

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DOT 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,

vs.

THE STATE OF NEVADA
DEPARTMENT OF TAXATION,

Respondent.

Case No. 82014

Electronically Filed
Jul 20 2022 01:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**THE ESSENCE ENTITIES'
SUPPLEMENTAL BRIEF IN
RESPONSE TO JUNE 8, 2022
ORDER**

On June 8, 2022, this Court entered an Order staying merits briefing and requesting supplemental briefing on three issues raised by the Essence Entities’¹ Motion to Dismiss or Stay Appeal Pending Cure of Jurisdictional Defect. The Court’s Order concluded, “[i]ncluded with the supplemental briefing, the parties shall bring to this Court’s attention any stipulation or certification that has

¹ Integral Associates, LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, and Essence Henderson, LLC.

subsequently been filed in the district court that may resolve any potential jurisdictional issues.” (Order, June 8, 2022 at 4.)

After the Court’s Order, the Essence Entities filed a “Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) and Request for an Order Shortening Time.” The District Court signed the Order Shortening Time on July 18, 2022 and set a hearing on the motion for July 20, 2022. (Ex. 1.) Certain Appellants filed (or joined) a “Response and Limited Opposition to Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b).” (Ex. 2.)

In their response, Appellants agreed “good cause exists for the District Court to certify the Findings of Fact and Conclusions of Law from Phase 1 and Phase 2 as final pursuant to NRCP 54(b).” (*Id.* at 4.) They also acknowledged that “such certification will moot the pending Motion to Dismiss or Stay Appeal Pending Cure of Jurisdictional Defect and allow the appeals to move forward without the necessity for further intervention by the Supreme Court.” (*Id.*)

The District Court held the hearing on July 20, 2022 (the deadline for this Response) and orally granted the Essence Entities’ request to certify the Phase 1 and Phase 2 Findings of Fact and Conclusions of Law as final under NRCP 54(b). Therefore, the jurisdictional defect in the Appellant’s appeal has been cured and the three supplemental briefing questions have been rendered academic. The

Essence Entities will promptly supply this Court with a copy of the written certification order when it is entered.

Once this Court lifts the merits briefing stay, the Essence Entities will file an answering brief within 21 days of the date of the Court's Order or such other time as directed by this Court.

DATED this 20th day of July, 2022.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith
Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for the Essence Entities

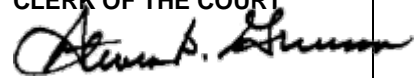
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to NRAP 25(b) and NEFR 9(d), that on this 20th day of July, 2022, I electronically filed the foregoing **THE ESSENCE ENTITIES' SUPPLEMENTAL BRIEF IN RESPONSE TO JUNE 8, 2022 ORDER** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex), Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC

EXHIBIT 1

The Essence Entities'
Supplemental Brief in Response to
June 8, 2022 Order



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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.: A-19-787004 B

Dept. No.: XXXI

CONSOLIDATED WITH:

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that an "Order Shortening Time" was entered in the above-
2 captioned matter on July 18, 2022, a true and correct copy of which is attached hereto.

3 DATED this 18th day of July, 2022.

4 PISANELLI BICE PLLC

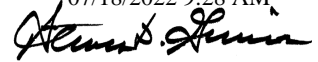
5
6 By: /s/ Jordan T. Smith
7 James J. Pisanelli, Esq., Bar No. 4027
8 Todd L. Bice, Esq., Bar No. 4534
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12 *Attorneys for Defendants in Intervention,*
13 *Integral Associates LLC d/b/a Essence Cannabis*
14 *Dispensaries, Essence Tropicana, LLC, Essence*
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 18th day of July, 2022, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **NOTICE OF ENTRY OF ORDER** to all parties listed on the Court's Master Service List.

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC


CLERK OF THE COURT

James J. Pisanelli, Esq., Bar No. 4027

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d/b/a Essence Cannabis Dispensaries,

Essence Tropicana, LLC, Essence Henderson, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Case No.: A-19-787004-B

Dept. No.: XXXI

CONSOLIDATED WITH:

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

In Re: DOT Litigation

**MOTION TO CERTIFY TRIAL PHASES 1
AND 2 AS FINAL UNDER NRCP 54(b)**

**AND REQUEST FOR AN ORDER
SHORTENING TIME**

HEARING DATE: JULY 20, 2022

HEARING TIME: 10:00 A.M.

I. INTRODUCTION

The Plaintiffs are unsuccessful applicants from the State's 2018 recreational marijuana licensing process. After being denied licenses, Plaintiffs alleged various illegalities in the application process and sued. Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC (together “the Essence Entities”) are among the group of successful applicants that intervened in the litigation to protect their licenses and to defend against Plaintiffs' spurious accusations.

1 Trial eventually began in July 2020. Through a trial protocol order, then-Judge Gonzalez
2 divided trial into three phases. The parties have completed the first two trial phases but – two years
3 later – the last phase has not even started. Judge Gonzalez entered interim Findings of Fact and
4 Conclusions of Law after Phases 1 and 2. Those orders denied the vast majority of Plaintiffs’ claims
5 but entered an injunction against a regulation that conflicted with one of the governing statutes.
6 Judge Gonzalez expressly found that there were no constitutional violations unrelated to the
7 unlawful regulation.

8 When certain Defendants whose licenses were unaffected by the partial grant of injunctive
9 relief sought their costs as prevailing parties, Judge Gonzalez denied the cost applications as
10 premature. Judge Gonzalez stated that she intended to enter one final judgment after all trial phases
11 were complete. But despite the lack of a final appealable order, a group of Plaintiffs appealed the
12 interim trial orders to the Nevada Supreme Court. The Essence Entities flagged the jurisdictional
13 defect for the Plaintiffs and tried to work with them for many months on ways to cure the problem.
14 However, Plaintiffs refused because they want to appeal the underlying orders as purportedly
15 aggrieved parties while simultaneously avoiding the payment of costs to the Essence Entities and
16 other Defendants as prevailing parties.

17 To remedy this inequity, the Essence Entities moved in the Nevada Supreme Court to
18 dismiss the appeal for lack of jurisdiction or, alternatively, to stay proceedings pending cure of the
19 jurisdictional defect through NRCP 54(b) certification or otherwise. On June 8, 2022, the Nevada
20 Supreme Court entered an order requesting supplemental briefing on the Essence Entities’
21 jurisdictional question and related issues. The Supreme Court’s Order concluded that “[i]ncluded
22 with the supplemental briefing, the parties shall bring to this Court’s attention any stipulation *or*
23 *certification that has subsequently been filed in the district court that may resolve any potential*
24 *jurisdictional issues.*” (emphasis added).

25 Therefore, the Essence Entities respectfully move this Court for NRCP 54(b) certification
26 of Judge Gonzalez’s Phase 1 and Phase 2 rulings to fix Plaintiffs’ appellate jurisdictional defect and
27 to allow the prevailing Defendants – like the Essence Entities – to finally seek recovery of their
28 costs. The Essence Entities’ supplemental brief is due in the Nevada Supreme Court on or before

1 July 20, 2022. Thus, the Essence Entities also seek an order shortening time so that this Motion can
2 be heard before that deadline and so the Nevada Supreme Court can be informed of any
3 “certification that has subsequently been filed in the district court that may resolve any potential
4 jurisdictional issues.”

5
6 PISANELLI BICE PLLC

7 By: /s/ Todd L. Bice
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13 *Attorneys for Defendants in Intervention,*
14 *Integral Associates LLC d/b/a Essence*
15 *Cannabis Dispensaries, Essence Tropicana,*
16 *LLC, Essence Henderson, LLC*
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DECLARATION OF TODD L. BICE IN SUPPORT OF REQUEST FOR ORDER

SHORTENING TIME

1. I am counsel for the Essence Entities in the above-captioned action and a partner at the law firm of Pisanelli Bice PLLC. I have personal knowledge of the facts stated herein, except those stated upon information and belief, which facts I believe to be true. I am competent to testify to the matters herein.

2. I make this declaration in support of the Essence Entities' Motion to Certify Trial Phases 1 and 2 as Final under NRCP 54(b) and Request for an Order Shortening Time under EDCR 2.26.

3. The facts showing the basis for the motion are set forth herein. In short, Plaintiffs have claimed the ability to appeal Judge Gonzalez's Phase 1 and Phase 2 orders while depriving the prevailing Defendants of the ability to seek their costs as prevailing parties. The Essence Entities moved the Nevada Supreme Court to dismiss the Plaintiffs' appeal for lack of jurisdiction or to stay pending cure of the jurisdictional problem.

4. On June 8, 2022, the Nevada Supreme Court ordered additional briefing on the Essence Entities' motion to dismiss or stay and ordered that the supplemental briefing should "bring to this Court's attention any stipulation *or certification that has subsequently been filed in the district court that may resolve any potential jurisdictional issues.*" (emphasis added).

5. Accordingly, the Essence Entities now seek NRCP 54(b) certification to cure Plaintiffs' own jurisdictional defects and allow the Essence Entities to finally seek their costs as prevailing parties.

6. The Essence Entities' current deadline to respond to the Nevada Supreme Court is July 20, 2022.

7. If this Motion is heard in the ordinary course, this Court will not have an opportunity to rule before the Essence Entities must respond and inform the Nevada Supreme Court about whether any certification has been subsequently filed that may resolve any potential jurisdictional issues.

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8. Therefore, I respectfully request that the Court hear this Motion on or before July 20, 2022.

9. I certify that this request is not made for any improper purpose.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 15th day of July, 2022.

/s/ Todd L. Bice
TODD L. BICE, ESQ.

ORDER SHORTENING TIME

Good cause appearing, it is hereby ordered that the foregoing **MOTION TO CERTIFY TRIAL PHASES 1 AND 2 AS FINAL UNDER NRCP 54(B) AND REQUEST FOR AN ORDER SHORTENING TIME**

shall be heard on shortened time on the 20th day of July, 2022, at the hour of 10:00 o'clock a.m., before the Department XXXI of the Eighth Judicial District Court.

DATED this ___ day of _____ 2022.

Motion must be served by 2:00 p.m. on July 18, 2022; Opposition must be filed and served by 4:00 p.m. on July 19, 2022.

Dated this 18th day of July, 2022



DISTRICT COURT JUDGE

Respectfully submitted:

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
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*Attorneys for Defendants in Intervention,
Integral Associates LLC d/b/a Essence Cannabis
Dispensaries, Essence Tropicana, LLC,
Essence Henderson, LLC*

**66A 5FE 70C0 3E0B
Joanna S. Kushner
District Court Judge**

II. STATEMENT OF FACTS

A. The Trial is Divided into Three Phases But Only the First Two are Complete.

At least eight separate cases were filed arising out of the State's recreational marijuana licensing process. On December 6, 2019, Chief Judge Bell entered an order consolidating all cases in Department 11, the Honorable Judge Gonzalez presiding. (Ex. 1, Or. Granting Joint Mot. to Consolidate, Dec. 6, 2019, on file.) Eventually, in July 2020, Judge Gonzalez entered Amended Trial Protocol No. 2 and bifurcated trial into three separate phases. (Ex. 2, at § VIII.) The first phase was to address claims based on petitions for judicial review. (*Id.* § VIII(A).) The second phase was to assess the "[i]legality of the 2018 recreational marijuana application process (claims for Equal Protection, Due Process, Declaratory Relief, Intentional Interference with Prospective Economic Advance, Intentional Interference with Contractual Relations, and Permanent Injunction)." (*Id.* § VIII(B).) And, the third phase was to resolve certain parties' requests for writs of mandamus based on purported "[i]mproper scoring of applications related to calculation errors on the 2018 recreational marijuana application." (*Id.* § VIII(C).) Other disappointed applicants also asserted claims under Section 1983 which – unlike the other phases – are going to be resolved in a later jury trial for damages. (*See* Ex. 3 (Business Court Order Scheduling a Supplemental Rule 16 Conference for Phase III, Sept. 21, 2020); Ex. 4 (Business Court Scheduling Order and Order Setting Civil Jury Trial, Calendar Call and Pre-Trial Conference for Phase III, Oct. 27, 2020).)

The second phase was conducted first – before Phase 1 for judicial review claims. The "second phase" started on July 17, 2020, and ended August 18, 2020. (Ex. 5.) Ultimately, Judge Gonzalez denied all relief with one exception: the State acted beyond its authority when it adopted a regulatory standard requiring background checks only for prospective owners, officers, and board members with a 5% or greater ownership stake instead of requiring background checks for all owners, officers, and board members regardless of ownership interest. (*Id.* at 29.) Judge Gonzalez granted Plaintiffs' equal protection claim in part based on "the decision by the [the State] to arbitrarily and capriciously replace ... the background check of each owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1), [the State] created an unfair process." (*Id.*) The district court narrowly enjoined this regulatory requirement. (*Id.*) Importantly,

Judge Gonzalez found that “[n]o monetary damages are awarded given the speculative nature of the potential loss of market share.” (*Id.*) The Findings of Fact, Conclusions of Law, and Permanent Injunction was entered September 3, 2020. (*Id.*)¹

The industry intervenors without any owners, officers, or board members with less than a 5% stake – like the Essence Entities – were unaffected by Judge Gonzalez’s ruling. All of the Essence Entities’ prospective owners, officers, and board members were subject to the State’s background check because they had no one with less than a 5% interest. Accordingly, the Essence Entities were not impacted by the injunction and have been operating their locations since the district court’s ruling.

On September 8, 2020, the district court conducted the petition for judicial review phase (“Phase 1”). (Ex. 6.) The district court denied the petitions for judicial review under NRS 233B.130 in their entirety. (*Id.* at 12.) The Findings of Fact and Conclusions of Law was entered September 16, 2020. (*Id.*)²

The Plaintiffs’ mandamus claims originally contemplated for the third phase were partially resolved by pretrial motion practice and some of the affected parties settled with the State during Phase 2 (but conducted first). (*See* Ex. 7, §VIII(C) n.5.) However, some of the Plaintiffs’ mandamus claims have never been formally dismissed.

Even so, the last, third phase will only involve the remaining jury trial for Section 1983 claims between Jorge Pupo and Nevada Wellness Center, LLC. (*See* Ex. 3 & 4.) The third phase has not started and there has been no final judgment concluding all three phases of the trial.

B. Judge Gonzalez Denies Costs As Premature but Plaintiffs Appeal Anyway.

After the first two phase of trial finished, certain prevailing Defendants filed memoranda of costs. But Judge Gonzalez granted motions to retax because “[t]he award of costs is premature under NRS 18.110 as there is not a final judgment in this matter.” (Ex. 8.) Judge Gonzalez explained that a “[f]inal judgment will be issued following completion of Phase 3 [then] scheduled for a jury trial on June 28, 2021.” (*Id.*) Thus, the Court and the parties have always contemplated that a single

¹ The Findings of Fact and Conclusions of Law is not a form of “judgment” because it “include[s] recitals of pleasing [and] a record of prior proceedings.”

² *See supra* Footnote 1.

1 final judgment will be entered after Phase 3 which will merge the district court's rulings from all
2 prior phases.

3 **C. Certain Plaintiffs Appeal Even Though There is No Final Judgment.**

4 Even though Judge Gonzalez clearly explained that one final judgment would be entered
5 following all three phases, certain Plaintiffs appealed the Phase 1 and Phase 2 rulings to the Nevada
6 Supreme Court. Yet without a final judgment, or NRCP 54(b) certification, the Supreme Court
7 lacks jurisdiction over the appeal. The Essence Entities tried to cooperate with the Plaintiffs about
8 the jurisdictional defect and ways to fix it but, despite initially indicating that they would seek
9 certification, the Plaintiffs did nothing. (Ex.'s 9, 10 & 11.) So, the Essence Entities moved to
10 dismiss for lack of appellate jurisdiction or, alternatively, to stay the appeal to allow Plaintiffs the
11 chance to seek NRCP 54(b) certification.

12 On June 8, 2022, the Nevada Supreme Court issued an Order on the Essence Entities'
13 motion. (Ex. 12). The Court requested additional briefing on issues raised by the motion and also
14 stated "*the parties shall bring to this Court's attention any stipulation or certification that has*
15 *subsequently been filed in the district court that may resolve any potential jurisdictional issues.*"
16 (*Id.*) (emphasis added). The Essence Entities and the State sought extensions of time to file their
17 supplemental briefs and the new deadline to do so is July 20, 2022.

18 As a result, to cure Plaintiffs' jurisdictional defect and to obtain judgments that would allow
19 the Essence Entities to seek their costs as prevailing parties, the Essence Entities seek NRCP 54(b)
20 certification of Judge Gonzalez's Phase 1 and Phase 2 rulings. NRCP 54(b) certification would also
21 comply with the Supreme Court's directives.

