

IN THE SUPREME COURT OF THE STATE OF NEVADA

TGIG, LLC; NEVADA HOLISITIC
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 GREAN LEAF FARMS
HOLDINGS LLC,

Appellants,

v.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TAXATION,

Respondent.

Electronically Filed
Oct 05 2022 04:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 82014

District Court 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

CROSS-APPELLANTS' DOCKETING STATEMENT

AARON D. FORD
Nevada Attorney General
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*Attorneys for Cross-Appellants
The State of Nevada ex rel., State of Nevada
Department of Taxation
and its Cannabis Compliance Board*

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

DOCKETING STATEMENT

1. Judicial District Eighth Department XI

County Clark Judge Elizabeth Gonzalez

District Ct. Case No. A-19-787004-B

2. Attorney filing this joint docketing statement:

Attorney: Aaron D. Ford Telephone (702) 486-3420
Attorney General
Craig A. Newby
Deputy Solicitor General
Nevada Bar No. 8591

Firm: Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Clients: The State of Nevada ex rel., State of Nevada Department of Taxation
and its Cannabis Compliance Board

3. Attorneys representing cross-respondents:

Respondents: TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners,
Fidelis Holdings, LLC, Gravitas Nevada, LLC, Nevada Pure, LLC,
Medifarm, LLC, and Medifarm IV, LLC

Counsel: John A. Hunt, Esq.
Firm: Clark Hill, PLLC
Telephone: 702-832-8300
Address: 3800 Howard Hughes Parkway, #500
Las Vegas, NV 89169

Respondent: THC Nevada, LLC

Counsel: Amy L. Sugden, Esq.
Firm: Sugden Law
Telephone: 702-625-3605
Address: 9728 Gillespie Street
Las Vegas, NV 89183

Respondent: Herbal Choice, Inc.

Counsel: Sigal Chattah, Esq.

Firm: Chattah Law Group

Telephone: 702-360-6200

Address: 5875 S. Rainbow Blvd, #204, Las Vegas NV 89118

Respondents: Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, NevCann, LLC, and Red Earth, LLC

Counsel: Nicolas R. Donath, Esq.

Firm: N.R. Donath & Associates

Telephone: 702-952-2880

Address: 871 Coronado Center Dr., #200
Henderson, NV 89052

Respondents: Clark Natural Medicinal Solutions, LLC; NYE Natural Medicinal Solutions, LLC; Clark NMSD, LLC, and Inyo Fine Cannabis Dispensary, LLC

Counsel: Craig D. Slater, Esq.

Firm: Luh & Associates

Telephone: 702-367-8899

Address: 8987 W. Flamingo Road, # 100
Las Vegas, NV 89147

4. Nature of disposition

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): First two of three trial phases in consolidated cases certified by district court pursuant to NRCP 54(b) |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court.

1) *Nevada Organic Remedies, LLC v. ETW Management Group LLC; Global Harmony LLC; Herbal Choice Inc.; Just Quality, LLC; Libra Wellness Center, LLC; Rombough Real Estate Inc., D/B/A Mother Herb; Zion Gardens LLC; THC Nevada LLC; and MMOF Vegas Retail, Inc, and the State of Nevada Department of Taxation; NEVCANN LLC; Green Leaf Farms Holdings LLC; Greenmart of Nevada NLV LLC; Red Earth LLC; and Green Therapeutics LLC*

Case No. 79669, Consolidated with Case Nos. 79668, 79670, 79671, 79672, 79673 (Appeals)

2) *The State of Nevada Department of Taxation v. The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark; and the Honorable Trevor L. Atkin, District Judge, and MM Development Company, Inc.; and LivFree Wellness, LLC (Real Parties in Interest)*

Case No. 79825 (Original Proceeding)

3) *Nevada Wellness Center, LLC, v. Greenmart of Nevada NLV LLC; Nevada Organic Remedies, LLC; the State of Nevada Department of Taxation; Helping Hands Wellness Center LLC; Lone Mountain Partners, LLC; Integral Associates LLC, d/b/a Essence Cannabis Dispensaries; Essence Tropicana LLC; Essence Henderson, LLC; CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace; Commerce Park Medical, LLC; Cheyenne Medical, LLC; Fidelis Holdings, LLC; GBS Nevada Partners, LLC; Gravitas Nevada, LLC; Medifarm IV LLC; Medifarm, LLC; Nevada Holistic Medicine, LLC; Nevada Pure, LLC; Nuleaf Incline Dispensary, LLC; Paradise Wellness Center, LLC; Serenity Wellness Center LLC; TGIG, LLC; Tryke Companies Reno, LLC; Tryke Companies So NV, LLC; Compassionate Team of Las Vegas*

LLC; DP Holdings; Clear River LLC; LivFree Wellness, LLC; MM Development Company, Inc.; ETW Management Group LLC; Global Harmony LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC; Herbal Choice Inc.; Just Quality, LLC; Libra Wellness Center, LLC; Rombough Real Estate INC., d/b/a Mother Herb; NEVCANN LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC; MMOF Vegas Retail, Inc.; Las Vegas Wellness; Compassion LLC; Qualcan LLC; D LUX LLC; Deep Roots Medical LLC; Euphoria Wellness LLC; Clark Natural Medicinal Solutions LLC, d/b/a Nuveda; Clark NMSD LLC, d/b/a Nuveda; D H Flamingo Inc., d/b/a Apothecary Shoppe; Inyo Fine Cannabis Dispensary LLC, d/b/a Inyo Fine Cannabis Dispensary; Nye Natural Medicinal Solutions LLC, d/b/a Nuveda; Surterra Holdings Inc.; Agua Street LLC; Bioneva Innovations of Carson City LLC; Blue Coyote Ranch LLC; Good Chemistry Nevada LLC; Greenleaf Wellness Inc.; High Sierra Holistics LLC; LVMC C and PLLC; Miller Farms LLC; Twelve Twelve LLC; Southern Nevada Growers LLC; Waveseer Of Nevada LLC; Harvest of Nevada LLC; Gravitas Nevada Ltd.; Gravitas Henderson LLC; Franklin Bioscience NV LLC; Wellness Connection of Nevada, LLC; Eureka Newgen Farms LLC; Strive Wellness Of Nevada LLC; Rural Remedies LLC; Pure Tonic Concentrates LLC; Nevada Medical Group LLC; and NCMM LLC

