here with
14 respect to any claim. Here, the TGIG Plaintiffs have never explained how any regulation
15 was in and of itself a violation of any of these principles.

16 Their as applied challenges fair no better. The trial has shown conclusively the
17 TGIG Plaintiffs would not be eligible if their interpretations of the regulations were applied
18 to them.

19 **IV. Conclusion**

20 For these reasons, a directed verdict is warranted.

21 Respectfully submitted August 11, 2020.

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/s/ Traci Plotnick
Traci Plotnick, an employee of the
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