22 **III. ARGUMENT**

23 NRCP 54(b) allows the Court to certify as final an interlocutory order that eliminates fewer
24 than all claims or fewer than all parties. It states, "[w]hen an action presents more than one claim
25 for relief...or when multiple parties are involved, the court may direct entry of a final judgment as
26 to one or more, but fewer than all, claims or parties only if the court expressly determines that there
27 is no just reason for delay." NRCP 54(b). Without certification, any order that resolves less than all
28 claims or all rights of the parties does not terminate the action and may be revised at any time. *Id.*

When determining whether there is “no just reason for delay,” the Court weighs the prejudice to the various parties and considers the effect on the remaining claims. *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 610–11, 797 P.2d 978, 981 (1990), overruled on other grounds by *Matter of Est. of Sarge*, 134 Nev. 866, 432 P.3d 718 (2018); *see also Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 443 (1986).

Here, there has been no final judgment entered resolving all claims or the liabilities of all parties. When resolving the motions to retax, Judge Gonzalez expressly stated the intention to enter a final judgment after the third phase. (Ex. 8.) The third phase is not complete. And even though many cases have been consolidated, only the first two phases of a singular trial have been completed. Consequently, the Phase 1 and Phase 2 rulings are not separately appealable. Nonetheless, the Nevada Supreme Court’s June 8, 2022 Order indicated that NRCP 54(b) certification would likely cure any jurisdictional defect in Plaintiffs’ appeal while simultaneously allow the prevailing Defendants to seek their costs. Certification would not adversely affect any claims pending in Phase 3 and there is no prejudice to any party. Therefore, there is no just reason to delay NRCP 54(b) certification of Judge Gonzalez’s Phase 1 and Phase 2 rulings from September 3, 2020 and September 16, 2020.

IV. CONCLUSION

For these reasons, the Essence Entities respectfully request that the Court certify the Findings of Fact and Conclusions of Law entered on September 3, 2020 and September 16, 2020, respectively, as final pursuant to NRCP 54(b).

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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Las Vegas, Nevada 89101

*Attorneys for Defendants in Intervention,
Integral Associates LLC d/b/a Essence
Cannabis Dispensaries, Essence Tropicana,
LLC, Essence Henderson, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 15th day of July, 2022, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **MOTION TO CERTIFY TRIAL PHASES 1 AND 2 AS FINAL UNDER NRCP 54(b) AND REQUEST FOR AN ORDER SHORTENING TIME** to the following:

/s/ Shannon Dinkel
An employee of PISANELLI BICE PLLC

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*Attorneys for Integral Associates LLC
d/b/a Essence Cannabis Dispensaries,
Essence Tropicana, LLC, Essence Henderson, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: DOT Litigation

Case No.: A-19-787004-B
Dept. No.: XXXI

CONSOLIDATED WITH:

A-785818
A-786357
A-786962
A-787035
A-787540
A-787726
A-801416

**APPENDIX TO MOTION TO CERTIFY
TRIAL PHASES 1 AND 2 AS FINAL
UNDER NRCP 54(b)**

**AND REQUEST FOR AN ORDER
SHORTENING TIME**

1.	Order Granting Joint Motion to Consolidate, dated December 16, 2019	0001 - 0010
2.	Amended Trial Protocol No. 2, dated July 2, 2020	0011 - 0032
3.	Business Court Order Scheduling A Supplemental Rule 16 Conference for Phase III, dated September 21, 2020	0033 - 0038
4.	Business Court Scheduling Order and Order Setting Civil Jury Trial Calendar Call, and Pre-Trial Conference, dated October 27, 2020	0039 - 0044

5.	Findings of Fact and Conclusions of Law, dated September 3, 2020	0045 - 0075
6.	Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 16, 2020	0076 - 0088
7.	Amended Trial Protocol No. 2, dated July 2, 2020	0089 - 0110
8.	Notice of Entry of Order Granting Motions to Retax, dated August 30, 2021	0111 - 0126
9.	Email from Amy Sugden, Esq., to Jordan Smith, Esq., regarding In re DOT Appeal, dated December 17, 2021	0127 - 0129
10.	Email from Mark Dzarnoski, Esq., to Jordan Smith, Esq., and Todd Bice, Esq., regarding DOT Appeal: Jurisdictional Issue, dated February 22, 2022	0130 - 0134
11.	Email from Mark Dzarnoski, Esq., to Jordan Smith, Esq., regarding DOT Appeal: Jurisdictional Issue, dated February 25, 2022	0135 - 0136
12.	Supreme Court Order regarding Pisanelli Bice Appearance and Motion to Dismiss or Stay, dated June 8, 2022	0137 - 0141

DATED this 15th day of July, 2022.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
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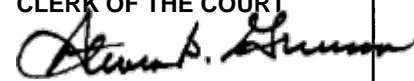
*Attorneys for Defendants in Intervention,
Integral Associates LLC d/b/a Essence
Cannabis Dispensaries, Essence Tropicana,
LLC, Essence Henderson, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 15th day of July, 2022, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **APPENDIX TO MOTION TO CERTIFY TRIAL PHASES 1 AND 2 AS FINAL UNDER NRCP 54(b) AND REQUEST FOR AN ORDER SHORTENING TIME** to the following:

/s/ Shannon Dinkel
An employee of PISANELLI BICE PLLC

EXHIBIT 1



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

Dept No.: XI

**ORDER GRANTING JOINT MOTION
TO CONSOLIDATE**

Date of Hearing: October 29, 2019

Time of Hearing: 9:00 a.m.

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

1 appearing on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green
2 Leaf Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice Inc., Just Quality, LLC,
3 Libra Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red
4 Earth LLC, THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc.'s (collectively,
5 "ETW Plaintiffs"); Dominic P. Gentile, Esq. and Ross J. Miller, Esq., of the law firm Clark Hill
6 PLC, appearing on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline
7 Dispensary, LLC, Nevada Holistic Medicine, LLC, TRYKE Companies SO NV, LLC, TRYKE
8 Companies Reno, LLC, Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis
9 Holdings, LLC, Gravitas Nevada, LLC, Nevada Pure, LLC, Medifarm, LLC (collectively,
10 "Serenity Plaintiffs"); William S. Kemp, Esq. of the law firm Kemp, Jones & Coulthard LLP,
11 appearing on behalf of MM Development Company, Inc. and LivFree Wellness LLC; Steven G.
12 Shevorski, Esq., of the Office of the Nevada Attorney General, appearing on behalf of the State of
13 Nevada, Department of Taxation; Todd L. Bice, Esq., of the law firm Pisanelli Bice, appearing on
14 behalf of Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana,
15 LLC, Essence Henderson, LLC; Jared Kahn, Esq., of the law firm JK Legal & Consulting, LLC,
16 appearing on behalf of Helping Hands Wellness Center, Inc.; Alina M. Shell, Esq., of the law
17 firm McLetchie Law, appearing on behalf of GreenMart of Nevada NLV LLC; Dennis Prince,
18 Esq., of the law firm Prince Law Group, appearing on behalf of CPCM Holdings, LLC d/b/a
19 Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC;
20 Rusty Graf, Esq. and Brigid Higgins, Esq., of the law firm Black & Lobello, appearing on behalf
21 of Clear River, LLC; Theodore Parker, III, Esq. and Mahogany Turfley, Esq. of the law firm
22 Parker Nelson & Associates, appearing on behalf of Nevada Wellness Center, LLC; Peter
23 Christiansen, Esq. and Whitney Barrett, Esq., of the law firm Christiansen Law Offices, appearing
24 on behalf of Qualcan LLC; Dennis L. Kennedy, Esq. and Stephanie J. Glantz, Esq., of the law
25 firm Bailey Kennedy, appearing on behalf of D.H. Flamingo, Inc.; and all other appearances
26 noted in the record, and upon the Court's consideration of the pleadings and papers on file herein,
27 including any joinders and oppositions, the arguments of counsel, and good cause appearing,
28 makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

DATED this 5th day of December, 2019.



LINDA MARIE BELL, CHIEF JUDGE, EIGHTH JUDICIAL DISTRICT COURT

WS

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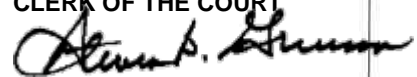
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EXHIBIT 2



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.

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8 
9
10 Elizabeth Gonzalez, District Court Judge
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12
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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
17 Program.

18 
19 Jill Hawkins
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DEPT NO:

TRIAL DATE:

JUDGE:

CLERK:

REPORTER:

JURY FEES:

COUNSEL FOR PLAINTIFF:

COUNSEL FOR DEFENDANT:

DEFENDANT

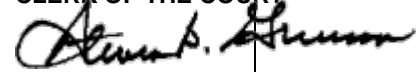
[illegible]

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.

EXHIBIT 3



OSH

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In Re: D.O.T. Litigation,

Case No. A-19-787004-B

Consolidated with:

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787035-C

A-19-787540-W

A-19-787726-C

A-19-801416-B

Dept. No. XI

Date of Hearing: 10/26/20

Time of Hearing: 9:00a.m.

BUSINESS COURT ORDER SCHEDULING

A SUPPLEMENTAL RULE 16 CONFERENCE FOR PHASE III

This BUSINESS COURT ORDER (“Order”) is entered to reduce the costs of litigation, to assist the parties in resolving their disputes if possible and, if not, to reduce the costs and difficulties of discovery and trial. This Order may be amended or modified by the Court upon good cause shown, and is made subject to any Orders that have heretofore been entered herein. This case is deemed “complex” and is automatically exempt from Arbitration.

IT IS HEREBY ORDERED:

I. MANDATORY RULE 16 CONFERENCE

A. A mandatory Rule 16 conference with the Court and counsel/parties in proper person will be held on **October 26, 2020, at 9:00 a.m.**

B. The following persons are required to attend the conference:

(1) trial or lead counsel for all parties; and

(2) parties may attend. If counsel feels that the requirement of attendance of the parties is beneficial, please contact the department to schedule a conference call with the Judge for a determination. The conference call must be scheduled at least two weeks prior to the conference.

0034

1 C. The purpose of this conference is to streamline discovery, expedite settlement or
2 other appropriate disposition of the case. Counsel/parties in proper person must be prepared to
3 discuss the following:

4 (1) status of 16.1 settlement discussions and a review of possible court
5 assistance;

6 (2) alternative dispute resolution appropriate to this case;

7 (3) simplification of issues;

8 (4) the nature and timing of all discovery;

9 (5) an estimate of the volume of documents and/or electronic information
10 likely to be the subject of discovery in the case from parties and nonparties and whether there
11 are technological means, including but not limited to production of electronic images rather than
12 paper documents and any associated protocol, that may render document discovery more
13 manageable at an acceptable cost;

14 (6) identify any and all document retention/destruction policies including
15 electronic data;

16 (7) whether the appointment of a special master or receiver is necessary
17 and/or may aid in the prompt disposition of this action;

18 (8) any special case management procedures appropriate to this case;

19 (9) trial setting;

20 (10) other matters that may aid in the prompt disposition of this action; and

21 (11) identify any unusual issues that may impact discovery.

22 D. Parties desiring a settlement conference before another judge shall so notify the
23 court at the setting.

24 E. The Plaintiff is responsible for serving a copy of this Order upon counsel for all
25 parties who have not formally appeared in this case as of the date of the filing of this order.
26
27
28

II. PRETRIAL MOTIONS

A. No documents may be submitted to the Court under seal based solely upon the existence of a protective order.

Any sealing or redaction of information must be done by motion.

All motions to seal and/or redact and the potentially protected information must be filed at the clerk's office front counter during regular business hours 9 am to 4 pm.

In accordance with, Administrative Order 19-03, the motion to seal must contain the language "Hearing Requested" on the front page of the motion under the Department number.

Pursuant to SRCR Rule 3(5)(b), redaction is preferred and sealing will be permitted only under the most unusual of circumstances.

If a motion to seal and/or redact is filed with the potentially protected information, the proposed redacted version of the document with a slip-sheet for any exhibit entitled "Exhibit ** Confidential Filed Under Seal" must be attached as an Exhibit.

The potentially protected information in unredacted and unsealed form must be filed at the same time and a hearing on the motion to seal set. While the motion to seal is pending, the potentially protected information will not be accessible to the public.

If the motion to seal is noncompliant, the motion to seal may be stricken and the potentially protected information unsealed.

B. Any requests for injunctive relief must be made with notice to the opposing party unless extraordinary circumstances exist. All parties shall advise the Court in writing if there is an agreement to consolidate the trial on the merits with the preliminary injunction hearing pursuant to NRCPP 65(a)(2).

C. Any motions which should be addressed prior to trial – including motions for summary judgment – shall be served, filed and scheduled for hearing no later than 45 days before trial.

D. Motions in limine shall be served, filed and scheduled for hearing no later than 45 days before trial. Omnibus motions in limine will not be accepted. Except upon a showing of unforeseen extraordinary circumstances, the Court will not shorten time for the briefing of any pretrial motions or orally presented after these deadlines.

1 **III. DISCOVERY**

2 A. All discovery disputes in this matter will be handled by the District Court Judge
3 rather than the Discovery Commissioner.

4 B. A continuance of trial does not extend the deadline for completing discovery. A
5 request for an extension of the discovery deadline, if needed, must be presented in compliance
6 with EDCR 2.35.

7 C. A party objecting to a written discovery request must, in the original objection,
8 specifically detail the reasons that support the objection, and include affidavits or other evidence
9 for any factual assertions upon which an objection is based.
10

11 D. Documents produced in compliance with NRCP 16.1 or in response to a written
12 discovery request, must be consecutively Bates stamped or numbered and accompanied by an
13 index with a reasonably specific description of the documents.

14 E. Any party whether in compliance with NRCP 16.1 or in a response to a written
15 discovery request not producing all documents in its possession, custody or control, shall:

16 (1) identify any documents withheld with sufficient particularity to support a
17 Motion to Compel; and
18

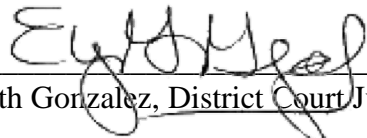
19 (2) state the basis for refusing to produce the documents(s).
20

21 F. If photographs are produced in compliance with NRCP 16.1 or in a response to a
22 written discovery request, the parties are instructed to include one (1) set of color prints (Color
23 laser copies of sufficient clarity are acceptable), accompanied by a front page index, location
24 depicted in the photograph (with reasonable specificity) and the date the photograph was taken.
25 If color laser copies are deposited, any party wishing to view the original photographs shall
26 make a request to do so with the other party.

27 When a case is settled, counsel for the plaintiff and each unrepresented plaintiff of
28 record shall notify the District Court Judge within twenty-four (24) hours of the settlement and
shall advise the Court of the identity of the party or parties who will prepare and present the

1 judgment, dismissal, or stipulation of dismissal, which shall be presented within twenty (20)
2 days of the notification of settlement.

3 Failure to comply with any provision of this Pretrial Order may result in the imposition
4 of sanctions. DATED this 21st day of September, 2020.

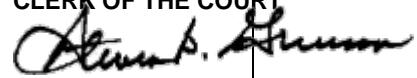
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9 Elizabeth Gonzalez, District Court Judge

10 **Certificate of Service**

11 I hereby certify that on the date filed, this Business Court Order Scheduling a Rule 16
12 Conference was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in
13 the Eighth Judicial District Court Electronic Filing Program and/or e-mailed or mailed by US
14 1st Class Mail to the following parties;

15
16 /s/ *Dan Kutinac*
17 Dan Kutinac, JEA
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EXHIBIT 4



1 **SCHTO**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 In Re: D.O.T. Litigation,
5 (Phase III)

) **Case No.** A-19-787004-B

) **Consolidated with:**

) A-18-785818-W

) A-18-786357-W

) A-19-786962-B

) A-19-787035-C

) A-19-787540-W

) A-19-787726-C

) A-19-801416-B

) **Dept. No.** XI

) **Date of Hearing:** 10/26/20

) **Time of Hearing:** 9:00a.m.

13
14 **BUSINESS COURT SCHEDULING ORDER and ORDER SETTING CIVIL**
15 **JURY TRIAL, CALENDAR CALL and PRE-TRIAL CONFERENCE**

16 This **BUSINESS COURT SCHEDULING ORDER AND TRIAL SETTING ORDER** is
17 entered following the Mandatory Rule 16 Conference conducted on 10/26/20. Pursuant to NRC
18 16.1(f) this case has been deemed complex and all discovery disputes will be resolved by this Court.
19 The filing of the JCCR has been waived. This Order may be amended or modified by the Court upon
20 good cause shown.