Case No. 80230 (Appeal)

- 4) *The State of Nevada Department of Taxation v. The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark; and the Honorable Elizabeth Goff Gonzalez, District Judge and Nevada Wellness Center, LLC (Real Party in Interest)*

Case No. 80637 (Original Proceeding)

- 5) *The State of Nevada Department of Taxation v. The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark; and the Honorable Elizabeth Goff Gonzalez, District Judge and Nevada Wellness Center, LLC; MM Development Company, Inc.; and LivFree Wellness, LLC (Real Parties in Interest)*

Case No. 81448 (Original Proceeding)

6) *The State of Nevada, on Relation of Its Department of Taxation v. 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 Grean Leaf Farms Holdings LLC*

Case No. 82014 (Appeal)

7) *Wellness Connection of Nevada, LLC v. Qualcan LLC, et al.*

Case No. 85314 (Appeal)

7. Pending and prior proceedings in other courts.

None.

8. Nature of the action.

Cross-Respondents were 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 Nevada. Cross-Appellants are the Department of Taxation, which was the administrative agency responsible for issuing the licenses at the times subject to these complaints, and its Cannabis Compliance Board, which is the administrative agency now responsible for licensure of cannabis establishments.

Pursuant to an Amended Trial Protocol dated June 23, 2020, trial in the consolidated cases took place in phases. The Second Phase challenged the legality of the 2018 recreational marijuana application process. Following this phase, the district court issued a written order dated September 3, 2020 granting a claim for declaratory relief, a claim for equal protection in part, and injunctive relief that “permanently enjoined [the State] 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).” Cross-Appellants appeal the district court’s order as it pertains to the Second Phase of trial for the consolidated cases.

On August 4, 2022, the district court issued an Order Granting Motion to Certify Trial Phases 1 and 2 as Final under NRCP 54(b), making Cross-Appellants' notice of appeal timely.

9. Issues on appeal.

1) Whether the district court erred as a matter of law by assuming cross-respondents had standing to seek the relief obtained during the Second Phase of trial.

2) Whether the district court erred as a matter of law by not recognizing that the dispute over the identification of prospective owners, officers, and board members was moot.

3) Whether the district court erred in awarding cross-respondents any relief during the Second Phase of trial as a matter of fact or law.

10. Pending proceedings in this court raising the same or similar issues.

Outside of the proceedings in this consolidated appeal from the district court's certified orders, the State is unaware of other proceedings pending before this court which address the issues identified above on appeal.

11. Constitutional issues.

The district court's justiciability determinations raise constitutional issues.

12. Other issues.

As asserted by the TGIG Appellants in their docketing statement, this appeal involves 1) an issue arising under the United States and/or Nevada Constitutions, 2) a substantial issue of first impression, 3) an issue of public policy, and 4) a ballot question because of their contention a statute passed as the result of a ballot initiative was changed by the Department of Taxation.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

The State believes this matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a). Specifically, the consolidated cases originated in business court. NRAP 17(a)(9).

14. Trial.

The district court conducted a bench trial for the Second Phase between July 17, 2020 and August 18, 2020.

15. Judicial Disqualification.

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

September 3, 2020, as certified pursuant to NRCP 54(b) on August 4, 2022.

17. Date written notice of entry of judgment or order was served:

September 22, 2020 by mail/electronic/fax, as certified pursuant to NRCP 54(b) on August 4, 2022.

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59): No.

19. Date notice of appeal filed.

September 6, 2022.

20. Specify the statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting the Supreme Court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1), following granting of an Order Granting Motion to Certify Trial Phases 1 and 2 as Final under NRCP 54(b) by the district court.

22. List all parties involved in the action or consolidated actions in the district court:

Nevada Wellness Center, LLC
ETW Management Group LLC
Global Harmony LLC
Herbal Choice Inc
Just Quality, LLC
Libra Wellness Center, LLC
Rombough Real Estate Inc. d/b/a Mother Herb
NevCann LLC
THC Nevada LLC
Zion Gardens LLC
MMOF Vegas Retail, Inc.
Qualcan LLC
Rural Remedies, LLC
TGIG, LLC
Nevada Holistic Medicine, LLC
GBS Nevada Partners, LLC
Fidelis Holdings, LLC
Gravitas Nevada, LLC
Nevada Pure, LLC
Medifarm, LLC
Medifarm IV, LLC
MM Development Company, Inc
LivFree Wellness LLC
Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC
CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace
Commerce Park Medical, LLC
Cheyenne Medical, LLC
Helping Hands Wellness Center, Inc.
Circle S Farms, LLC
Clark Natural Medicinal Solutions LLC
NYE Natural Medicinal Solutions LLC
Clark NMSD LLC
Deep Root Medical, LLC
THC Nevada, LLC
Herbal Choice, Inc.
Green Therapeutics, LLC

Eureka Newgen Farms, LLC
Polaris Wellness Center, LLC
TRNVP098F
Pure Tonic Concentrates, LLC
Wellness Connection of Nevada, LLC
Jorge Pupo
The State of Nevada, Department of Taxation

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

D.H. Flamingo, Inc., d/b/a The Apothecary Shoppe; Clark Natural Medicinal Solutions, LLC, d/b/a Nu Veda; Nye Natural Medicinal Solutions, LLC, d/b/a NuVeda; Clark NMSD, LLC, d/b/a NuVeda; and Inyo Fine Cannabis Dispensary, LLC, d/b/a Inyo Fine Cannabis Dispensary; and Surterra Holdings, Inc. (collectively the "D.H. Flamingo Plaintiffs"). The claims pled by D.H. Flamingo Plaintiffs in their First Amended Complaint filed on September 6, 2019 are: (1) Petition for Judicial Review; (2) Petition for Writ of Certiorari; (3) Petition for Writ of Mandamus; and (4) Petition for Writ of Prohibition.

The claims pled by the TGIG Plaintiffs' in their Second Amended Complaint filed on November 26, 2019 are: (1) Violation of Civil Rights (Due Process: Deprivation of Property); (2) Violation of Civil Rights (Due Process: Deprivation of Lioerty); (3) Violation of Civil Rights Equal Protection; (4) Petition for Judicial Review; (5) Petition for Writ of Mandamus; and (6) Declaratory Relief.