21 **IT IS HEREBY ORDERED** that the parties will comply with the following deadlines:

22 Supplemental Initial Experts Disclosures **01/22/21**

23 Rebuttal Experts Disclosures **02/26/21**

24 Discovery Cut Off **04/09/21**

25 Dispositive Motions and Motions in Limine are to be filed by **05/07/21**
26 ***Omnibus Motions in Limine are not allowed***

27
28 **ORDER SETTING CIVIL JURY TRIAL, CALENDAR CALL and PRE-TRIAL**

IT IS HEREBY FURTHER ORDERED THAT:

0040

1 A. The above entitled case is set to be tried to a jury on a **Five week stack** to begin, **June**
2 **28, 2021 at 1:30p.m.**

3 B. A calendar call will be held on **June 22, 2021 at 9:30a.m.** Parties must bring to
4 Calendar Call the following:

- 5 (1) Typed exhibit lists;
- 6 (2) List of depositions;
- 7 (3) List of equipment needed for trial, including audiovisual equipment;¹ and
- 8 (4) Courtesy copies of any legal briefs on trial issues.

9 The Final Pretrial Conference will be set at the time of the Calendar Call.

10 C. A Pre-Trial Conference with the designated attorney and/or parties in proper person
11 will be held on **June 3, 2021 at 9:15a.m.**

12 D. Parties are to appear on **April 12, 2021 at 9:00a.m.**, for a Status Check on the
13 matter.

14 E. The Pre-Trial Memorandum must be filed no later than **May 28, 2021**, with a courtesy
15 copy delivered to Department XI. All parties, (Attorneys and parties in proper person) **MUST** comply
16 with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the
17 Memorandum an identification of orders on all motions in limine or motions for partial summary
18 judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of
19 the opinions to be offered by any witness to be called to offer opinion testimony as well as any
20 objections to the opinion testimony.

21 F. All motions in limine, **Omnibus Motions in Limine are not allowed**, must be in
22 writing and filed no later than **May 7, 2021. Orders shortening time will not be signed except in**
23 **extreme emergencies.**

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¹ If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3300 or via E-Mail at CourtHelpDesk@clarkcountycourts.us

1 G. No documents may be submitted to the Court under seal based solely upon the
2 existence of a protective order.

3 Any sealing or redaction of information must be done by motion.

4 All motions to seal and/or redact and the potentially protected information must be filed at the
5 clerk's office front counter during regular business hours 9 am to 4 pm.

6 In accordance with, Administrative Order 19-03, the motion to seal must contain the language
7 "Hearing Requested" on the front page of the motion under the Department number.

8 Pursuant to SRCR Rule 3(5)(b), redaction is preferred and sealing will be permitted only under
9 the most unusual of circumstances.

10 If a motion to seal and/or redact is filed with the potentially protected information, the proposed
11 redacted version of the document with a slip-sheet for any exhibit entitled "Exhibit ** Confidential
12 Filed Under Seal" must be attached as an Exhibit.

13 The potentially protected information in unredacted and unsealed form must be filed at the
14 same time and a hearing on the motion to seal set. While the motion to seal is pending, the potentially
15 protected information will not be accessible to the public.

16 If the motion to seal is noncompliant, the motion to seal may be stricken and the potentially
17 protected information unsealed.

18 H. All original depositions anticipated to be used in any manner during the trial must be
19 delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to
20 be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to
21 be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-
22 Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be
23 filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference
24 commencement. Counsel shall advise the clerk prior to publication.

26 I. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All
27 exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring
28 binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial
Conference. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed
prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be

1 prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise
2 agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into
3 evidence.

4 J. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be
5 included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall
6 be prepared to stipulate or make specific objections to items to be included in the Jury Notebook.

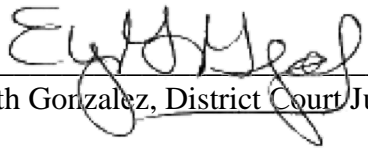
7 K. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to the
8 jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall provide
9 the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and proposed form of
10 verdict along with any additional proposed jury instructions with an electronic copy in Word format.

11 L. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand, two
12 (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted pursuant to
13 conducted pursuant to EDCR 2.68.

14
15 **Failure of the designated trial attorney or any party appearing in proper person to appear**
16 **for any court appearances or to comply with this Order shall result in any of the following: (1)**
17 **dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date;**
18 **and/or any other appropriate remedy or sanction.**

19
20 Counsel is required to advise the Court immediately when the case settles or is otherwise
21 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a
22 Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be
23 given to Chambers.

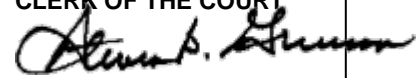
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25 DATED this 27th day of October, 2020.

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28 Elizabeth Gonzalez, District Court Judge

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/s/ *Dan Kutinac*
Dan Kutinac

EXHIBIT 5



FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation

Case No. A-19-787004-B

Consolidated with:

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787035-C

A-19-787540-W

A-19-787726-C

A-19-801416-B

Dept. No. XI

FINDINGS OF FACT, CONCLUSION OF LAW AND PERMANENT INJUNCTION

This matter having come before the Court for a non-jury trial on Phase 2 pursuant to the Trial Protocol¹ beginning on July 17, 2020², and occurring day to day thereafter until its completion on August 18, 2020. The following counsel and party representatives participated in this Phase of the Trial:³

The Plaintiffs

Dominic P. Gentile, Esq., John A. Hunt, Esq., Mark S. Dzarnoski, Esq. and Ross J. Miller, Esq., of the law firm Clark Hill, appeared on behalf of TGIG, LLC; Nevada Holistic Medicine, LLC; GBS

¹ Phase 2 as outlined in the Trial protocol includes:

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).

² Prior to the commencement of trial the Court commenced an evidentiary hearing relief to Nevada Wellness motion for case terminating sanctions filed 6/26/2020. The decision in 136 NAO 42 raised issues which caused the Court to suspend that hearing and consolidate it with the merits of the trial. As a result of the evidence presented during trial the motion is granted in part.

³ Given the social distancing requirements many representatives attended telephonically for at least a portion of the proceedings.

1 Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm,
2 LLC; and Medifarm IV, LLC; (Case No. A786962-B) (the “TGIG Plaintiffs”) Demetri Kouretas
3 appeared as the representative for TGIG, LLC; Scott Sibley appeared as the representative for Nevada
4 Holistic Medicine, LLC; Michael Viellion appeared as the representative for GBS Nevada Partners,
5 LLC; Michael Sullivan appeared as the representative for Gravitas Nevada, LLC; David Thomas
6 appeared as the representative for Nevada Pure, LLC; and, Mike Nahass appeared as the representative
7 for Medifarm, LLC and Medifarm IV, LLC;
8

9 Adam K. Bult, Esq., and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber
10 Schreck, LLP, appeared on behalf of ETW Management Group, LLC; Global Harmony, LLC; Just
11 Quality, LLC; Libra Wellness Center, LLC; Rombough Real Estate Inc. dba Mother Herb; and Zion
12 Gardens, LLC; (Case No. A787004-B) (the “ETW Plaintiffs”) Paul Thomas appeared as the
13 representative for ETW Management Group, LLC; John Heishman appeared as the representative for
14 Global Harmony, LLC; Ronald Memo appeared as the representative for Just Quality, LLC; Erik Nord
15 appeared as the representative for Libra Wellness Center, LLC; Craig Rombough appeared as the
16 representative for Rombough Real Estate Inc. dba Mother Herb; and, Judah Zakalik appeared as the
17 representative for Zion Gardens, LLC;
18

19 William S. Kemp, Esq., and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones & Coulthard,
20 LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness, LLC; (Case No.
21 A785818-W) (the “MM Plaintiffs”); Leighton Koehler appeared as the representative for MM
22 Development Company, Inc.; and Tim Harris appeared as the representative for LivFree Wellness,
23 LLC;
24

25 Theodore Parker III, Esq., and Mahogany A. Turfley, Esq., of the law firm Parker Nelson &
26 Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W) and Frank
27 Hawkins appeared as the representative for Nevada Wellness Center;
28

1 Peter S. Christiansen, Esq., and Whitney Barrett, Esq., of the law firm Christiansen Law
2 Offices, appeared on behalf of Qualcan LLC and Lorenzo Barracco appeared as the representative for
3 Qualcan LLC;

4 James W. Puzey, Esq., of the law firm Holley, Driggs, Walch, Fine, Puzey, Stein & Thompson,
5 appeared on behalf of High Sierra Holistics, LLC and Russ Ernst appeared as the representative for
6 High Sierra Holistics, LLC;

7 Amy L. Sugden, Esq., of Sugden Law, appeared on behalf of THC Nevada, LLC and Allen
8 Puliz appeared as the representative for THC Nevada, LLC;

9 Sigal Chattah, Esq., of the law firm Chattah Law Group, appeared on behalf of Herbal Choice,
10 Inc. and Ron Doumani appeared as the representative for Herbal Choice, Inc.;

11 Nicolas R. Donath, Esq., of the law firm N.R. Donath & Associates, PLLC, appeared on behalf
12 of Green Leaf Farms Holdings, LLC; Green Therapeutics, LLC; NevCann, LLC; and Red Earth, LLC
13 and Mark Bradley appeared as the representative for Green Leaf Farms Holdings, LLC; Green
14 Therapeutics, LLC; NevCann, LLC; and Red Earth, LLC;

15 Stephanie J. Smith, Esq., of Bendavid Law, appeared on behalf of Natural Medicine, LLC and
16 Endalkachew “Andy” Mersha appeared as the representative for Natural Medicine, LLC;

17 Craig D. Slater, Esq., of the law firm Luh & Associates, appeared on behalf of Clark Natural
18 Medicinal Solutions, LLC; NYE Natural Medicinal Solutions, LLC; Clark NMSD, LLC; and Inyo Fine
19 Cannabis Dispensary, LLC; Pejman Bady appeared as the representative for Clark Natural Medicinal
20 Solutions, LLC; NYE Natural Medicinal Solutions, LLC; and Clark NMSD, LLC; and David
21 Goldwater appeared as the representative Inyo Fine Cannabis Dispensary, LLC;⁴

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⁴ Although Rural Remedies, LLC claims were severed for this phase, Clarence E. Gamble, Esq., of the law firm Ramos Law participated on its behalf by phone.

The State

Diane L. Welch, Esq. of the law firm McDonald Carano, LLP, appeared on behalf of Jorge Pupo (“Pupo”);

Steven G. Shevorski, Esq., and Akke Levin, Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada, Department of Taxation (“DoT”) and Cannabis Compliance Board⁵ (“CCB”) (collectively “the State”) and Karalin Cronkhite appeared as the representative for the DoT and CCB;

The Industry Defendants

David R. Koch, Esq., and Brody Wight, Esq., of the law firm Koch & Scow, LLC, appeared on behalf of Nevada Organic Remedies, LLC (“NOR”) and Kent Kiffner appeared as the representative for Nevada Organic Remedies, LLC;

Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm Black & Lobello, appeared on behalf of Clear River, LLC and Tisha Black appeared as the representative for Clear River, LLC;

Eric D. Hone, Esq., and Joel Schwarz, Esq., of the law firm H1 Law Group, appeared on behalf of Lone Mountain Partners, LLC;

Alina M. Shell, Esq., Cayla Witty, Esq., and Leo Wolpert, Esq., of the law firm McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC;

Jared Kahn, Esq., of the law firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc. and Alfred Terteryan appeared as the representative for Helping Hands Wellness Center, Inc.;

Rick R. Hsu, Esq., of the law firm Maupin, Cox & LeGoy, appeared on behalf of Pure Tonic Concentrates, LLC;

⁵ The CCB was added based upon motion practice as a result of the transfer of responsibility for the Marijuana Enforcement Division effective on July 1, 2020.

1 Jennifer Braster, Esq., and Andrew J. Sharples, Esq., of the law firm Naylor & Braster,
2 appeared on behalf of Circle S Farms, LLC;

3 Christopher Rose, Esq., and Kirill Mikhaylov, Esq., of the law firm Howard and Howard,
4 appeared on behalf of Wellness Connection of Nevada, LLC and Matt McClure appeared as the
5 representative for Wellness Connection of Nevada, LLC;

6 Richard D. Williamson, Esq., and Anthony G. Arger, Esq., of the law firm Robertson, Johnson,
7 Miller & Williamson, appeared on behalf of Deep Roots Medical, LLC and Keith Capurro appeared as
8 the representative for Deep Roots Medical, LLC;

9 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Dennis Prince,
10 Esq., of the Prince Law Group, appeared on behalf of CPCM Holdings, LLC d/b/a Thrive Cannabis
11 Marketplace; Commerce Park Medical, LLC; and Cheyenne Medical, LLC (“Thrive”) and Phil
12 Peckman appeared as the representative for on behalf of CPCM Holdings, LLC d/b/a Thrive Cannabis
13 Marketplace; Commerce Park Medical, LLC; and Cheyenne Medical, LLC (“Thrive”);

14 Todd L. Bice, Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice, appeared on
15 behalf of Integral Associates, LLC d/b/a Essence Cannabis Dispensaries; Essence Tropicana, LLC;
16 Essence Henderson, LLC; (“Essence”) (collectively the “Industry Defendants”).

17 Having read and considered the pleadings filed by the parties, having reviewed the evidence
18 admitted during this phase of the trial⁶, and having heard and carefully considered the testimony of the
19 witnesses called to testify, having considered the oral and written arguments of counsel, and with the
20 intent of deciding the remaining issues⁷ related to Legality of the 2018 recreational marijuana
21 application process only⁸, the Court makes the following findings of fact and conclusions of law:
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25 ⁶ Due to the limited amount of discovery conducted prior to the Preliminary Injunction hearing and the large volume
26 of evidence admitted during that 20-day evidentiary hearing, the Court required parties to reoffer evidence previously
utilized during that hearing.

27 ⁷ The Court granted partial summary judgment on the sole issue previously enjoined. The order entered 8/17/2020
28 states:

PROCEDURAL POSTURE

Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive, licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout the state. Defendant is the DoT, which was the administrative agency responsible for issuing the licenses at the times subject to these complaints. Some successful applicants for licensure intervened as Defendants.

The Attorney General's Office was forced to deal with a significant impediment at the early stages of the litigation. This inability to disclose certain information was outside of its control because of confidentiality requirements that have now been slightly modified by SB 32. Although the parties stipulated to a protective order on May 24, 2019, many documents produced in preparation for the trial and for discovery purposes were heavily redacted or produced as attorney's eyes only because of the highly competitive nature of the industry and sensitive financial and commercial information involved. Many admitted exhibits are heavily redacted and were not provided to the Court in unredacted form.

After Judge Bailus issued the preservation order in A785818 on December 13, 2018, the Attorney General's Office sent a preservation letter to the DoT. Pupo, Deputy Director of the DoT, testified he was not told to preserve his personal cellular phone heavily utilized for work purposes. He not only deleted text messages from the phone after the date of the preservation order but also was unable to produce his phone for a forensic examination and extraction of discoverable materials. The Court finds evidence has been irretrievably lost as a result of his actions.

While case terminating sanctions and/or an irrebuttable presumption were requested, after evaluation of the Ribiero factors, given the production of certain text messages with Pupo by some

[T]he DoT acted beyond the scope of its authority by replacing the requirement for a background check of each prospective owner with the 5 percent or greater standard in NAC 453D.255(1).

The entry of these findings will convert the preliminary injunction on this issue to a permanent injunction.

⁸ While several plaintiffs have reached a resolution of their claims with the State and certain Industry Defendants, the claims of the remaining plaintiffs remain virtually the same. At the time of the issuance of this decision, the following plaintiffs have advised the Court they have reached a resolution with the State and certain Industry Defendants:

ETW Management Group, LLC; Libra Wellness Center, LLC; Rombough Real Estate, Inc. dba Mother Herb; Just Quality, LLC; Zion Gardens, LLC; Global Harmony, LLC; MM Development, LLC; LivFree Wellness, LLC; Nevada Wellness Center, LLC; Qualcan, LLC; High Sierra Holistics, LLC; Natural Medicine, LLC.

1 Industry Defendants and their attorney Amanda Connor, the impact of the loss of evidence was limited.
2 As a result, the Court imposes an evidentiary sanction in connection with the Sanctions ruling that the
3 evidence on Pupo's phone, if produced, would have been adverse to the DoT.⁹

4 PRELIMINARY STATEMENT

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

9 The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters
10 in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The
11 Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to
12 modify¹⁰), those provisions with which the DoT was granted some discretion in implementation¹¹, and

13 ⁹ Given the text messages produced by certain Industry Defendants and Amanda Connor, any presumption is
14 superfluous given the substance of the messages produced.

15 ¹⁰ Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

16 An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or
suspended by the Legislature within 3 years from the date it takes effect.

17 ¹¹ NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana
18 cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those
regulations would include:

19 . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter.
20 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:

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

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

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

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

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

26 (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;

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

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

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

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

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

FINDINGS OF FACT

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

2. In 2000, the voters amended Nevada's Constitution to allow for the possession and use of marijuana to treat various medical conditions. Nevada Constitution, Article 4, Section 38(1)(a). The initiative left it to the Legislature to create laws "[a]uthoriz[ing] appropriate methods for supply of the plant to patients authorized to use it." Nevada Constitution, Article 4, Section 38(1)(e).

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

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

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

Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the

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

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

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of [NRS 453D.300](#).

1 regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and
2 retailers; and provide for certain criminal penalties?

3 6. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.¹²

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

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

7 (a) Marijuana may only be purchased from a business that is licensed by the State of
8 Nevada;

9 (b) Business owners are subject to a review by the State of Nevada to confirm that the
10 business owners and the business location are suitable to produce or sell marijuana;

11 (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly
12 controlled through State licensing and regulation;

13 (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;

14 (e) Individuals will have to be 21 years of age or older to purchase marijuana;

15 (f) Driving under the influence of marijuana will remain illegal; and

16 (g) Marijuana sold in the State will be tested and labeled.

17 NRS 453D.020(3).

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

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

23 10. The Nevada Tax Commission adopted temporary regulations allowing the state to issue
24 recreational marijuana licenses by July 1, 2017 (the “Early Start Program”). Only medical marijuana
25 establishments that were already in operation could apply to function as recreational retailers during the
26 early start period. The establishments were required to be in good standing and were required to pay a
27 one-time, nonrefundable application fee as well as a specific licensing fee. The establishment also was
28 required to provide written confirmation of compliance with their municipality’s zoning and location
requirements.

¹² As the provisions of BQ2 and the sections of NRS 453D in effect at the time of the application process (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature during the 2017 session in NRS 453D.

1 11. The Task Force’s findings, issued on May 30, 2017, referenced the 2014 licensing
2 process for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The
3 Task Force recommended that “the qualifications for licensure of a marijuana establishment and the
4 impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical
5 marijuana program except for a change in how local jurisdictions participate in selection of locations.”

6 12. During the 2017 legislative session, Assembly Bill 422 transferred responsibility for the
7 registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of
8 Public and Behavioral Health to the DoT.¹³

9
10 13. On February 27, 2018, the DoT adopted regulations governing the issuance, suspension,
11 or revocation of retail recreational marijuana licenses in LCB File No. R092-17, which were codified in
12 NAC 453D (the “Regulations”).

13 14. The Regulations for licensing were to be “directly and demonstrably related to the
14 operation of a marijuana establishment.” NRS 453D.200(1)(b). The phrase “directly and demonstrably
15 related to the operation of a marijuana establishment” is subject to more than one interpretation.
16

17 15. Each of the Plaintiffs were issued marijuana establishment licenses involving the
18 cultivation, production and/or sale of medicinal marijuana in or about 2014.
19
20
21

22 ¹³ Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

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

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of [NRS](#)
27 [453D.300](#), a marijuana establishment may require the person to submit to the Department a complete set of
fingerprints and written permission authorizing the Department to forward the fingerprints to the Central
Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its
28 report.

1 16. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.¹⁴

4
5 ¹⁴ Relevant portions of that provision require that application be made

6 ... by submitting an application in response to a request for applications issued pursuant to [NAC 453D.260](#) which
7 must include:

8 ***

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

- 10 (a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation
11 facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail
12 marijuana store;
13 (b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment
14 registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed
15 with the Secretary of State;
16 (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability
17 company, association or cooperative, joint venture or any other business organization;
18 (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business,
19 and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;
20 (e) The physical address where the proposed marijuana establishment will be located and the physical address of
21 any co-owned or otherwise affiliated marijuana establishments;
22 (f) The mailing address of the applicant;
23 (g) The telephone number of the applicant;
24 (h) The electronic mail address of the applicant;
25 (i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License
26 prescribed by the Department;
27 (j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during
28 which the retail marijuana store plans to be available to sell marijuana to consumers;
29 (k) An attestation that the information provided to the Department to apply for the license for a marijuana
30 establishment is true and correct according to the information known by the affiant at the time of signing; and
31 (l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of [NAC
32 453D.250](#) and the date on which the person signed the application.

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

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

- 38 (a) An organizational chart showing all owners, officers and board members of the proposed marijuana
39 establishment;
40 (b) A list of all owners, officers and board members of the proposed marijuana establishment that contains the
41 following information for each person:

- 42 (1) The title of the person;
43 (2) The race, ethnicity and gender of the person;
44 (3) A short description of the role in which the person will serve for the organization and his or her
45 responsibilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Each of the Factors is within the DoT’s discretion in implementing the application
process provided for in BQ2. The DoT had a good-faith basis for determining that each of the Factors
is “directly and demonstrably related to the operation of a marijuana establishment.”

20. Pupo met with several of the applicants’ agent, Amanda Conner, Esq., numerous times
for meals in the Las Vegas Valley. Pupo also met with representatives of several of the applicants in
person. These meetings appeared to relate to regulatory, disciplinary and application issues.

1 21. The DoT posted the application on its website and released the application for
2 recreational marijuana establishment licenses on July 6, 2018.¹⁵

3 22. The DoT used a Listserv¹⁶ to communicate with prospective applicants.

4 23. While every medical marijuana certificate holder was required to have a contact person
5 with information provided to the DoT for purposes of communication, not every marijuana
6 establishment maintained a current email or checked their listed email address regularly, and some of
7 the applicants contend that they were not aware of the revised application.
8

9 24. Applications were accepted from September 7, 2018 through September 20, 2018.

10 25. The DoT elected to utilize a bright line standard for evaluating the factor “operating
11 such an establishment in compliance” of whether the applicant was suspended or revoked.¹⁷ If an
12 applicant was suspended or revoked they were not qualified to apply. This information was
13 communicated in the cover letter with the application.¹⁸ This decision was within the discretion of the
14 DoT.
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19 ¹⁵ The DoT made a change to the application after circulating the first version of the application to delete the
20 requirement of a physical location. The modification resulted in a different version of the application bearing the same
“footer” with the original version remaining available on the DoT’s website.

21 ¹⁶ According to Dictionary.com, the term “Listserv” is used to refer to online mailing list. When capitalized it refers
22 to a proprietary software.

23 ¹⁷ The method by which certain disciplinary matters (self-reported or not) were resolved by the DoT would not affect
the grading process.

24 ¹⁸ The cover letter reads in part:

25 All applicants are required to be in compliance with the following:

26 All licenses, certificates, and fees are current and paid;

27 Applicant is not delinquent in the payment of any tax administered by the Department or is not in default on
payment required pursuant to a written agreement with the Department; or is not otherwise liable to the Department
for the payment of money;

28 No citations for illegal activity or criminal conduct; and

Plans of correction are complete and on time, or are in progress within the required 10 business days.

1 26. The DoT utilized a question and answer process through a generic email account at
2 marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers directly from the
3 DoT, and that information was not further disseminated by the DoT to other applicants.¹⁹

4 27. The cover letter with the application advised potential applicants of the process for
5 questions:

6 Do not call the division seeking application clarification or guidance.
7 Email questions to marijuana@tax.state.nv.us

8 28. No statutory or regulatory requirement for a single point of contact process required the
9 DoT to adopt this procedure.

10 29. As the individual responsible for answering the emailed questions stated:

11 Jorge Pupo is the MED deputy Director. Steve Gilbert is program manager and reports to Jorge.
12 I report to Steve. Steve prefers to not have the world know our structure. He likes industry folks
13 knowing though and addressing them. He has all questions come to me. One's I can't answer,
14 he fields and has me respond, then if he can't then Jorge gets them and Jorge has me respond.
That's the goal anyway. ☺

15 Ky Plaskon text to Rebecca Gaska 9/18/2018, Exhibit 1051.

16 30. Some applicants abided by this procedure.

17 31. The DoT did not post the questions and answers so that all potential applicants would be
18 aware of the process

19 32. The DoT made no effort to ensure that the applicants received the same answers
20 regardless of which employee of the DoT the applicant asked.

21 33. On July 9, 2018, at 4:06 pm, Amanda Connor sent a text to Pupo:

22 List of things for us to talk about when you can call me:

23 Attachment E

24 Attachment I

25 Requirement for a location or physical address

26 Attachment F

Requirement for initial licensing fee

27 ¹⁹ This single point of contact process had been used in the 2014 medical marijuana establishment application period.
28 The questions and answers were posted to the department's website for all potential applicants to review and remain there to
this day. Exhibit 2038.

1 Transfers of ownership

2
3 Exhibit 1588-052.

4 34. Although Pupo tried to direct Amanda Connor to Steve Gilbert, she texted him that she
5 would wait rather than speak to someone else.

6 35. On the morning of July 11, 2018, Pupo and Amanda Connor spoke for twenty-nine
7 minutes and forty-five seconds.²⁰

8
9 36. Despite the single point of contact process being established, the DoT departed from this
10 procedure. By allowing certain applicants and their representatives to personally contact the DoT
11 employee about the application process, the DoT violated its own established procedures for the
12 application process.

13 37. After the posting of the application on July 6, 2018, Pupo decided to eliminate the
14 physical location requirement outlined in NRS 453D.210(5) and NAC 453D.265(b)(3).²¹

15
16 38. The DoT published a revised application on July 30, 2018. This revised application was
17 sent to all participants via the DoT's Listserv. The revised application modified physical address
18 requirements. For example, a sentence on Attachment A of the application, prior to this revision, the
19 sentence had read, "Marijuana Establishment's proposed physical address (this must be a Nevada
20 address and cannot be a P.O. Box)." The revised application on July 30, 2018, read: "Marijuana
21 Establishment's proposed physical address if the applicant owns property or has secured a lease or
22 other property agreement (this must be a Nevada address and not a P.O. Box). Otherwise, the
23 applications are virtually identical.
24

25
26
27 ²⁰ Exhibit 1809-054.

28 ²¹ It is unclear whether Pupo had communications similar to those with Amanda Connor with other potential applicants or their agents as Pupo did not preserve the data from his cell phone.

1 39. The DoT sent a copy of the revised application through the Listserv used by the DoT.
2 Not all Plaintiffs' correct emails were included on this list.

3 40. The July 30, 2018, application, like its predecessor, described how applications were to
4 be scored. The scoring criteria was divided into identified criteria and non-identified criteria. The
5 maximum points that could be awarded to any applicant based on these criteria was 250 points.

6 41. The identified criteria consisted of organizational structure of the applicant (60 points);
7 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
8 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
9 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

10 42. The non-identified criteria²² all consisted of documentation concerning the integrated
11 plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from
12 seed to sale (40 points); evidence that the applicant has a plan to staff, educate and manage the
13 proposed recreational marijuana establishment on a daily basis (30 points); a plan describing operating
14 procedures for the electronic verification system of the proposed marijuana establishment and
15 describing the proposed establishment's inventory control system (20 points); building plans showing
16 the proposed establishment's adequacy to serve the needs of its customers (20 points); and a proposal
17 explaining likely impact of the proposed marijuana establishment in the community and how it will
18 meet customer needs (15 points).

19 43. An applicant was permitted to submit a single application for all jurisdictions in which it
20 was applying, and the application would be scored at the same time.
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27 ²² About two weeks into the grading process the Independent Contractors were advised by certain DoT employees
28 that if an identifier was included in the nonidentified section points should be deducted. It is unclear from the testimony
whether adjustments were made to the scores of those applications graded prior to this change in procedure being
established.

1 44. Although the amended application changed the language related to a physical address,
2 there was still confusion.²³

3 45. Amanda Connor corresponded with Pupo by email requesting clarification on August
4 22, 2018.²⁴

5 46. Although the DoT had used certain DoT personnel to grade applications for medical
6 marijuana establishment applications in White Pine County shortly before the recreational applications
7 were graded, the DoT made a decision for resource and staff reasons that non DoT employees hired on
8 a temporary basis would be used to grade the recreational medical marijuana applications.
9

10 47. Prior to the close of the application evaluation process, Pupo discussed with a
11 representative of the Essence Entities the timing of closing a deal involving the purchase of the entities
12 by a publicly traded company.

13 48. By September 20, 2018, the DoT received a total of 462 applications.
14

15 _____
16 ²³ One plaintiff was advised by counsel (not Amanda Conner) that, despite the information related to the change for
17 physical address, the revised application appeared to conflict with the statute's physical address requirement and that
18 therefore a physical address was required.

19 ²⁴ The email thread reads:

20 On Aug 22 at 6:17 pm Amanda Connor wrote

21 Jorge –

22 I know the regulations make clear that land use or the property will not be considered in the application and having a
23 location secured is not required, but there seems to be some inconsistency in the application. Can you please confirm that a
24 location is not required and documentation about a location will not be considered or no points will be granted for having a
25 location?

26 On Aug 22 at 8:15 pm Pupo wrote:

27 That is correct. If you have a lease or own property than (sic) put those plans. If you dont (sic) then tell us what will the
28 floorplan be like etc etc

On Aug 22 at 8:24 pm Amanda Connor wrote

But a person who has a lease or owns the property will not get more points simply for having the property secured, correct?

On Aug 22 at 8:27 pm Pupo wrote:

Nope. LOCATION IS NOT SCORED DAMN IT!

Exhibit 2064.

1 49. In order to grade and rank the applications, the DoT posted notices that it was seeking to
2 hire individuals with specified qualifications necessary to evaluate applications. Certain DoT
3 employees also reached out to recent State retirees who might have relevant experience as part of their
4 recruitment efforts. The DoT interviewed applicants and made decisions on individuals to hire for each
5 position.

6 50. When decisions were made on who to hire, the individuals were notified that they would
7 need to register with “Manpower” under a preexisting contract between the DoT and that company.
8 Individuals would be paid through Manpower, as their application-grading work would be of a
9 temporary nature.
10

11 51. The DoT identified, hired, and provided some training to eight individuals hired to
12 grade the applications, including three to grade the identified portions of the applications, three to grade
13 the non-identified portions of the applications, and one administrative assistant for each group of
14 graders (collectively the “Independent Contractors”).
15

16 52. Based upon the testimony at trial, it remains unclear how the DoT trained the Temporary
17 Employees. While portions of the training materials from PowerPoint decks were introduced into
18 evidence, it is unclear which slides from the PowerPoint decks were used. Testimony regarding the
19 oral training based upon example applications and practice grading of prior medical marijuana
20 establishment applications was insufficient for the Court to determine the nature and extent of the
21 training of the Independent Contractors.
22

23 53. Based on the evidence adduced, the Court finds that the lack of training for the graders
24 affected the graders’ ability to evaluate the applications objectively and impartially.

25 54. NAC 453D.272(1) required the DoT to determine that an Application is “complete and
26 in compliance” with the provisions of NAC 453D in order to properly apply the licensing criteria set
27 forth therein and the provisions of the Ballot Initiative and the enabling statute.
28

1 55. In evaluating whether an application was “complete and in compliance,” the DoT made
2 no effort to verify owners, officers or board members (except for checking whether a transfer request
3 was made and remained pending before the DoT).

4 56. For purposes of grading the applicant’s organizational structure²⁵ and diversity, if an
5 applicant’s disclosure in its application of its owners, officers, and board members did not match the
6 DoT’s own records, the DoT did not penalize the applicant. Rather, the DoT permitted the grading, and
7 in some cases, awarded a conditional license to an applicant under such circumstances and dealt with
8 the issue by simply informing the winning applicant that its application would have to be brought into
9 conformity with DoT records.
10

11 57. The DoT announced the award of conditional licenses in December 2018.

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

17 59. Some of the Industry Defendants and their agent Ms. Connor, produced text messages
18 forensically extracted from their cell phones revealing the extent of contact and substance of
19 communications between them and Pupo. Additionally, phone records of Pupo identifying telephone
20 numbers communicated with and length of communication (but not content) were obtained from
21 Pupo’s cellular service provider. This evidence reinforces the presumption related to Pupo’s failure to
22 preserve evidence and reflects the preferential access and treatment provided.²⁶
23
24

25 ²⁵ The use of Advisory Boards by many applicants who were LLCs has been criticized. The DoT provided no
26 guidance to the potential applicants or the Temporary Employees of the manner by which these “Boards” should be
evaluated. As this applied equally to all applicants, it is not a basis for relief.

27 ²⁶ TGIG also was represented by Amanda Conner and had communications with Pupo. TGIG did not provide its
28 communications with Pupo.