The claims pled by Nevada Wellness Center, LLC in its Second Amended Complaint filed on March 26, 2020 are: (1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; (7) Petition for Writ of Mandamus; (8) Violation of 42 U.S.C, § 1983 by Jorge Pupo and the Department; and (9) Unjust Enrichment.

The claims pled by ETW Management Group et al. in their Third Amended Complaint filed on January 29, 2020 are: (1) Violation of Substantive Due Process - THE DOT; (2) Violation of Procedural Due Process - THE DOT; (3) Violation of Equal Protection - THE DOT; (4) Declaratory Judgment - All Defendants; (5) Petition for Judicial Review - All Defendants; and (6) Petition for Writ Mandamus – the DOT.

The claims pled by MM Development Company, Inc. & LivFree Wellness, LLC in their Second Amended Complaint filed on January 29, 2020 are: (1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; and (7) Petition for Writ of Mandamus.

The claims pled by Natural Medicine, LLC in its Complaint in Intervention filed on February 7, 2020 are: (1) Declaratory Relief; (2) Petition for Judicial Review; (3) Petition for Writ of Certiorari; (4) Petition for Writ of Mandamus; and (5) Petition for Writ of Prohibition.

The claims pled by Strive Wellness of Nevada, LLC in its Complaint in Intervention filed on February 7, 2020 are: (1) Declaratory Relief; (2) Petition for Judicial Review; (3) Petition for Writ of Certiorari; (4) Petition for Writ of Mandamus; and (5) Petition for Writ of Prohibition.

The claims pled by Qualcan, LLC in its Second Amended Complaint filed on February 11, 2020 are: (1) Declaratory Relief; (2) Request for Injunctive Relief; (3) Intentional Interference with Prospective Economic Advantage; (4) Intentional Interference with Contractual Relations; (5) Petition for Judicial Review; (6) Petition for Writ of Mandamus; (7) Violation of Procedural Due Process; (8) Violation of Substantive Due Process; and (9) Equal Protection Violation.

The claims for relief pled by Rural Remedies, LLC in its Amended Complaint-in-Intervention are: (1) Declaratory Relief; (2) Permanent Injunction; (3) Violation of 42 U.S.C. § 1983; (4) Petition for Judicial Review; (5) Petition for Writ of Mandamus; and (6) Unjust Enrichment.

Nevada Wellness Center, LLC and Rural Remedies, LLC's claim for violation of 42 U.S.C. § 1983 will be tried in PHASE THREE of trial against Jorge Pupo only.

The trial in these proceedings began on July 13, 2020. As noted above, trial was ordered to be conducted in three (3) phases, with each phase addressing only certain claims. The First Phase addressed only the petition for judicial review (the "First Phase"), the Second Phase addressed the equal protection, due process, declaratory relief, and permanent injunction claims (the "Second Phase"), and the Third Phase would address writ of mandamus claims and, in part, it is believed Nevada Wellness Center, LLC and Rural Remedies, LLC's claim for violation of

42 U.S.C. § 1983 will be tried in Phase Three of trial against Jorge Pupo only (the "Third Phase").

The Second Phase concluded with a decision issued by the Court on September 3, 2020 that converted the Preliminary Injunction into a permanent injunction and granted declaratory relief while determining among other things that: (i) the Department acted beyond its scope authority when it arbitrarily and capriciously replaced the mandatory requirement of BQ2; and (ii) the Department is permanently enjoined from conducting a final inspection of an of the conditional licenses issued to defendants who did not provide the identification of each prospective owner, officer, and board member as required. The Court then proceeded and completed the next phase (i.e., the First Phase) according to NRS Chapter 233B.

Dispositions: *See* Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment on First Claim for Relief filed August 14, 2020.¹; see also Findings of Fact, Conclusions of Law and Permanent Injunction, filed September 3, 2020 (re: Second Phase); *see also* Findings of Fact, Conclusion of Law and Permanent Injunction filed September 16, 2020 (re: Phase Judgment).

Remaining disposition: The Third Phase of the trial has not taken place yet. As noted above, the Third Phase will address writ of mandamus claims and, in part, it is believed Nevada Wellness Center, LLC and Rural Remedies, LLC's claim for violation of 42 U.S.C. § 1983 will be tried in Phase Three of trial against Jorge Pupo only.

¹ The Court ordered:

It is hereby ORDERED that Nevada Wellness Center's Motion for Summary Judgment Regarding its First Claim for Declaratory Relief is GRANTED IN PART. Pursuant to NRCP 56, as a matter of law, the 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).

With respect to the remaining issues, this court finds that genuine issues of material fact preclude summary judgment. The court finds that the applicants were entitled to a fair process, but there remain genuine issues of material fact as to causation and damages. For that reason, the remaining motions are denied without prejudice, to be renewed at the conclusion of the Plaintiffs' case at trial.

Id., pg. 6.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

No.

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

The Third Phase of the trial involves claims against Jorge Pupo, a former State employee, for alleged violations of 42 U.S.C. § 1983.

(b) Specify the parties remaining below:

Jorge Pupo, Nevada Wellness Center, LLC, Rural Remedies, LLC.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes.

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Not applicable.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.
- Any tolling motion(s) and order(s) resolving tolling motion(s).
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal.
- Any other order challenged on appeal.
- Notices of entry for each attached order.

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this joint docketing statement.

The State of Nevada ex rel., State of
Nevada Department of Taxation
and its Cannabis Compliance Board
Names of Cross-Appellants

Craig A. Newby
Name of counsel of record

10/5/2022
Date

/s/ Craig A. Newby
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

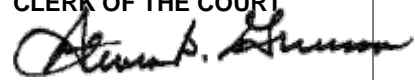
I hereby certify that I am an employee of the Nevada Office of the Attorney General, and that on October 5, 2022, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of Cross-Appellants' Docketing Statement, by means of the Nevada Supreme Court's electronic filing system.

DATED this 5th day of October, 2022.

/s/ Lucas Combs

An Employee of the Office of the Attorney
General

EXHIBIT A



1 **ACOM**
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8 Fax: (702) 862-8400
Attorneys for Plaintiffs

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

11 SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC, a
12 Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
13 limited liability company, NEVADA HOLISTIC
MEDICINE, LLC, a Nevada limited liability
14 company, TRYKE COMPANIES SO NV, LLC,
a Nevada limited liability company, TRYKE
15 COMPANIES RENO, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
16 LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
17 liability company, GRAVITAS NEVADA, LTD,
a Nevada limited liability company, NEVADA
18 PURE, LLC, a Nevada limited liability company,
MEDIFARM, LLC, a Nevada limited liability
19 company, MEDIFARM IV, LLC a Nevada
limited liability company, DOE PLAINTIFFS I
20 through X; and ROE ENTITY PLAINTIFFS I
through X,

21 Plaintiffs,

22 vs.

23 THE STATE OF NEVADA, DEPARTMENT
24 OF TAXATION, CHEYENNE MEDICAL,
LLC, CIRCLE S. FARMS, LLC, CLEAR
25 RIVER, LLC, COMMERCE PARK MEDICAL
L.L.C., DEEP ROOTS MEDICAL LLC,
26 ESSENCE HENDERSON LLC, ESSENCE
TROPICANA, LLC, EUREKA NEWGEN
27 FARMS LLC, GREEN THERAPEUTICS, LLC,
GREENMART OF NEVADA, LLC, HELPING
28 HANDS WELLNESS CENTER, INC., LONE

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

SECOND AMENDED COMPLAINT

1 MOUNTAIN PARTNERS LLC, NEVADA
2 ORGANIC REMEDIES, LLC, POLARIS
3 WELLNESS CENTER, L.L.C., PURE TONIC
4 CONCENTRATES LLC, TRNVP098, and
5 WELLNESS CONNECTION OF NEVADA,
6 LLC,

Defendants.

7 Plaintiffs, SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company,
8 TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a
9 Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited
10 liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company,
11 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, GBS NEVADA
12 PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada
13 limited liability company, GRAVITAS NEVADA, LTD, a Nevada limited liability company,
14 NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada
15 limited liability company MEDIFARM IV, LLC, a Nevada limited liability company; DOE
16 PLAINTIFFS I through X; and ROE ENTITIES I through X, by and through their counsel,
17 DOMINIC P. GENTILE, ESQ. and VINCENT SAVARESE III, ESQ., MICHAEL V.
18 CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the law firm of Gentile Cristalli Miller
19 Armeni Savarese, hereby complain and allege against DEFENDANT STATE OF NEVADA,
20 DEPARTMENT OF TAXATION; DOE DEFENDANTS I through X; and ROE ENTITY
21 DEFENDANTS I through X, in their official and personal capacities, as follows:

24 **I.**

25 **PARTIES, JURISDICTION, AND VENUE**

26 1. Plaintiff SERENITY WELLNESS CENTER, LLC, was and is a Nevada limited
27 liability company and does business in Clark County, Nevada.

1 2. Plaintiff TGIG, LLC, was and is a Nevada limited liability company and does
2 business in Clark County, Nevada.

3 3. Plaintiff NULEAF INCLINE DISPENSARY, LLC, was and is a Nevada limited
4 liability company and does business in Clark County, Nevada.

5 4. Plaintiff NEVADA HOLISTIC MEDICINE, LLC, was and is a Nevada limited
6 liability company and does business in Clark County, Nevada.

7 5. Plaintiff TRYKE COMPANIES SO NV, LLC was and is a Nevada limited
8 liability company and does business in Clark County, Nevada.

9 6. Plaintiff TRYKE COMPANIES RENO, LLC, was and is a Nevada limited
10 liability company and does business in Clark County, Nevada.

11 7. Plaintiff GBS NEVADA PARTNERS, LLC, was and is a Nevada limited liability
12 company and does business in Clark County, Nevada.

13 8. Plaintiff FIDELIS HOLDINGS, LLC, was and is a Nevada limited liability
14 company and does business in Clark County, Nevada.

15 9. Plaintiff GRAVITAS NEVADA, LTD, was and is a Nevada limited liability
16 company and does business in Clark County, Nevada.

17 10. Plaintiff NEVADPURE, LLC, was and is a Nevada limited liability company and
18 does business in Clark County, Nevada.

19 11. Plaintiff MEDIFARM, LLC was and is a Nevada limited liability company and
20 does business in Clark County, Nevada.

21 12. Plaintiff MEDIFARM IV, LLC was and is a Nevada limited liability company
22 and does business in Clark County, Nevada.

23 13. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
24 “Department”) is an agency of the State of Nevada. The Department is responsible for licensing
25 and regulating retail marijuana businesses in Nevada through its Marijuana Enforcement
26 Division.

27 ...

28 ...

**Parties Who Received Conditional Recreational Retail Marijuana Establishment
Licenses (“Defendant Applicants”)**

14. Upon information and belief, Defendant CHEYENNE MEDICAL, LLC is a Nevada limited liability company doing business under the fictitious names Thrive Cannabis Marketplace, Thrive, and/or Cheyenne Medical.

15. Upon information and belief, Defendant CIRCLE S FARMS, LLC is a Nevada limited liability company doing business under the fictitious firm names Canna Straz, and/or Circle S.

16. Upon information and belief, Defendant CLEAR RIVER, LLC is a Nevada limited liability company doing business under the fictitious names United States Marijuana Company, United States Medical Marijuana, Nevada Medical Marijuana, Clear River Wellness, Clear River Infused, Nevada Made Marijuana, Greenwolf Nevada, Farm Direct Weed, Atomicrockz, and/or Giddystick.

17. Upon information and belief, Defendant COMMERCE PARK MEDICAL L.L.C. is a Nevada limited liability company doing business under the fictitious names Thrive Cannabis Marketplace, LivFree Las Vegas, and/or Commerce Park Medical.

18. Upon information and belief, Defendant DEEP ROOTS MEDICAL LLC is a Nevada limited liability company doing business under the fictitious name Deep Root Harvest.

19. Upon information and belief, Defendant ESSENCE HENDERSON LLC is a Nevada limited liability company doing business under the fictitious name Essence Cannabis Dispensary.

20. Upon information and belief, Defendant ESSENCE TROPICANA LLC is a Nevada limited liability company doing business under the fictitious name Essence.

21. Upon information and belief, Defendant EUREKA NEWGEN FARMS LLC is a Nevada limited liability company doing business under the fictitious name Eureka NewGen Farms.