1 60. The DoT's late decision to delete the physical address requirement on some application
2 forms while not modifying those portions of the application that were dependent on a physical location
3 (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated
4 communications by an applicant's agent, not effectively communicating the revision, and leaving the
5 original version of the application on the website is evidence of a lack of a fair process.

6 61. The DoT's departure from its stated single point of contact and the degree of direct
7 personal contact outside the single point of contact process provided unequal, advantageous and
8 supplemental information to some applicants and is evidence of a lack of a fair process.

9 62. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
10 would not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
11 inspection of their marijuana establishment.²⁷

12 63. The DoT's lack of compliance with the established single point of contact and the
13 pervasive communications, meetings with Pupo, and preferential information provided to certain
14 applicants creates an uneven playing field because of the unequal information available to potential
15 applicants. This conduct created an unfair process for which injunctive relief may be appropriate.

16 64. The only direct action attributed to Pupo during the evaluation and grading process
17 related to the determination related to the monopolistic practices. Based upon the testimony adduced at
18 trial, Pupo's reliance upon advice of counsel from Deputy Attorney General Werbicky in making this
19 decision removes it from an arbitrary and capricious exercise of discretion.

20 65. Nothing in NRS 453D or NAC 453D provides for any right to an appeal or review of a
21 decision denying an application for a retail recreational marijuana license.

22 66. In 2019, more than three years from the passage of Ballot Question 2, Nevada's
23 legislature repealed NRS 453D.200. 2019 Statutes of Nevada, Page 3896.

24
25
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28 ²⁷ The DoT has agreed to extend this deadline due to these proceedings and the public health emergency. Some of
the conditional licenses not enjoined under the preliminary injunction have now received final approval.

1 67. With its repeal, NRS 453D.200 was no longer effective as of July 1, 2020.

2 68. Nevada’s legislature also enacted statutes setting forth general qualifications for
3 licensure and registration of persons who have applied to receive marijuana establishment licenses.
4 NRS 678B.200.

5 69. The CCB was formed by the legislature and is now the government entity that oversees
6 and regulates the cannabis industry in the State of Nevada. By statute, the CCB now determines if the
7 “person is qualified to receive a license...” NRS 678B.200(1).

8 70. There are an extremely limited number of licenses available for the sale of recreational
9 marijuana.
10

11 71. The number of licenses available was set by BQ2 and is contained in NRS
12 453D.210(5)(d).

13 72. The secondary market for the transfer of licenses is limited.²⁸

14 73. Although there has been little tourism demand for legal marijuana sales due to the public
15 health emergency and as a result growth in legal marijuana sales has declined, the market is not
16 currently saturated. With the anticipated return of tourism after the abatement of the current public
17 health emergency, significant growth in legal marijuana sales is anticipated. Given the number of
18 variables related to new licenses, the claim for loss of market share is too speculative for relief.
19

20 74. Since the Court does not have authority to order additional licenses in particular
21 jurisdictions and because there are a limited number of licenses that are available in certain
22 jurisdictions, injunctive relief may be necessary to permit the Plaintiffs, if successful in the NRS
23 453D.210(6) process, to actually obtain a license with respect to the issues on which partial summary
24 judgment was granted.
25
26

27 ²⁸ Multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply
28 updating the applications previously filed would not comply with BQ2.

75. The remaining Plaintiffs²⁹(excluding TGIG) (the “Untainted Plaintiffs”) have not identified by a preponderance of the evidence, that if a single point of contact was followed by the DoT and equal information provided to all applicants, as was done for the medical marijuana application process, that there is a substantial likelihood they would have been successful in the ranking process.

76. After balancing the equities among the parties, the Court determines that the balance of equities does not weigh in favor of the Untainted Plaintiffs on the relief beyond that previously granted in conjunction with the partial summary judgment order entered on August 17, 2020.

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

CONCLUSIONS OF LAW

78. This Court has previously held that the 5 percent rule found in NAC 453D.255(1) was an impermissible deviation from the background check requirement of NRS 453D.200(6) as applied to that statute.

79. “Any person...whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” NRS 30.040.

80. A justiciable controversy is required to exist prior to an award of declaratory relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

81. The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination. . . .” *Sioux City Bridge Co. v. Dakota Cty., Neb.*, 260 U.S. 441, 445 (1923). If a suspect class or fundamental right is not implicated, then the law or regulation promulgated by the state will be upheld “so long as it bears

²⁹ TGIG's employment of Amanda Connor and direct contact with Pupo were of the same degree as the Industry Defendants who were clients of Amanda Connor.

1 a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631 (1996). When the state
2 or federal government arbitrarily and irrationally treats groups of citizens differently, such unequal
3 treatment runs afoul the Equal Protection Clause. *Engquist v. Oregon Dep’t of Agr.*, 553 U.S. 591, 601
4 (2008). Where an individual or group were treated differently but are not associated with any distinct
5 class, Plaintiffs must show that they were “intentionally treated differently from others similarly
6 situated and that there is no rational basis for the difference in treatment.” *Vill. of Willowbrook v.*
7 *Olech*, 528 U.S. 562, 564 (2000).

8
9 82. The Nevada Constitution also demands equal protection of the laws under Article 4,
10 Section 21 of the Nevada Constitution. *See Doe v. State*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017).

11 83. NRS 33.010 governs cases in which an injunction may be granted. The applicant must
12 show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving
13 party’s conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is
14 an inadequate remedy.

15
16 84. Plaintiffs have the burden to demonstrate that the DoT’s conduct, if allowed to continue,
17 will result in irreparable harm for which compensatory damages is an inadequate remedy.

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

24
25 86. BQ2 provides, “the Department shall adopt all regulations necessary or convenient to
26 carry out the provisions of this chapter.” NRS 453D.200(1). This language does not confer upon the
27 DoT unfettered or unbridled authority to do whatever it wishes without constraint. The DoT was not
28

1 delegated the power to legislate amendments because this is initiative legislation. The Legislature itself
2 has no such authority with regard to NRS 453D until three years after its enactment under the
3 prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.

4 87. Where, as here, amendment of a voter-initiated law is temporally precluded from
5 amendment for three years, the administrative agency may not modify the law.³⁰

6 88. An agency's action in interpreting and executing a statute it is tasked with interpreting is
7 entitled to deference "unless it conflicts with the constitution or other statutes, exceeds the agency's
8 powers, or is otherwise arbitrary and capricious." *Nuleaf CLV Dispensary, LLC v. State Dept. of Health*
9 *and Human Services, Div. of Pub. and Behavioral Health*, 414 P.3d 305, 308 (Nev. 2018) (quoting
10 *Cable v. State ex rel. Emp'rs Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006)).

11 89. NRS 453D.200(1) provides that "the Department shall adopt all regulations necessary or
12 convenient to carry out the provisions of this chapter." The Court finds that the words "necessary or
13 convenient" are susceptible to at least two reasonable interpretations. This limitation applies only to
14 Regulations adopted by the DoT.
15

16 90. While the category of diversity is not specifically included in the language of BQ2, the
17 evidence presented in the hearing demonstrates that a rational basis existed for the inclusion of this
18 category in the Factors and the application.
19

20 91. The DoT's inclusion of the diversity category was implemented in a way that created a
21 process which was partial and subject to manipulation by applicants.
22

23 92. NAC 453D.272 contains what is commonly referred to as the Regulations' "anti-
24 monopoly" provision. It forbids the DoT from issuing to any person, group of persons, or entity, in a
25 county whose population is 100,000 or more, the greater of one license to operate a retail marijuana
26 store or more than 10 percent of the retail marijuana licenses allocable for the county.
27

28 ³⁰ The Court notes that the Legislature has now modified certain provisions of BQ2. The Court relies on those statutes and regulations in effect at the time of the application process.

1 93. Although not required to use a single point of contact process for questions related to the
2 application, once DoT adopted that process and published the appropriate process to all potential
3 applicants, the DoT was bound to follow that process.

4 94. The DoT employees provided various applicants with different information as to
5 diversity and what would be utilized from this category and whether it would be used merely as a
6 tiebreaker or as a substantive category.

7 95. The DoT selectively discussed with applicants or their agents the modification of the
8 application related to physical address as well as other information contained in the application.
9

10 96. The process was impacted by personal relationships in decisions related to the
11 requirements of the application and the ownership structures of competing applicants.

12 97. The intentional and repeated violations of the single point of contact process in favor of
13 only a select group of applicants was an arbitrary and capricious act and served to contaminate the
14 process. These repeated violations adversely affected applicants who were not members of that select
15 group. These violations are in and of themselves insufficient to void the process as urged by some of
16 the Plaintiffs.
17

18 98. The DoT disseminated various versions of the 2018 Retail Marijuana Application, one
19 of which was published on the DoT's website and required the applicant to provide an actual physical
20 Nevada address for the proposed marijuana establishment, and not a P.O. Box, and an alternative
21 version of the DoT's application form, which was distributed to some, but not all, of the potential
22 applicants via a DoT Listserv, which deleted the requirement that applicants disclose an actual physical
23 address for their proposed marijuana establishment.
24

25 99. The applicants were applying for conditional licensure, which would last for 1 year.
26 NAC 453D.282. The license was conditional based on the applicant's gaining approval from local
27
28

1 authorities on zoning and land use, the issuance of a business license, and the Department of Taxation
2 inspections of the marijuana establishment.

3 100. By selectively eliminating the requirement to disclose an actual physical address for
4 each and every proposed retail recreational marijuana establishment, the DoT limited the ability of the
5 Independent Contractors to adequately assess graded criteria such as (i) prohibited proximity to schools
6 and certain other public facilities, (ii) impact on the community, (iii) security, (iv) building plans, and
7 (v) other material considerations prescribed by the Regulations.

8
9 101. The hiring of Independent Contractors was well within the DoT's discretionary power.

10 102. The evidence establishes that the DoT failed to properly train the Independent
11 Contractors. The DoT failed to establish any quality assurance or quality control of the grading done
12 by Independent Contractors.³¹ This is not an appropriate basis for the requested relief as the DoT
13 treated all applicants the same in the grading process. The DoT's failures in training the Independent
14 Contractors applied equally to all applicants.

15
16 103. The DoT made licensure conditional for one year based on the grant of power to create
17 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a
18 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's
19 discretion.

20 104. Certain of DoT's actions related to the licensing process were nondiscretionary
21 modifications of BQ2's mandatory requirements.³² The evidence establishes DoT's deviations
22 constituted arbitrary and capricious conduct without any rational basis for the deviation.

23
24 105. The DoT's decision to not require disclosure on the application and to not conduct
25 background checks of persons owning less than 5 percent prior to award of a conditional license is an

26
27 ³¹ The only QA/QC process was done by the Temporary Employees apparently with no oversight by the DoT.

28 ³² These are contained in the order entered August 17, 2020.

1 impermissible deviation from the mandatory language of BQ2, which mandated “a background check
2 of each prospective owner, officer, and board member of a marijuana establishment license applicant.”
3 NRS 453D.200(6).

4 106. Under the circumstances presented here, the Court concludes that certain of the
5 Regulations created by the DoT are unreasonable, inconsistent with BQ2, and outside of any discretion
6 permitted to the DoT.

7 107. The DoT acted beyond its scope of authority when it arbitrarily and capriciously
8 replaced the mandatory requirement of BQ2, for the background check of each prospective owner,
9 officer and board member with the 5 percent or greater standard in NAC 453.255(1). This decision by
10 the DoT was not one they were permitted to make as it resulted in a modification of BQ2 in violation of
11 Article 19, Section 2(3) of the Nevada Constitution.
12

13 108. The balance of equities weighs in favor of Plaintiffs on the issue for which partial
14 summary judgment has been granted.³³
15

16 109. The DoT stands to suffer no appreciable losses and will suffer only minimal harm as a
17 result of an injunction related to the August 17, 2020, partial summary judgment.

18 110. The bond previously posted for the preliminary injunction is released to those parties
19 who posted the bond.³⁴

20 111. If any conclusions of law are properly findings of fact, they shall be treated as if
21 appropriately identified and designated.
22
23
24

25 ³³ The order concludes:

26 [A]s a matter of law, the DoT acted beyond the scope of its authority by replacing the requirement for
27 a background check of each prospective owner with the 5 percent or greater standard in NAC 453D.255(1).

28 ³⁴ Any objections to the release of the bond must be made within five judicial days of entry of this order. If no
objections are made, the Court will sign an order submitted by Plaintiffs. If an objection is made, the Court will set a
hearing for further argument on this issue.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

The claim for declaratory relief is granted. The Court declares:

The DoT acted beyond its scope of authority when it arbitrarily and capriciously replaced the mandatory requirement of BQ2, for the background check of each prospective owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1). This decision by the DoT was not one they were permitted to make as it resulted in a modification of BQ2 in violation of Article 19, Section 2(3) of the Nevada Constitution.

The claim for equal protection is granted in part:

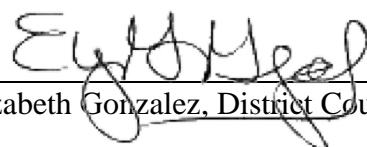
With respect to the decision by the DoT to arbitrarily and capriciously replace the mandatory requirement of BQ2, for the background check of each prospective owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1), the DoT created an unfair process. No monetary damages are awarded given the speculative nature of the potential loss of market share.

Injunctive relief under these claims is appropriate. The State is permanently enjoined from conducting a final inspection of any of the conditional licenses issued in or about December 2018 for an applicant who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6).

The Court declines to issue an extraordinary writ unless violation of the permanent injunction occurs.

All remaining claims for relief raised by the parties in this Phase are denied.

DATED this 3rd day of September 2020.

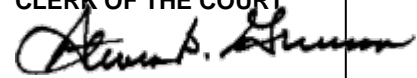

Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, these Findings of Fact, Conclusion of Law and Permanent Injunction were electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ Dan Kutinac
Dan Kutinac, JEA Dept XI

EXHIBIT 6



FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation

Case No. A-19-787004-B

Consolidated with:

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787035-C

A-19-787540-W

A-19-787726-C

A-19-801416-B

Dept. No. XI

FINDINGS OF FACT, CONCLUSION OF LAW AND PERMANENT INJUNCTION

This matter having come before the Court for a non-jury trial on Phase 1 pursuant to the Trial Protocol¹ on September 8, 2020². The following counsel and party representatives participated in this Phase of the Trial:³

The Plaintiffs

Mark S. Dzarnoski, Esq. of the law firm Clark Hill, appeared on behalf of TGIG, LLC; Nevada Holistic Medicine, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC; and Medifarm IV, LLC; (Case No. A786962-B) (the "TGIG Plaintiffs");

¹ Phase 1 of the Trial as outlined in the Trial Protocol includes all claims related to the petitions for judicial review filed by various Plaintiffs. Many of the Plaintiffs who filed Petitions for Judicial Review have now resolved their claims with the State and certain Industry Defendants.

² Prior to the commencement of Phase 1 of Trial, the Court completed the Trial of Phase 2 and issued a written decision on September 3, 2020. That decision included declaratory and injunctive relief related to many of the same issues raised by Plaintiffs in argument during this Phase. The Court previously limited the petition for judicial review process in this phase to the scoring and ranking of plaintiffs' applications. See Order entered November 7, 2019.

³ Given the public health emergency Phase 1 of the Trial was conducted entirely by remote means.

1 Adam K. Bult, Esq. and Maximilien D. Fetaz, Esq. of the law firm Brownstein Hyatt Farber
2 Schreck, LLP, appeared on behalf of ETW Management Group, LLC; Global Harmony, LLC; Just
3 Quality, LLC; Libra Wellness Center, LLC; Rombough Real Estate Inc. dba Mother Herb; and Zion
4 Gardens, LLC; (Case No. A787004-B) (the “ETW Plaintiffs”);

5 Nathaniel R. Rulis, Esq. of the law firm Kemp, Jones & Coulthard, LLP, appeared on behalf of
6 MM Development Company, Inc. and LivFree Wellness, LLC; (Case No. A785818-W) (the “MM
7 Plaintiffs”);;

8 Theodore Parker III, Esq. and Jennifer Del Carmen, Esq. of the law firm Parker Nelson &
9 Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W) and Frank
10 Hawkins appeared as the representative for Nevada Wellness Center;

11 Peter S. Christiansen, Esq. and Whitney Barrett, Esq. of the law firm Christiansen Law Offices,
12 appeared on behalf of Qualcan LLC;

13 James W. Puzey, Esq. of the law firm Holley, Driggs, Walch, Fine, Puzey, Stein & Thompson,
14 appeared on behalf of High Sierra Holistics, LLC;

15 Amy L. Sugden, Esq. of Sugden Law, appeared on behalf of THC Nevada, LLC and Allen Puliz
16 appeared as the representative for THC Nevada, LLC;

17 Sigal Chattah, Esq. of the law firm Chattah Law Group, appeared on behalf of Herbal Choice,
18 Inc..

19 Nicolas R. Donath, Esq. of the law firm N.R. Donath & Associates, PLLC, appeared on behalf
20 of Green Leaf Farms Holdings, LLC; Green Therapeutics, LLC; NevCann, LLC; and Red Earth, LLC;

21 Stephanie J. Smith, Esq. of Bendavid Law, appeared on behalf of Natural Medicine, LLC;

22 Craig D. Slater, Esq. of the law firm Luh & Associates, appeared on behalf of Clark Natural
23 Medicinal Solutions, LLC; NYE Natural Medicinal Solutions, LLC; Clark NMSD, LLC; and Inyo Fine
24 Cannabis Dispensary, LLC; and,

1 Clarence E. Gamble, Esq. of the law firm Ramos Law on behalf of Rural Remedies, LLC.

2 *The State*

3 Steven G. Shevorski, Esq. and Kiel Ireland, Esq. of the Office of the Nevada Attorney General,
4 appeared on behalf of the State of Nevada, Department of Taxation (“DoT”) and Cannabis Compliance
5 Board⁴ (“CCB”) (collectively “the State”).