22. Upon information and belief, Defendant GREEN THERAPEUTICS LLC is a Nevada limited liability company doing business under the fictitious name Provision.

1 23. Upon information and belief, Defendant GREENMART OF NEVADA LLC is a
2 Nevada limited liability company doing business under the fictitious name Health for Life.

3 24. Upon information and belief, Defendant HELPING HANDS WELLNESS
4 CENTER, INC. is a Nevada corporation doing business under the fictitious names Cannacare,
5 Green Heaven Nursery, and/or Helping Hands Wellness Center.

6 25. Upon information and belief, Defendant LONE MOUNTAIN PARTNERS LLC
7 is a Nevada limited liability company doing business under the fictitious names Zenleaf, Siena,
8 Encore Cannabis, Bentley Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

9 26. Upon information and belief, Defendant NEVADA ORGANIC REMEDIES LLC
10 is a Nevada limited liability company doing business under the fictitious names The Source
11 and/or The Source Dispensary.

12 27. Upon information and belief, Defendant POLARIS WELLNESS CENTER L.L.C.
13 is a Nevada limited liability company doing business under the fictitious name Polaris MMJ.

14 28. Upon information and belief, Defendant PURE TONIC CONCENTRATES LLC
15 is a Nevada limited liability company doing business under the fictitious names Green Heart
16 and/or Pure Tonic.

17 29. Upon information and belief, Defendant TRNVP098 LLC is a Nevada limited
18 liability company doing business under the fictitious names Grassroots and/or Taproot Labs.

19 30. Upon information and belief, Defendant WELLNESS CONNECTION OF
20 NEVADA LLC is a Nevada limited liability company doing business under the fictitious name
21 Cultivate Dispensary

22 31. The true names and capacities, whether individual, corporate, association or
23 otherwise of Doe Plaintiffs I through X, Roe Entity Plaintiffs I through X; Doe Defendants I
24 through X; and Roe Entity Defendants I through X, inclusive, are unknown to Plaintiffs at
25 this time, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed
26 and believe, and thereupon allege, that each of the Defendants designated herein as Doe
27 and/or Roe Entities is responsible in some manner for the events and occurrences herein
28 referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein.

1 And Plaintiffs will ask leave of the Court to amend this Complaint to insert the true names
2 and capacities of all Doe and/or Roe Entity Plaintiffs and Defendants when the same have
3 been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join
4 such parties in this action.

5 32. Both jurisdiction and venue with respect to this action properly lie in this Court
6 pursuant to Nev. Rev. Stat. § 13.040.

7 II.

8 **GENERAL ALLEGATIONS**

9 33. The Nevada State Legislature passed a number of bills during the 2017
10 legislative session that affected the licensing, regulation, and operation of recreational marijuana
11 establishments in the state of Nevada. One of those bills, Assembly Bill 422, transferred
12 responsibility for the registration, licensing, and regulation of marijuana establishments from the
13 State of Nevada's Division of Public and Behavioral Health to the Department of Taxation.

14 34. This legislation was added to the voters' approval at the 2016 General Election of
15 2016 initiative petition, Ballot Question No. 2; is known as the "Regulation and Taxation of
16 Marijuana Act"; and is codified at NRS 453D.010, *et seq.* Nevada Revised Statutes ("NRS")
17 pursuant to

18 35. NRS 453D.020 (Findings and declarations) provides:

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

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

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

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

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

3 (c) Cultivating, manufacturing, testing, transporting and
4 selling marijuana will be strictly controlled through state licensing
and regulation;

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

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

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

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

9 36. NRS 453D.200 (Duties of Department relating to regulation and licensing of
10 marijuana establishments; information about consumers) provides:

11 “1. Not later than January 1, 2018, the Department shall adopt all
12 regulations necessary or convenient to carry out the provisions of
13 this chapter. The regulations must not prohibit the operation of
14 marijuana establishments, either expressly or through regulations
that make their operation unreasonably impracticable. The
regulations shall include:

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

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

18

19 2. The Department shall approve or deny applications for
licenses *pursuant to NRS 453D.210*” (emphasis added).

20 37. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;
21 conditions for approval of application; limitations on issuance of licenses to retail marijuana
22 stores; competing applications), in turn, provides, in pertinent part:

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

24 (a) *Issue the appropriate license if the license application is
approved.*

25 5. The Department shall *approve a license application if:*

26 (a) The prospective marijuana establishment has submitted an
27 application in compliance with regulations adopted by the
Department and the application fee required pursuant to NRS
453D.2;

28 6. When competing applications are submitted for a proposed

1 retail marijuana store within a single county, the Department shall
2 use an *impartial and numerically scored competitive bidding*
3 *process* to determine which application or applications among
those competing will be approved” (emphasis added).

4 38. According to an August 16, 2018 letter from the Department, pursuant to
5 Section 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17
6 ("R092-17"), the Department was responsible for allocating the licenses of recreational
7 marijuana retail stores "to jurisdictions within each county and to the unincorporated area of
8 the county proportionally based on the population of each jurisdiction and of the
9 unincorporated area of the county.”

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

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

16 41. Pursuant to Section 6.2 of the Recreational Marijuana Establishment License
17 Application (“the Application”) issued by the Department, as enabled under the above-quoted
18 provisions of NRS 453D.210, if the Department received more than one application for a license
19 for a recreational marijuana retail store and the Department determined that more than one of the
20 applications was complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department
21 was required to rank the applications within each applicable locality for any applicants in a
22 jurisdiction that limits the number of retail marijuana stores in order from first to last, with ranking
23 being based on compliance with the provisions of R092-17 Sec. 80, NRS 453D and on the content of
24 the applications relating to the following specifically-enumerated and objective published criteria:
25
26
27

28 a. Operating experience of another kind of business by the owners, officers or board

members that has given them experience which is applicable to the operation of a marijuana establishment.

- b. Diversity of the owners, officers or board members.
- c. Evidence of the amount of taxes paid and other beneficial financial contributions.
- d. Educational achievements of the owners, officers or board members.
- e. The applicant's plan for care, quality and safekeeping of marijuana from seed to sale.
- f. The financial plan and resources of the applicant, both liquid and illiquid.
- g. The experience of key personnel that the applicant intends to employ.
- h. Direct experience of the owners, officers, or board members of a medical marijuana establishment or marijuana establishment in this State.