6 *The Industry Defendants*

7 David R. Koch, Esq. of the law firm Koch & Scow, LLC, appeared on behalf of Nevada
8 Organic Remedies, LLC (“NOR”);

9 Rusty Graf, Esq. of the law firm Black & Lobello, appeared on behalf of Clear River, LLC;

10 Eric D. Hone, Esq. of the law firm H1 Law Group, appeared on behalf of Lone Mountain
11 Partners, LLC;

12 Alina M. Shell, Esq. of the law firm McLetchie Law, appeared on behalf of GreenMart of
13 Nevada NLV LLC;

14 Jared Kahn, Esq. of the law firm JK Legal & Consulting, LLC, appeared on behalf of Helping
15 Hands Wellness Center, Inc.;

16 Rick R. Hsu, Esq. of the law firm Maupin, Cox & LeGoy, appeared on behalf of Pure Tonic
17 Concentrates, LLC;

18 Andrew J. Sharples, Esq. of the law firm Naylor & Braster, appeared on behalf of Circle S
19 Farms, LLC;

20 Christopher Rose, Esq. and Kirill Mikhaylov, Esq. of the law firm Howard and Howard,
21 appeared on behalf of Wellness Connection of Nevada, LLC;

22
23
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25
26
27 ⁴ The CCB was added based upon motion practice as a result of the transfer of responsibility for the Marijuana
28 Enforcement Division effective on July 1, 2020. While certain statutes and regulations in effect at the time of the
application process have been modified, for purposes of these proceedings the Court evaluates those that were in existence
at the time of the application process.

1 Richard D. Williamson, Esq. and Jonathan Tew, Esq. of the law firm Robertson, Johnson,
2 Miller & Williamson, appeared on behalf of Deep Roots Medical, LLC;

3 Joseph A. Gutierrez, Esq. of the law firm Maier Gutierrez & Associates, and Dennis Prince,
4 Esq. of the Prince Law Group, appeared on behalf of CPCM Holdings, LLC d/b/a Thrive Cannabis
5 Marketplace; Commerce Park Medical, LLC; and Cheyenne Medical, LLC (“Thrive”); and,

6 Todd L. Bice, Esq. and Jordan T. Smith, Esq. of the law firm Pisanelli Bice, appeared on behalf
7 of Integral Associates, LLC d/b/a Essence Cannabis Dispensaries; Essence Tropicana, LLC; Essence
8 Henderson, LLC; (“Essence”) (collectively the “Industry Defendants”).

9
10 Having read and considered the pleadings filed by the parties, having reviewed the
11 administrative record filed in this proceeding,⁵ and having considered the oral and written arguments of
12 counsel, and with the intent of deciding the remaining issues⁶ related to the various Petitions for
13 Judicial Review only,⁷ the Court makes the following findings of fact and conclusions of law:

14 15 **PROCEDURAL POSTURE**

16 Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive,
17 licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout
18 the state. Defendant is the DoT, which was the administrative agency responsible for issuing the
19 licenses at the times subject to these complaints. Some successful applicants for licensure intervened as
20 Defendants.

21
22
23 ⁵ The State produced the applications as redacted by various Plaintiffs on June 12, 2020 and supplemented with
24 additional information on June 26, 2020. The Court previously denied TGIG’s motion to supplement the record by order
25 entered August 28, 2020. The portions of the applications which were redacted varied based upon the decisions made by
26 each individual Plaintiff. These redacted applications do not provide the Court with information needed to make a decision
27 related to the “completeness” issue as argued during Phase 1. During Phase 2 of the Trial an unredacted application by THC
28 was admitted.

⁶ The Court granted partial summary judgment and remanded to the DoT, MM and LivFree’s appeals which had
been summarily rejected by Pupo. See written order filed on July 11, 2020.

⁷ While several plaintiffs have reached a resolution of their claims with the State and certain Industry Defendants,
the Petitions of the remaining plaintiffs remain virtually the same.

1 The Attorney General's Office was forced to deal with a significant impediment at the early
2 stages of the litigation. This inability to disclose certain information was outside of its control because
3 of confidentiality requirements that have now been slightly modified by SB 32. Although the parties
4 stipulated to a protective order on May 24, 2019,⁸ many documents produced in preparation for the
5 trial and for discovery purposes were heavily redacted or produced as attorney's eyes only because of
6 the highly competitive nature of the industry and sensitive financial and commercial information
7 involved. Much of the administrative record is heavily redacted and was not provided to the Court in
8 unredacted form.
9

10 PRELIMINARY STATEMENT

11 On June 12, 2020, the DOT submitted its Record on Review in Accordance with the Nevada
12 Administrative Procedure Act, including documents showing certain applicants' applications, the
13 scoring sheets, and related tally sheets. On June 26, 2020, the DOT filed a Supplement to Record on
14 Review in Accordance with the Nevada Administrative Procedure Act to add certain information
15 related to the dissemination of the applications. The documents contained within these two filings
16 (collectively, the "Record") provides all relevant evidence that resulted in the DoT's final decision. All
17 Plaintiffs redacted their own applications that are the subject of their Petition for Judicial Review.⁹
18

19 FINDINGS OF FACT

20 1. Ballot Question 2 ("BQ2") was enacted by the Nevada Legislature and is codified at
21 NRS 453D.¹⁰
22

23 ⁸ The Court recognizes the importance of utilizing a stipulated protective order for discovery purpose in complex
24 litigation involving confidential commercial information. NRS 600A.070. The use of a protective order does not relieve a
party of proffering evidence sufficient for the Court to make a determination on the merits related to the claims at issue.

25 ⁹ The Record filed by the State utilized the versions of the submitted applications which had been redacted by the
26 applicants as part of the stipulated protective order in this matter. Applications for which an attorney's eyes only
27 designation had been made by a Plaintiff were not included in the Record. The redacted applications submitted by Plaintiffs
limits the Court's ability to discern information related to this Phase.

28 ¹⁰ As the provisions of BQ2 and the sections of NRS 453D in effect at the time of the application process (with the
exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada
Legislature during the 2017 session in NRS 453D.

2. BQ2 specifically identified regulatory and public safety concerns:

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.

NRS 453D.020(3).

3. On February 27, 2018, the DoT adopted regulations governing the issuance, suspension, or revocation of retail recreational marijuana licenses in LCB File No. R092-17, which were codified in NAC 453D (the “Regulations”).

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

5. NAC 453D.272(1) provides the procedure for when the DoT receives more than one “complete” application for a single county. Under this provision the DoT will determine if the “application is complete and in compliance with this chapter and Chapter 453D of NRS, the Department will rank the applications . . . in order from first to last based on the compliance with the provisions of this chapter and Chapter 453D of NRS and on the content of the applications relating to . . .” several enumerated factors. NAC 453D.272(1).

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

¹¹ The DoT made a change to the application after circulating the first version of the application to delete the requirement of a physical location. The modification resulted in a different version of the application bearing the same “footer” with the original version remaining available on the DoT’s website.

1 7. The DoT used a Listserv¹² to communicate with prospective applicants.

2 8. Applications were accepted from September 7, 2018 through September 20, 2018.

3 9. After the posting of the application on July 6, 2018, Pupo decided to eliminate the
4 physical location requirement outlined in NRS 453D.210(5) and NAC 453D.265(b)(3).

5 10. The DoT published a revised application on July 30, 2018. This revised application was
6 sent to all participants via the DoT's Listserv. The revised application modified physical address
7 requirements. For example, a sentence on Attachment A of the application, prior to this revision, the
8 sentence had read, "Marijuana Establishment's proposed physical address (this must be a Nevada
9 address and cannot be a P.O. Box)." The revised application on July 30, 2018, read: "Marijuana
10 Establishment's proposed physical address if the applicant owns property or has secured a lease or
11 other property agreement (this must be a Nevada address and not a P.O. Box)." Otherwise, the
12 applications are virtually identical.

13 11. The DoT sent a copy of the revised application through the Listserv used by the DoT.
14 Not all Plaintiffs' correct emails were included on this list.

15 12. The July 30, 2018, application, like its predecessor, described how applications were to
16 be scored. The scoring criteria was divided into identified criteria and non-identified criteria. The
17 maximum points that could be awarded to any applicant based on these criteria was 250 points.

18 13. The identified criteria consisted of organizational structure of the applicant (60 points);
19 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
20 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
21 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.
22
23
24
25
26

27 ¹² According to Dictionary.com, the term "Listserv" is used to refer to online mailing list. When capitalized it refers
28 to a proprietary software.

1 14. The non-identified criteria all consisted of documentation concerning the integrated plan
2 of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to
3 sale (40 points); evidence that the applicant has a plan to staff, educate and manage the proposed
4 recreational marijuana establishment on a daily basis (30 points); a plan describing operating
5 procedures for the electronic verification system of the proposed marijuana establishment and
6 describing the proposed establishment's inventory control system (20 points); building plans showing
7 the proposed establishment's adequacy to serve the needs of its customers (20 points); and a proposal
8 explaining likely impact of the proposed marijuana establishment in the community and how it will
9 meet customer needs (15 points).
10

11 15. An applicant was permitted to submit a single application for all jurisdictions in which it
12 was applying, and the application would be scored at the same time.

13 16. By September 20, 2018, the DoT received a total of 462 applications.

14 17. NAC 453D.272(1) required the DoT to determine that an Application is "complete and
15 in compliance" with the provisions of NAC 453D in order to properly apply the licensing criteria.¹³
16

17 18. In evaluating whether an application was "complete and in compliance," the DoT made
18 no effort to verify owners, officers or board members (except for checking whether a transfer request
19 was made and remained pending before the DoT).¹⁴
20

21 19. The DoT announced the award of conditional licenses in December 2018.
22
23

24 ¹³ The Plaintiffs argue that the failure to provide an actual proposed physical address should render many of the
25 applications incomplete and requests that Court remand the matter to the State for a determination of the completeness of
26 each application and supplementation of the record. As the physical address issue has been resolved by the Court in the
Phase 2 decision, the Court declines to take any action on the petition for judicial review with respect to this issue.

27 ¹⁴ As the Plaintiffs (with the exception of THC) have not provided their unredacted applications, the Court cannot
28 make a determination with respect to completeness of this area. As the Court has already granted a permanent injunction on
the ownership issue, the Court declines to take any further action on the petition for judicial review with respect to this
issue.

1 20. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
2 would not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
3 inspection of their marijuana establishment.¹⁵

4 21. Nothing in NRS 453D or NAC 453D provides for any right to an appeal or review of a
5 decision denying an application for a retail recreational marijuana license.

6 22. In 2019, more than three years from the passage of BQ2, Nevada’s legislature repealed
7 NRS 453D.200. 2019 Statutes of Nevada, Page 3896.

8 23. With its repeal, NRS 453D.200 was no longer effective as of July 1, 2020.

9 24. Nevada’s legislature also enacted statutes setting forth general qualifications for
10 licensure and registration of persons who have applied to receive marijuana establishment licenses.
11 NRS 678B.200.

12 25. The CCB was formed by the legislature and is now the government entity that oversees
13 and regulates the cannabis industry in the State of Nevada. By statute, the CCB now determines if the
14 “person is qualified to receive a license...” NRS 678B.200(1).

15 26. The Plaintiffs have not identified by a preponderance of the evidence any specific
16 instance with respect to their respective applications that the procedure used by the DoT for analyzing,
17 evaluating, and ranking the applications was done in violation of the applicable regulations or in an
18 arbitrary or capricious manner.

19 27. To the extent that judicial review would be available in this matter, no additional relief is
20 appropriate beyond that contained in the decision entered on September 3, 2020.¹⁶

21 ¹⁵ The DoT has agreed to extend this deadline due to these proceedings and the public health emergency. Some of
22 the conditional licenses not enjoined under the preliminary injunction have now received final approval.

23 ¹⁶ The Court recognizes the decision in *State Dep’t of Health & Human Services, Div. of Pub. & Behavioral Health*
24 *Med. Marijuana Establishment Program v. Samantha Inc.* (“Samantha”), 133 Nev. 809, 815-16, 407 P.3d 327, 332 (2017),
25 limits the availability of judicial review. Here as the alternative claims not present in that matter have already been decided
26 by written order entered September 3, 2020, regardless of whether the vehicle of judicial relief is appropriate, no further
27 relief will be granted in this matter.
28

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

CONCLUSIONS OF LAW

29. This Court has previously held that the 5 percent rule found in NAC 453D.255(1) was an impermissible deviation from the background check requirement of NRS 453D.200(6) as applied to that statute.

30. This Court has previously held that the deletion of the physical address requirement given the decision in *Nuleaf CLV Dispensary, LLC v. State Dept. of Health and Human Services, Div. of Pub. and Behavioral Health*, 414 P.3d 305, 308 (Nev. 2018) does not form a basis for relief.¹⁷

31. “Courts have no inherent appellate jurisdiction over official acts of administrative agencies.” *Fitzpatrick v. State ex rel., Dept. of Commerce, Ins. Div.*, 107 Nev. 486, 488, 813 P.2d 1004 (1991) (citing *Crane*, 105 Nev. 399, 775 P.2d 705).

32. Under NRS 233B.130(1), judicial review is only available for a party who is “(a) [i]dentified as a party of record by an agency in an administrative proceeding; and (b) [a]ggrieved by a final decision in a contested case.”

33. A contested case is “a proceeding . . . in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.” NRS 233B.032.

34. A valid petition for judicial review requires a record of the proceedings below to be transmitted to the reviewing court within a certain timeframe. NRS 233B.131. The record in such a case must include:

- (a) All pleadings, motions and intermediate rulings.
- (b) Evidence received or considered.
- (c) A statement of matters officially noticed.

¹⁷ The Court remains critical of the method by which the decision to delete the address requirement was made and the manner by which it was communicated. These issues are fully addressed in the decision entered September 3, 2020.

- (d) Questions and offers of proof and objections, and rulings thereon.
(e) Proposed findings and exceptions.
(f) Any decision, opinion or report by the hearing officer presiding at the hearing.

NRS 233B.121(7).

35. Judicial review under NRS 233B is to be restricted to the administrative record. *See* NRS 233B.135(1)(b).

36. The Record provides all relevant evidence that resulted in the DoT's analysis of Plaintiffs' applications.

37. The Record is limited and Plaintiffs themselves redacted their own applications at issue.

38. The Record in this case does not support Plaintiffs' Petition.

39. Plaintiffs do not cite to any evidence in the Record that supports their substantive arguments.

40. The Plaintiffs have not met their burden of establishing that the DoT's decisions granting and denying the applications for conditional licenses: (1) violated constitutional and/or statutory provisions; (2) exceeded the DOT's statutory authority; (3) were based upon unlawful procedure; (4) were clearly erroneous based upon the Record; (5) were arbitrary and capricious; or (6) generally constituted an abuse of discretion.

41. The applicants were applying for conditional licensure, which would last for 1 year. NAC 453D.282. The license was conditional based on the applicant gaining approval from local authorities on zoning and land use, the issuance of a business license, and the Department of Taxation inspections of the marijuana establishment.

42. The DoT made licensure conditional for one year based on the grant of power to create regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's discretion.