42. However, no numerical scoring values are assigned to any of the foregoing criteria enumerated in the Application.

43. Moreover, Section 6.3 of the Application further provides that “[a]pplications that have not demonstrated a sufficient response related to the criteria set forth above will not have *additional [unspecified, unpublished] criteria* considered in determining whether to issue a license *and will not move forward in the application process*” (emphasis added).

44. Thus, by necessary implication, conversely, Section 6.3 of the Application textually subjects an Application which *has* in fact demonstrated a “sufficient” response related to the specific, published criteria set forth above to “*additional [unspecified, unpublished] criteria*,” consideration of which by the Department will determine whether or not a license is issued and whether or not a license Application will “*move forward in the application process*, notwithstanding the textual requirement of NRS 453 D. 200.1(b) that the Department shall adopt only regulations that prescribe “[q]ualifications for licensure that are directly and *demonstrably* related to the operation of a marijuana establishment” (emphasis added).

45. No later than December 5, 2018, the Department was responsible for issuing conditional licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one of the allocated licenses in accordance with the impartial numerically scored

1 competitive bidding process mandated by NRS 453D.210.

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

6 47. Plaintiffs, each of whom were already operating licensed recreational retail
7 marijuana stores and possessed a share of the retail recreational marijuana market in their
8 jurisdictions at the time, submitted Applications for licenses to own and operate additional
9 recreational marijuana retail stores and thereby to retain their market share in a highly
10 competitive industry, in compliance with the specified, published requirements of Department
11 regulations together with the required application fee in accordance with NRS 453D.210.

12 48. Plaintiffs have been informed by the Department that all of their Applications to
13 operate recreational marijuana retail stores were denied.

14 49. In each instance, Plaintiffs were informed by letter from the Department stating
15 that a license was not granted to the applicant “because it did not achieve a score high enough to
16 receive an available license.”

17 50. On information and belief, Plaintiffs allege that the Department’s denial of their
18 license applications was not properly based upon actual implementation of the impartial and
19 numerically scored competitive bidding process mandated by NRS 453D.210, but rather, was in
20 fact based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

21 51. On information and belief, Plaintiffs allege conversely that that the Department
22 improperly granted licenses to other competing applicants, likewise without actual
23 implementation of the impartial and numerically scored competitive bidding process mandated
24 by NRS 453D.210, but rather, based upon the arbitrary and capricious exercise of administrative
25 partiality and favoritism.

26 52. On information and belief, Plaintiffs allege that the Department of Taxation has
27 unlawfully, and in a manner resulting in a deprivation of the legal protections to which the
28 Plaintiffs are entitled:

1 A. granted more than one conditional recreational marijuana store license per
2 jurisdiction to certain favored applicants, owners, or ownership groups in violation of the
3 administration of an impartial and numerically scored competitive bidding process;

4 B. granted conditional licenses to applicants who benefitted from information not made
5 available to all applicants, but rather conveyed to these favored applicants or their attorneys or
6 agents, by Department of Taxation personnel themselves in a manner designed to give these
7 favored applicants an advantage in the scoring process over other applicants in obtaining a
8 license or licenses to purportedly be awarded pursuant thereto, and thereby destroying the
9 mandated impartiality of the competitive bidding process;

10 C. granted conditional licenses to applicants who were known by the Department of
11 Taxation to have violated the criminal laws of the State of Nevada by having sold marijuana to
12 minors and nonetheless, at the behest of these applicants, their attorneys and/or agents made the
13 supervisory Department of Taxation personnel in charge of the licensing process, and at said
14 supervisory personnel's direction, had that information deliberately suppressed from law
15 enforcement, removed from the administrative files and eliminated from the collection of
16 information made available to and forming the base of knowledge of those scoring the
17 Applications, an express component of which was to evaluate the prior compliance record of
18 applicants who were already operating licensed retail recreational marijuana establishments;

19 D. granted conditional licenses to applicants who, after receiving information not
20 available to all applicants, failed to disclose the true addresses of the locations at which they
21 proposed to open a retail recreational marijuana store, the Department of Taxation thereby totally
22 abdicating the requirement that the Application be impartially numerically scored with regard to
23 the impact that it was likely to have on the community in which it would operate;

24 E. granted conditional licenses to applicants who failed to disclose each of their owners,
25 the Department of Taxation thereby totally abdicating the requirement of a background check
26 into their historical behavior and associations and ignoring the mandate that retail sales of
27 marijuana be removed from the criminal element in society;

28 F. granted conditional licenses to applicants who impermissibly amended Applications

1 after they were purportedly “complete and in compliance” when submitted;

2 G. granted conditional licenses to applicants without investigating discrepancies between
3 the owners, officers and directors listed on the application where they were different from those
4 officially listed with the Nevada Secretary of State;

5 H. granting conditional licenses to applicants who benefitted from the Department of
6 Taxation implementing in a manner that was partial and subject to manipulation, the awarding of
7 points for diversity, resulting in the abdicating its mission to conduct an impartial numerically
8 scored competitive bidding process;

9 I. failed to train the temporary employees hired to performing the impartial numerically
10 scored competitive bid process and/or put in place, adequately supervise and/or maintain quality
11 assurance and/or quality control over the process which, in turn, rendered the grading process
12 inconsistent and unfair to Plaintiffs;

13 J. granted conditional licenses to applicants in direct contravention of the legislative and
14 regulatory mandate to operate the impartial numerically scored competitive bidding process in a
15 manner that will prevent monopolistic practices in a county with a population of 100,000 or
16 more;

17 K. granted conditional licenses to applicants in other unlawful manners to be further
18 developed at trial.

19 III.

20 CLAIMS FOR RELIEF

21 FIRST CLAIM FOR RELIEF

22 (Violation of Civil Rights)

23 (Due Process: Deprivation of Property)

24 (U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

25 53. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

26 54. Pursuant to the enactment of NRS 598A.030 it has become the stated policy of the
27 laws of Nevada to
28

1 (a) Prohibit acts in restraint of trade or commerce, except where properly regulated as
2 provided by law, and

3 (b) Preserve and protect the free, open and competitive nature of our market system, and

4 (c) Penalize all persons engaged in such anticompetitive practices to the full extent
5 allowed by law

6 55. Such prohibited acts in restraint of trade or commerce include, among others,

7 A. monopolization of trade or commerce in this State, including, without
8 limitation, attempting to monopolize or otherwise combining or conspiring to monopolize trade
9 or commerce in this State, and,

10 B. consolidation, conversion, merger, acquisition of shares of stock or other
11 equity interest, directly or indirectly, of another person engaged in commerce in this State or the
12 acquisition of any assets of another person engaged in commerce in this State that may:

13 (1) Result in the monopolization of trade or commerce in this State or would
14 further any attempt to monopolize trade or commerce in this State; or

15 (2) Substantially lessen competition or be in restraint of trade.