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

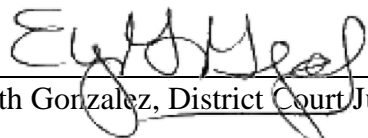
3 **ORDER**

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

5 Plaintiffs' Petitions for Judicial Review under NRS 233B.130 is denied in its entirety.

6 All remaining claims for relief raised by the parties in this Phase are denied.

7 DATED this 16th day of September 2020.

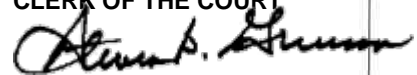
8
9 
10 _____
11 Elizabeth Gonzalez, District Court Judge

12
13 **Certificate of Service**

14 I hereby certify that on the date filed, these Findings of Fact, Conclusion of Law and Permanent
15 Injunction were electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the
16 Eighth Judicial District Court Electronic Filing Program.

17
18 /s/ *Dan Kutinac*
19 Dan Kutinac, JEA Dept XI

EXHIBIT 7



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 NRCPP 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 NRCPP 16.1(a)(3)(B) and
16 shall address the objections at the final pretrial conference. Objections not disclosed in accordance
17 with NRCPP 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 
10 Elizabeth Gonzalez, District Court Judge
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
17 Program.

18 
19 Jill Hawkins
20
21
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23
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DEPT NO:

TRIAL DATE:

JUDGE:

CLERK:

JURY FEES:

COUNSEL FOR PLAINTIFF:

PLAINTIFF

COUNSEL FOR DEFENDANT:

DEFENDANT

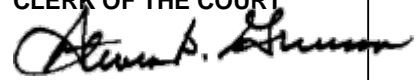
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Proposed Administrative Order Regarding Electronic Exhibits for Trial

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.

EXHIBIT 8



NEOJ

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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

**NOTICE OF ENTRY OF ORDER
GRANTING MOTIONS TO RETAX**

PLEASE TAKE NOTICE that an Order Granting Motions to Retax was entered on August 30, 2021. A copy of said Order is attached hereto.

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DATED this 30th day of August, 2021.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Adam K. Bult

ADAM K. BULT, ESQ., NV Bar No. 9332

MAXIMILIEN D. FETAZ, ESQ., NV Bar No. 12737

TRAVIS F. CHANCE, ESQ., NV Bar No. 13800

JENNINGS & FULTON, LTD.

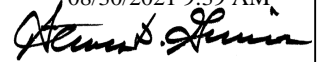
ADAM R. FULTON, ESQ., NV Bar No. 11572

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTIONS TO RETAX** to be submitted electronically to all parties currently on the electronic service list on August 30, 2021.

/s/ Wendy Cosby
an employee of Brownstein Hyatt Farber Schreck, LLP


CLERK OF THE COURT

OGM

ADAM K. BULT, ESQ., Nevada Bar No. 9332

abult@bhfs.com

MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737

mfetaz@bhfs.com

TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

tchance@bhfs.com

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Facsimile: 702.382.8135

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Las Vegas, NV 89146

Telephone: 702.979.3565

Facsimile: 702.362.2060

Attorneys for ETW Management Group LLC; et al.

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

**ORDER GRANTING MOTIONS TO
RETAX**

Hearing Date: November 6, 2020

Hearing Time: In Chambers

On November 6, 2020, in chambers, these matters came on for hearing: TGIG Plaintiffs' Motion to Retax Wellness Connection's Memo of Costs; ETW Plaintiffs', Nevada Wellness Center, LLC's, MM Development Company, Inc. d/b/a Planet 13's, LivFree Wellness, LLC d/b/a The Dispensary's, and Qualcan LLC's Motion to Retax and Settle Costs; and TGIG Plaintiffs' Motion to Retax Lone Mountain's Memo of Costs (collectively, the "Motions to Retax").

1 And this Court, having considered the relevant briefing and evidence, the relevant legal
2 authorities, the joinders thereto, and good cause appearing, this Court finds as follows:

3 1. The award of costs is premature under NRS 18.110 as there is not a final judgement
4 in this matter.

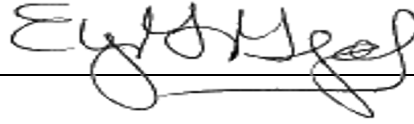
5 2. Final judgment will be issued following completion of Phase 3 scheduled for a jury
6 trial on June 28, 2021.

7 3. This decision is without prejudice to seek recovery costs at the time of the final
8 judgment.

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

IT IS HEREBY ORDERED that the Motions to Retax are **GRANTED** in full.
Dated this 30th day of August, 2021



Submitted by and approved as to form:

0E9 BEF EC69 BA0B
Elizabeth Gonzalez
District Court Judge

**BROWNSTEIN HYATT FARBER
SCHECK, LLP**

**HOWARD & HOWARD ATTORNEYS
PLLC**

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Maximilien D. Fetaz, Esq.,
NV Bar No. 12737
Travis F. Chance, Esq., NV Bar No. 13800
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

BY: /s/ L. Christopher Rose
L. Christopher Rose, Esq., NV Bar No. 7500
Kirill V. Mikhaylov, Esq., NV Bar No. 3800
Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

*Attorneys for Wellness Connection of Nevada,
LLC*

Adam R. Fulton, Esq., NV Bar No. 11572
JENNINGS & FULTON, LTD.
2580 Sorrel Street
Las Vegas, NV 89146

Attorneys for ETW Plaintiffs

H1 LAW GROUP

BY: /s/ Joel Schwarz
Eric D. Hone, Esq., NV Bar No. 8499
Joel Schwarz, Esq., NV Bar No. 9181
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074

Attorneys for Lone Mountain Partners, LLC

Cosby, Wendy C.

From: Joel Schwarz <joel@h1lawgroup.com>
Sent: Friday, August 27, 2021 12:25 PM
To: L. Christopher Rose; Fetaz, Maximilien
Cc: Bult, Adam K.; Chance, Travis F.; Cosby, Wendy C.; Kirill V. Mikhaylov; Eric Hone
Subject: RE: In re DOT Litigation: Order re Motions to Retax

You may use mine as well.

Joel Schwarz

Attorney

H1 Law Group

Joel@H1LawGroup.com

701 N Green Valley Parkway, Suite 200

Henderson, Nevada 89074

p. 702-608-5913 f. 702-608-5913

www.H1LawGroup.com

This message may contain information that is private or confidential.

If you have received this message in error, please notify the sender and delete this email and attachments if any.

From: L. Christopher Rose <lcr@h2law.com>
Sent: Friday, August 27, 2021 12:24 PM
To: Fetaz, Maximilien <MFetaz@BHFS.com>; Joel Schwarz <joel@h1lawgroup.com>
Cc: Bult, Adam K. <ABult@BHFS.com>; Chance, Travis F. <tchance@bhfs.com>; Cosby, Wendy C. <wcosby@bhfs.com>; Kirill V. Mikhaylov <kvm@h2law.com>; Eric Hone <eric@h1lawgroup.com>
Subject: RE: In re DOT Litigation: Order re Motions to Retax

Max

You may use my electronic signature for this order.

Howard & Howard
law for business®

L. Christopher Rose
Attorney

3800 Howard Hughes Pkwy., Ste. 1000, Las Vegas, NV 89169

D: 702.667.4852 | C: 702.355.2973 | F: 702.567.1568

lcr@h2law.com | Bio | vCard | LinkedIn

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From: Fetaz, Maximilien <MFetaz@BHFS.com>
Sent: Friday, August 27, 2021 12:01 PM
To: L. Christopher Rose <lcr@h2law.com>; Joel Schwarz <joel@h1lawgroup.com>
Cc: Bult, Adam K. <ABult@BHFS.com>; Chance, Travis F. <tchance@bhfs.com>; Cosby, Wendy C. <wcosby@bhfs.com>; Kirill V. Mikhaylov <kvm@h2law.com>; 'Eric Hone' <eric@h1lawgroup.com>
Subject: In re DOT Litigation: Order re Motions to Retax

Chris/Joel,

I have attached for your review and approval the Order Granting Motions to Retax. Please let me know if we may affix your e-signature to the attached. Thank you,

Maximilien D. Fetaz

Brownstein Hyatt Farber Schreck, LLP

100 North City Parkway, Suite 1600

Las Vegas, NV 89106

702.464.7083 tel

MFetaz@BHFS.com

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303) 223-1300 and delete the message. Thank you.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 In Re: D.O.T. Litigation

CASE NO: A-19-787004-B

7 DEPT. NO. Department 11
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9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
12 system to all recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 8/30/2021

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16 Jennifer Braster jbraster@naylorandbrasterlaw.com

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24 Eileen Conners eileen@nvlawyers.com

25 Jonathan Crain jcrain@christiansenlaw.com
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Staci Ibarra	sibarra@pnalaw.net
Benjamin Gordon	bgordon@nblawnv.com

EXHIBIT 9

From: [Amy Sugden](#)
To: [Jordan T. Smith](#)
Subject: Re: In re DOT Appeal
Date: Friday, December 17, 2021 2:05:43 PM

CAUTION: This message is from an EXTERNAL SENDER.

Great, thanks.

From: Jordan T. Smith <JTS@pisanellibice.com>
Date: Friday, December 17, 2021 at 2:04 PM
To: Amy Sugden <amy@sugdenlaw.com>, Gentile, Dominic <dgentile@ClarkHill.com>, Hunt, John A. <jhunt@clarkhill.com>, Dzarnoski, Mark <mdzarnoski@clarkhill.com>, Maupin, A. William <awmaupin@clarkhill.com>
Cc: Todd Bice <tlb@pisanellibice.com>, Steven G. Shevorski <SShevorski@ag.nv.gov>
Subject: RE: In re DOT Appeal

Thanks, Amy. That works for me. Talk to you then.

Jordan T. Smith
Partner
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
tel 702.214.2100
fax 702.214.2101

From: Amy Sugden <amy@sugdenlaw.com>
Sent: Friday, December 17, 2021 2:02 PM
To: Jordan T. Smith <JTS@pisanellibice.com>; Gentile, Dominic <dgentile@ClarkHill.com>; Hunt, John A. <jhunt@clarkhill.com>; Dzarnoski, Mark <mdzarnoski@clarkhill.com>; Maupin, A. William <awmaupin@clarkhill.com>
Cc: Todd Bice <tlb@pisanellibice.com>; Steven G. Shevorski <SShevorski@ag.nv.gov>
Subject: Re: In re DOT Appeal

CAUTION: This message is from an EXTERNAL SENDER.

Hi Jordan,

Thanks for the email. Hope all is well with you too.

Let's do a call at 4 p.m. (let me know if that's not possible on your end)

Dial In: 605-313-5682
Access Code: 656490

Amy

From: Jordan T. Smith <JTS@pisanellibice.com>

Date: Friday, December 17, 2021 at 10:24 AM

To: Gentile, Dominic <dgentile@ClarkHill.com>, Hunt, John A. <jhunt@clarkhill.com>, 'Amy@sugdenlaw.com' <'Amy@sugdenlaw.com'>, Dzarnoski, Mark <mdzarnoski@clarkhill.com>, 'sigal@thegoodlawyerlv.com' <'sigal@thegoodlawyerlv.com'>

Cc: Todd Bice <tlb@pisanellibice.com>, Steven G. Shevorsi <SShevorsi@ag.nv.gov>

Subject: In re DOT Appeal

All,

I hope you've been well. We just learned that appellant's opening brief is due next week. For some reason, we haven't been receiving the electronic filing notices. We intend to file a motion to dismiss the appeal for lack of jurisdiction and we wanted to discuss it with you. We (and the State) are willing to stipulate that your opening brief is not due until that motion is resolved. We don't want you guys to spend more time and effort perhaps unnecessarily.

Are you available today for a quick call? We are also available on Monday.

Thanks,

Jordan T. Smith
Partner
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
tel 702.214.2100
fax 702.214.2101

EXHIBIT 10

From: [Dzarnoski, Mark](#)
To: [Jordan T. Smith](#); [Todd Bice](#)
Cc: [RAISULI1@AOL.COM](#); [Bain, Tanya](#)
Subject: RE: DOT Appeal: Jurisdictional Issue
Date: Tuesday, February 22, 2022 8:57:51 AM

CAUTION: This message is from an EXTERNAL SENDER.
Thank you for the email. I will get this handled by the end of the week.

Mark Dzarnoski

Senior Counsel

Clark Hill LLP

3800 Howard Hughes Parkway, Ste 500, Las Vegas, NV 89169
(702) 697-7506(office) | (702) 862-8400(fax)
mdzarnoski@ClarkHill.com | www.clarkhill.com

From: Jordan T. Smith <JTS@pisanellibice.com>
Sent: Thursday, February 17, 2022 10:58 AM
To: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>; Todd Bice <tlb@pisanellibice.com>
Cc: RAISULI1@AOL.COM; Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: DOT Appeal: Jurisdictional Issue

[External Message]

Mark,

Following up a final time. The deadline for the Respondents' answering briefs is approaching. We'll have to file a motion if the jurisdictional issue isn't sorted out as we discussed on the phone a couple months ago.

Thanks,

Jordan T. Smith
Partner
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
tel 702.214.2100
fax 702.214.2101

From: Jordan T. Smith
Sent: Friday, January 21, 2022 5:16 PM
To: 'Dzarnoski, Mark' <mdzarnoski@ClarkHill.com>; Todd Bice <tlb@pisanellibice.com>
Cc: [RAISULI1@AOL.COM](#); Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: DOT Appeal: Jurisdictional Issue

Mark,

Following up again. We'd like to avoid a motion.

Thanks,

Jordan T. Smith
Partner
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
tel 702.214.2100
fax 702.214.2101

From: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>
Sent: Thursday, January 6, 2022 11:28 AM
To: Jordan T. Smith <JTS@pisanellibice.com>; Todd Bice <tlb@pisanellibice.com>
Cc: RAISULI1@AOL.COM; Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: DOT Appeal: Jurisdictional Issue

CAUTION: This message is from an EXTERNAL SENDER.

I should have an answer early next week. FYI, yesterday, all appellants agreed not to oppose a motion by the DOT to extend deadline for Answering Briefs for 60 days.

Mark Dzarnoski

Senior Counsel

Clark Hill LLP

3800 Howard Hughes Parkway, Las Vegas, NV 89169
(702) 697-7506(office) | (702) 862-8400(fax)
mdzarnoski@ClarkHill.com | www.clarkhill.com

From: Jordan T. Smith <JTS@pisanellibice.com>
Sent: Thursday, January 6, 2022 11:26 AM
To: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>; Todd Bice <tlb@pisanellibice.com>
Cc: RAISULI1@AOL.COM; Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: DOT Appeal: Jurisdictional Issue

[External Message]

Mark,

What's your plan to address the jurisdictional issue? The clock is running on our answering briefs.

Thanks,

Jordan T. Smith
Partner
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
tel 702.214.2100
fax 702.214.2101

From: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>
Sent: Tuesday, December 21, 2021 4:33 PM
To: Jordan T. Smith <JTS@pisanellibice.com>; Todd Bice <tlb@pisanellibice.com>
Cc: RAISULI1@AOL.COM; Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: DOT Appeal: Jurisdictional Issue

CAUTION: This message is from an EXTERNAL SENDER.
I'll check on those tomorrow. We weren't talking about them but they might just work.
Thanks.

Mark Dzarnoski

Senior Counsel

Clark Hill LLP

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(702) 697-7506(office) | (702) 862-8400(fax)
mdzarnoski@ClarkHill.com | www.clarkhill.com

From: Jordan T. Smith <JTS@pisanellibice.com>
Sent: Tuesday, December 21, 2021 2:51 PM
To: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>; Todd Bice <tlb@pisanellibice.com>
Cc: RAISULI1@AOL.COM; Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: DOT Appeal: Jurisdictional Issue

[External Message]

Mark,

Perhaps I misunderstood but I thought you were talking about the November 2020 orders denying the motions to retax where Judge Gonzalez noted the lack of finality. I've only seen a minute order on those motions but I could be overlooking it.

Jordan T. Smith
Partner
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
tel 702.214.2100
fax 702.214.2101

From: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>
Sent: Tuesday, December 21, 2021 1:40 PM
To: Jordan T. Smith <JTS@pisanellibice.com>; Todd Bice <tlb@pisanellibice.com>
Cc: RAISULI1@AOL.COM; Bain, Tanya <tbain@ClarkHill.com>
Subject: DOT Appeal: Jurisdictional Issue

CAUTION: This message is from an EXTERNAL SENDER.
In finishing up the Opening Brief, I have found that a written order denying our Motion to Amend FFCL was entered. Somehow, this order was "lost" to us in the record but is now "found." In our discussion, that was the vehicle we planned on using to resolve the

jurisdictional issue. I.e. we would submit a written order which included the 54(b) certification. That vehicle no longer exists.

We now believe that we will have to proceed either by Motion for Certification or by Stipulation. Please let me know if you want to make the effort of obtaining unanimous support for a Stipulation from your "group." If not or if you can't get agreement, we will prepare and submit a Motion.