16 56. Pursuant to NRS 598A.040, the above protection of a free, open and competitive
17 market system do not apply where contravened by conduct which is expressly authorized,
18 regulated or approved by

19 (a) statute of this State or of the United States;

20 (b) An ordinance of any city or county of this State, except for ordinances relating to
21 video service providers; or

22 (c) An administrative agency of this State or of the United States or of a city or county of
23 this State, having jurisdiction of the subject matter.

24 57. NRS 598A.210, in providing a cause of action for injunctive relief and/or
25 damages, represents a recognition under Nevada law and policy that a business's sales and the
26 resulting value of its market share are a property interest entitled to protection by the courts.

27 58. Such a statutorily recognized "property interest" is within the meaning and
28 subject to the due process protections of the Fourteenth Amendment to the Constitution of the

1 United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and
2 therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon
3 administrative partiality or favoritism, as when present as in the instances complained of herein,
4 none of those trigger the exemption set out in NRS 598A.040.

5 59. Here, while acting under color of state law, the Department has effectively
6 nullified and rendered illusory the legislative statutory entitlement which all applicants have to
7 an impartial numerically scored competitive bidding system for licensure of applicants who
8 comply with and prevail competitively in accordance with the objective and impartial standards
9 and procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6.

10 60. Plaintiffs further allege that pursuant to the implementation of the foregoing
11 constitutionally-repugnant licensing process, the denial of their Applications for licensure, when
12 coupled with the issuing of conditional licenses to their competitors pursuant to a constitutionally
13 invalid and corrupt process infected by actual arbitrary, capricious or corrupt decision-making
14 based upon administrative partiality or favoritism, has and will continue cause a diminution of
15 Plaintiffs sales and market share values as a direct result of the conduct of the Department of
16 Taxation issuing the conditional licenses and the business operations conducted pursuant thereto
17 by the beneficiaries of that unconstitutional licensing process.

18 61. Plaintiffs have therefore been and will continue to be deprived of property without
19 due process under color of state law in violation of the Fourteenth Amendment to the
20 Constitution of the United States and Article 1, Sections 1 and 8 of the Constitution of the State
21 of Nevada.

22 62. Plaintiffs are entitled to declaratory relief with respect to the forgoing federal
23 constitutional infirmities of the administrative licensing scheme pursuant to the provisions of
24 Title 42, United States Code ("U.S.C."), Section 1983 and otherwise.

25 63. Plaintiffs are entitled to declaratory relief because a justiciable controversy exists
26 that warrants a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act,
27 codified at NRS 30.010 to 30.160, inclusive.

28 64. Plaintiffs and Defendant have adverse and/or competing interests in that the
14 of 23

1 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' Applications in
2 in violation of Plaintiff's constitutional rights, Nevada law, and state policy.

3 65. The Department's refusal to issue licenses to Plaintiffs affects Plaintiffs' rights
4 under NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

5 66. Further, the Department's improper ranking of other applicants for licensure and
6 subsequent, improper issuance of licenses to such other applicants adversely affects the rights of
7 Plaintiff under NRS 453D, NAC 453D, R09217, and other Nevada laws and regulations.

8 67. The Department's actions and/or inactions also have created an actual justiciable
9 controversy ripe for judicial determination between Plaintiffs and the Department with respect to
10 the construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17,
11 and Plaintiffs have been harmed, and will continue to be harmed, by the Defendants' actions
12 and/or inactions.

13 68. The Department's actions and/or inactions have further failed to appropriately
14 address the necessary considerations and legislative intent of NRS 453D.210, designed to restrict
15 monopolies.

16 69. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 17 a. The procedures employed in evaluating license Applications and granting
18 conditional licenses violated Plaintiffs' procedural and substantive due
19 process rights and entitlement to equal protection of the law (as set forth *infra*)
20 under the Nevada and United States Constitutions and, therefore, those
21 conditional licenses awarded are void and unenforceable;
- 22 b. Defendant acted arbitrarily and capriciously or in contravention of a legal duty
23 and Plaintiffs are therefore entitled to a writ of mandamus;
- 24 c. Plaintiffs are entitled to judicial review; and

25 70. Plaintiffs also seek a declaration from this Court that the Department must issue
26 licenses to Plaintiffs for the operation of a recreational marijuana establishment as applied for in
27 that Plaintiffs' would have been entitled to receive said licenses had the Department properly
28 applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

1 71. Plaintiffs contend that a declaratory judgment is both necessary and proper at
2 this time for the Court to determine the respective rights, duties, responsibilities and liabilities
3 of Plaintiffs under NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and
4 regulations.

5 72. Plaintiffs are also entitled to injunctive relief from the foregoing federal
6 constitutional violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

7 73. The Department's flawed interpretation of the provisions of NRS 453D, NAC
8 Chapter 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the
9 law constitute and cause continuing and irreparable harm to Plaintiffs, who have no adequate
10 remedy at law.

11 74. The purpose of this administrative refusal was and is to unreasonably interfere
12 with Plaintiffs' business and cause Plaintiffs to suffer irreparable harm.

13 75. The Department will suffer no harm by following the law with respect to issuing
14 the licenses in question.

15 76. The Department's interpretation of NRS 453D, NAC Chapter 453D, and R092-17
16 is flawed and Plaintiffs are likely to succeed on the merits in this litigation.

17 77. Therefore, Plaintiffs are entitled to preliminary injunctive relief, and after a trial
18 on the merits, permanent injunctive relief, ordering the Department to issue the subject licenses
19 to Plaintiffs in accordance with NRS 453D, NAC 453D, and R092-17.

20 78. Plaintiffs are also entitled to damages attributable to the above-identified due
21 process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

22 79. As the actions of the Department have necessitated that Plaintiffs retain the legal
23 services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also
24 entitled to an award of attorneys' fees and costs of suit.