Best Regards,

Mark Dzarnoski

Senior Counsel

Clark Hill LLP

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(702) 697-7506(office) | (702) 862-8400(fax)

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EXHIBIT 11

From: [Dzarnoski, Mark](#)
To: [Jordan T. Smith](#)
Cc: [Bain, Tanya](#); RAISUL11@AOL.COM
Subject: DOT Appeal: Jurisdictional Issue
Date: Friday, February 25, 2022 3:04:15 PM
Attachments: [Order Granting Motions to Re-Tax.pdf](#)

CAUTION: This message is from an EXTERNAL SENDER.
JORDAN:

Each time I think I have a resolution for the jurisdictional issue, I find something new. Please see attached which is a written order on the Motions to Retax which neither of us remembered.

I now think that the only avenue to address the disparate views on the final order issue is a Motion for 54(b) certification on order shortening time. However, I want to highlight that our jurisdictional statement in our Opening Brief cites two basis for jurisdiction as follows: (1) NRAP 3A(b)(1) final order or judgment and (2) NRAP 3A(b)(3) order granting or refusing to grant an injunction. Even if we are wrong that a final appealable order exists pursuant to 3A(b)(1), appellate jurisdiction would still exist pursuant to 3A(b)(3).

I need to readjust my focus to the 54(b) motion and should have it in draft form for you by close of business Monday. I thought I would have something to you today but the route I was following has led me to a dead end.

Best Regards,
Mark Dzarnoski
Senior Counsel

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EXHIBIT 12

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

No. 82014

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,

vs.

THE STATE OF NEVADA
DEPARTMENT OF TAXATION,
Respondent.

FILED

JUN 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER

This is an appeal from a denial of judicial review and injunction in a district court action involving eight consolidated district court cases. Attorneys Todd L. Bice and Jordan T. Smith of Pisanelli Bice PLLC have filed a notice of appearance on behalf of defendants in intervention below, Integral Associates, LLC d/b/a Essence Cannabis Dispensaries; Essence Tropicana, LLC; and Essence Henderson, LLC (the Essence Entities), and request that the Essence Entities be added as parties to this appeal. The

request is granted, and the clerk of this court shall add the Essence Entities as respondents to this appeal represented by Mr. Bice and Mr. Smith.

The Essence Entities have filed a motion to dismiss the appeal for lack of jurisdiction or in the alternative to stay the instant proceedings pending a final disposition of all phases of the litigation below. Appellants TGIG, LLC; Nevada Holistic Medicine, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC; and Medifarm IV LLC oppose the motion, and appellants THC Nevada, LLC; Herbal Choice, Inc.; Green Leaf Farms Holdings, LLC; Green Therapeutics, LLC; NevCann LLC; and Red Earth, LLC have filed joinders to the opposition. The Essence Entities have filed a reply.¹ Additionally, the State has in its answering briefs contested appellate jurisdiction, asserting that judgment has not been entered resolving certain appellants' mandamus claims.

The Essence Entities argue that this court lacks jurisdiction because the appeal is from interlocutory orders resolving only the first two phases of a three phase trial and that the appeal should either be dismissed as premature or be stayed until the final third phase is completed. In phases one and two, the district court heard evidence and denied appellants' petitions for judicial review and resolved their requests for injunctive relief. The parties disagree on who are parties to and what claims remain for trial in the third phase of the trial. Appellants argue that the orders resolving phases one and two are appealable as final judgments from consolidated matters. *See Matter of Estate of Sarge*, 134 Nev. 866, 432 P.3d 718 (2018) (holding that consolidated cases retain their separate identities so that an

¹Respondents have filed a notice of non-opposition to the motion to dismiss and stay.

order resolving all of the claims in one of the consolidated cases is immediately appealable as a final judgment) *overruling Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 609, 797 P.2d 978, 980 (1990).

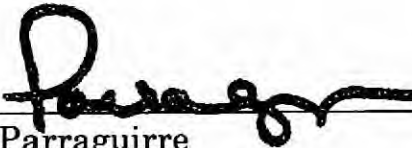
The Essence Entities' request to stay the proceedings in this appeal is granted to the following extent. The briefing schedule related to the merits briefing of this appeal shall be suspended pending further order of this court.² Appellants shall have 14 days from the date of this order to file supplemental briefs addressing the jurisdictional issue raised in the Essence Entities' motion to dismiss. The supplemental briefs shall include, but not necessarily be limited to, the following: 1) demonstration of whether the orders challenged on appeal fully resolve any of the eight consolidated district court cases below, rendering them appealable as appeals from final judgments under this court's holding in *Sarge*. See *Lee v. GNLV Corp.*, 116 Nev. 424, 427, 996 P.2d 416, 417 (2000) ("[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs."); 2) analysis of whether appellants are estopped from asserting the judgments are final and appealing by reason of their argument in district court against taxation of costs at this point in the proceeding; and 3) whether NRAP 3A(b)(3) (allowing an appeal from an order granting or refusing to grant an injunction) provides this court with jurisdiction over this appeal and if so, whether this court's jurisdiction is limited to addressing issues solely concerning the injunction and which issues raised on appeal that would cover. Respondents, including the Essence Entities, shall have 14 days from service of the supplemental briefs


²Respondent's second motion to extend time to file its answering briefs is granted. The answering briefs were filed on March 29, 2022.

to file and serve supplemental responses, including addressing these issues. Appellants shall then have 7 days from service of the supplemental responses to file and serve any supplemental replies. This court defers ruling on the Essence Entities' motion to dismiss this appeal pending review of the supplemental briefing.

Included with the supplemental briefing, the parties shall bring to this court's attention any stipulation or certification that has subsequently been filed in the district court that may resolve any potential jurisdictional issues.

It is so ORDERED.


_____, S.J.
Parraguirre


_____, J.
Cadish


_____, J.
Pickering

cc: Amy L. Sugden
Clark Hill PLC
N.R. Donath & Associates PLLC
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Attorney General/Las Vegas
Pisanelli Bice PLLC

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 In Re: D.O.T. Litigation

CASE NO: A-19-787004-B

7 DEPT. NO. Department 31
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
12 system to all recipients registered for e-Service on the above entitled case as listed below:

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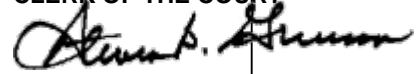
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EXHIBIT 2

The Essence Entities'
Supplemental Brief in Response to
June 8, 2022 Order



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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Supreme Court No. 82014
)	
	)	Consolidated with A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. XXXI
)	
)	

Hearing Date: July 20, 2022

Hearing Time: 10:00 a.m.

**RESPONSE AND LIMITED OPPOSITION TO MOTION TO CERTIFY TRIAL
PHASES 1 AND 2 AS FINAL UNDER NRCP 54(b)**

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings,
LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs
in Case A-19-786962-B (collectively "TGIG Plaintiffs") by and through its attorneys of record, of

1 the law firm Clark Hill, PLLC, hereby submits its **RESPONSE AND LIMITED OPPOSITION**
2 **TO MOTION TO CERTIFY TRIAL PHASES 1 AND 2 AS FINAL UNDER NRCP 54(b).**

3
4 DATED this 19th day of July 2022.

5 **CLARK HILL, PLLC**

6 By /s/ Mark S. Dzarnoski, Esq.
7 John A. Hunt, Esq. (NSBN 1888)
8 Dominic P. Gentile, Esq. (NSBN 1923)
9 Mark S. Dzarnoski, Esq. (NSBN 3398)
10 A. William Maupin (NSBN 1150)
11 3800 Howard Hughes Pkwy., #500
12 Las Vegas, Nevada 89169
13 Attorneys for TGIG Plaintiffs

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **TGIG PLAINTIFFS JOIN IN THE REQUEST FOR CERTIFICATION WITH**
17 **RESERVATION OF RIGHTS**

18 As set forth in the moving papers, the TGIG Plaintiffs filed a Notice of Appeal of the
19 Findings of Fact and Conclusions of Law entered by the District Court for Phase 1 and Phase 2
20 of these consolidated cases as they were defined in Amended Trial Protocol #2. Opening Briefs
21 have been filed by the TGIG Plaintiffs and the Defendant DOT has filed an Answering Brief in
22 the Nevada Supreme Court. After the commencement of the appeal, the moving parties herein
23 (hereinafter the “Essence Entities”) filed a Motion To Dismiss Or Stay Appeal Pending Cure Of
24 Jurisdictional Defect with the Nevada Supreme Court based upon lack of jurisdiction alleging a
25 lack of finality of the Findings of Fact and Conclusions of Law subject to the appeal. The
26 Nevada Supreme Court has requested supplemental briefing on the issue of jurisdiction and
27 asked the parties to respond to certain inquiries. The TGIG Plaintiffs have filed their
28

1 Supplemental Brief as ordered by the Nevada Supreme Court.

2 The issue of Supreme Court jurisdiction is hotly contested. The TGIG Plaintiffs maintain
3 that the orders appealed from dispose of all the issues presented in the case vis a vis these Plaintiffs
4 and the Defendant and Intervenors, and leave nothing for the future consideration of the court, except
5 for post-judgment issues such as attorney's fees and costs within the meaning of *Lee v. GNLV Corp.*,
6 116 Nev. 424, 427, 996 P.2d 416, 417 (2000) ("[A] final judgment is one that disposes of all the
7 issues presented in the case, and leaves nothing for the future consideration of the court, except for
8 post-judgment issues such as attorney's fees and costs.") Pursuant to *Matter of Est. of Sarge*, 134
9 Nev. 866, 866–67, 432 P.3d 718, 719–20 (2018), the orders were immediately appealable as a
10 final judgment even though another constituent case or cases involving Section 1983 claims (not
11 involving any party to these appeals) remain pending.
12

13 Further, the TGIG Plaintiffs argue jurisdiction is proper pursuant to NRAP 3A(b)(3).
14
15 *Sicor, Inc. v. Sacks*, 127 Nev. 896, 900, 266 P.3d 618, 620 (2011) suggests that an interlocutory
16 order granting an injunction is immediately appealable pursuant to NRAP 3A(b)(3) if it “finally
17 resolve(s) the particular issue” presented to the court and there are no “pending further
18 proceedings on the injunction request.” The Nevada Supreme Court has asked for supplemental
19 briefing regarding whether jurisdiction is proper pursuant to NRAP 3A(b)(3) as an order granting
20 an injunction.
21
22

23 In short, the TGIG Plaintiffs do not concede that the Nevada Supreme Court lacks
24 jurisdiction over the appeals or that such jurisdiction is predicated upon the District Court
25 certifying that the Findings of Fact and Conclusions of Law are final pursuant to NRCP 54(b).
26 However, the Supreme Court, as noted in the moving papers, has seemingly invited a resolution
27 to the matters subject to the Essence Parties Motion To Dismiss Or Stay Appeal Pending Cure Of
28

1 Jurisdictional Defect by stating as follows: ““the parties shall bring to this Court’s attention any
2 stipulation or certification that has subsequently been filed in the district court that may resolve
3 any potential jurisdictional issues.” Therefore, while reserving all arguments related to the
4 Supreme Court’s jurisdiction, the TGIG Plaintiffs believe that good cause exists for the District
5 Court to certify the Findings of Fact and Conclusions of Law from Phase 1 and Phase 2 as final
6 pursuant to NRCp 54(b). Whether required or not for the Supreme Court to accept jurisdiction,
7 such certification will moot the pending Motion To Dismiss Or Stay Appeal Pending Cure Of
8 Jurisdictional Defect and allow the appeals to move forward without the necessity of further
9 intervention by the Supreme Court.
10
11

12 The TGIG Plaintiffs further reserve the right to argue that the Findings of Fact and
13 Conclusions of Law were final orders, even without such certification, in connection with any
14 effort of Defendant or other interested parties filing a Memorandum of Costs and seeking an
15 award of such costs in a supplemental judgment on the basis that such requests are untimely.
16

17 II.

18 THE TGIG PLAINTIFFS CHALLENGE THE ESSENCE ENTITIES’ 19 CHARACTERIZATION OF PROCEEDINGS SET FORTH IN THEIR MOVING 20 PAPERS

21 In their moving papers, the Essence Entities assert as follows:

22 Judge Gonzalez stated that she intended to enter one final judgment after
23 all trial phases were complete. But despite the lack of a final appealable
24 order, a group of Plaintiffs appealed the interim trial orders to the Nevada
25 Supreme Court. The Essence Entities flagged the jurisdictional defect for
26 the Plaintiffs and tried to work with them for many months on ways to
27 cure the problem. However, Plaintiffs refused because they want to appeal
28 the underlying orders as purportedly aggrieved parties while
simultaneously avoiding the payment of costs to the Essence Entities and
other Defendants as prevailing parties.

Motion at 2:10-16.

1 The Essence Entities also assert as follows: “Even though Judge Gonzalez clearly explained that
2 one final judgment would be entered following all three phases, certain Plaintiffs appealed the
3 Phase 1 and Phase 2 rulings to the Nevada Supreme Court.” Motion at 9:4-6.
4

5 In taking judicial notice of its own docket, this Court can easily determine that the TGIG
6 Plaintiffs filed their Notice of Appeal on October 23, 2020 as required under NRAP 4(a)(1),
7 assuming the finality of the Findings of Fact and Conclusions of Law for which Notices of Entry
8 were filed and served on September 22, 2020. The Order of Judge Gonzalez referenced by the
9 Essence Entities in their moving papers was not issued until November 6, 2020, two weeks after
10 the Notice of Appeal was filed. No oral argument on the TGIG Plaintiffs’ Motions to Retax was
11 held and the Court issued a Minute Order on November 6, 2020 granting the Motions. Thus, as
12 of the filing of the Notice of Appeal, the TGIG Plaintiffs had no notice of what decision the
13 Court would make on the Motions to Retax and/or the legal basis the Court would use in making
14 its decision.
15

16 Significantly, the TGIG Plaintiffs never argued as a basis for its Motions to Retax that the
17 Findings of Fact or Conclusions of Law were not final and/or that the effort to seek an award of
18 costs was premature. To the contrary, the TGIG Plaintiffs argued both that the Memorandum of
19 Costs was untimely in that it was filed late and that the parties seeking an award of costs were
20 not the prevailing party.
21

22 It was the parties seeking an award of costs, who filed their Memorandums of Costs and
23 who opposed the Motions to Retax who argued that the submission of their Memorandums was
24 premature because the orders were not final. The District Court actually granted the TGIG
25

1 Plaintiffs' Motions to Retax and Settle Costs based upon the legal argument advanced by adverse
2 parties in their opposition to the motions while rejecting the arguments advanced by the TGIG
3 Parties.
4

5 The argument by the Essence Entities that the TGIG Parties are seeking the best of both
6 worlds in trying to appeal the underlying orders as final while simultaneously avoiding the
7 payment of costs on the basis that the orders are not final has zero support in the record. Further,
8 the suggestion that the TGIG Plaintiffs ignored a clear expression by the District Court that the
9 orders were not final when the TGIG Plaintiffs filed their Notice of Appeal is contrary to the
10 actual sequencing that occurred: i.e. the Notice of Appeal came first on October 23, 2020 while
11 the Minute Order of Judge Gonzalez was issued later on November 6, 2022.
12

13
14 As set forth above, the TGIG Plaintiffs continue to maintain that the Findings of Fact and
15 Conclusions of Law were final orders pursuant to *Matter of Est. of Sarge*, 134 Nev. 866, 866–67,
16 432 P.3d 718, 719–20 (2018). The TGIG Plaintiffs maintain that the District Court erred in its
17 Minute Order when it stated differently. The decision to grant the Motions to Retax was
18 essentially a correct decision rendered upon the wrong legal basis.
19

20
21 Notwithstanding the above and foregoing, the TGIG Plaintiffs still believe that
22 certification is in the interests of justice and judicial economy.
23

24 **III.**

25 **CONCLUSION**

26
27 For the above and foregoing reasons, the Court should certify the Findings of Fact and
28 Conclusions of Law as final pursuant to NRCp 54(b) without prejudice to the rights of the parties

1 to later argue that the Findings of Fact and Conclusions of Law were final upon Notice of Entry
2 for other purposes, including but not limited to Motions to Retax and Settle Costs.

3 DATED this 19th day of July 2022.
4

5 **CLARK HILL, PLLC**

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9 Mark S. Dzarnoski, Esq. (NSBN 3398)
10 A. William Maupin (NSBN 1150)
11 3800 Howard Hughes Pkwy., #500
12 Las Vegas, Nevada 89169
13 Attorneys for TGIG Plaintiffs

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the 19th day of July 2022, I served a true and correct copy of the
16 foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing
17 and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic
18 service list.

19 /s/ Deb Surwiece
20 An Employee of Clark Hill
21
22
23
24
25
26
27
28