25 ...

26 ...

27 ...

28 ...

SECOND CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Liberty)

(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

80. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

81. The fundamental constitutional right to pursue a lawful occupation constitutes a “liberty interest” within the meaning and subject to the due process protections of the Fourteenth Amendment to the Constitution of the United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon administrative partiality or favoritism.

82. However, acting under color of state law, the Department has effectively nullified and rendered illusory the legislative statutory entitlement to licensure of applicants who comply with and prevail competitively in accordance with the objective and impartial standards and procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by textually subjecting an Application which in fact provides “sufficient” responses related to the published, enumerated and specific criteria set forth in the Application to approval pursuant to further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth therein, as a silent supplemental condition of licensure, in violation of NRS 200.D.1(b) thereby rendering the administrative regulation governing the Application and licensing process susceptible to *ad hoc*, non-transparent, arbitrary, capricious or corrupt decision-making based upon administrative partiality or favoritism which cannot be discounted; thereby rendering that regulatory scheme unconstitutional on its face.

83. On information and belief, Plaintiffs further allege that the pursuant to the implementation of the foregoing constitutionally-repugnant licensing process, the denial of their Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt decision-making based upon administrative partiality or favoritism; and therefore, that that licensing process has thereby been rendered unconstitutional in its application as well.

84. Plaintiffs have therefore likewise been deprived of liberty without due process

1 under color of state law in violation of the Fourteenth Amendment to the Constitution of the
2 United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

3 85. The Constitutional infirmity of the entire licensing process renders the denial of
4 Plaintiffs' Applications for licensure void and unenforceable, and Plaintiffs are entitled to a
5 declaration as to the ineffectiveness thereof and an order enjoining the enforcement of those
6 license denials as well as those conditionally granted.

7 86. Plaintiffs are also entitled to damages for these due process violations pursuant
8 to the provisions of 42 U.S.C. Section 1983 and otherwise.

9 87. As the actions of the Department have necessitated that Plaintiffs retain the legal
10 services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also
11 entitled to an award of attorneys' fees and costs of suit.

12 **THIRD CLAIM FOR RELIEF**

13 **(Violation of Civil Rights)**

14 **(Equal Protection)**

15 **(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1; Title 42 U.S.C. § 1983)**

16 88. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

17 89. By improperly denying Plaintiffs' Applications for licensure under the provisions
18 of NRS 453D.200.2 and NRS 453D.210.4-6 while improperly granting the Applications of other
19 applicants under color of state law as set forth *supra*, the Department has, without justification,
20 disparately treated Plaintiffs' Applications absent rational basis, and has thereby violated
21 Plaintiffs' rights to equal protection of the law as guaranteed by the Fourteenth Amendment to
22 the Constitution of the United States and Article 1, Section 1 of the Constitution of the State of
23 Nevada.

24 90. The constitutional infirmity of the entire licensing process and the resulting denial
25 of equal protection renders the denial of Plaintiffs' Applications for licensure void and
26 unenforceable, and, for the reasons set forth, *supra*, Plaintiffs are entitled to a declaration as to
27 the ineffectiveness thereof and an order enjoining the enforcement of those license denials as
28 well as those conditionally granted.

91. Plaintiffs are also entitled to damages for these equal protection violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

92. As the actions of the Department have necessitated that Plaintiffs retain the legal services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(Petition for Judicial Review)

93. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

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

95. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs' Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC 453D, R092-17, and other Nevada state laws or regulations.

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

97. Accordingly, Plaintiffs petition this Court for judicial review of the record on which the Department's denials were based, and an order providing *inter alia*:

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

98. As the actions of the Department have necessitated that Plaintiffs retain the legal services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also

entitled to an award of attorneys' fees and costs of suit.

FIFTH CLAIM FOR RELIEF

(Petition for Writ of Mandamus)

99. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

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

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

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

b. Arbitrarily and capriciously denying the applications for no legitimate reason.

102. The Department acted arbitrarily and capriciously in the denial by performing and/or failing to perform the acts set forth *supra*, and because, *inter alia*:

a. The Board lacked substantial evidence to deny Plaintiffs’ Applications; and

b. The Board denied Plaintiffs’ Applications in order to approve the Applications of other competing applicants without regard to the merit of Plaintiffs’ Applications and the lack of merit of the Applications of other competing applicants.

103. These violations of the Department’s legal duties were arbitrary and capricious actions that compel this Court to issue a Writ of Mandamus directing the Department to review Plaintiffs’ Applications on their merits and/or approve them.

104. As a result of the Department’s unlawful and arbitrary and capricious actions, Plaintiffs have been forced to retain legal counsel to prosecute this action and is therefore also entitled to their damages, costs in this suit, and an award of attorneys’ fees pursuant to NRS 34.270.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief)

105. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

106. A justiciable controversy exists sufficient to warrant a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010, *et seq.*

107. Defendant Applicants received conditional recreational retail marijuana establishment licenses issued by the Department.

108. Plaintiffs contend that they are entitled to the same conditional licenses, which contention would/could deprive Defendant Applicants of their conditional licenses.

109. Plaintiffs request a declaratory judgment to determine their rights, status, or other legal relations under the applicable statutes and regulations with respect to this dispute brought by Plaintiffs. A declaratory judgment will eliminate any dispute over the conditional recreational marijuana establishment licenses issued by the Department.

110. Plaintiffs have been forced to retain legal counsel to prosecute this action and is therefore also entitled to their damages, costs in this suit, and an award of attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for relief as follows:

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

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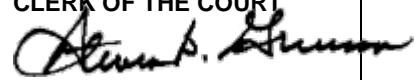
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EXHIBIT B



David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
Daniel G. Scow (NV Bar #14614)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
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dkoch@kochscow.com
sscow@kochscow.com

Attorneys for Defendant-Intervenor/Counterclaimant
Nevada Organic Remedies, LLC

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ETW MANAGEMENT GROUP LLC, et al.,

Plaintiffs,

vs.

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

Defendants,

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor

AND ALL CONSOLIDATED CASES.

Case No. A-19-787004-B

Dept. No. 13

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-19-8014416-B

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order Denying Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction* was entered in the above-referenced matter on August 17, 2020, a copy of which is attached hereto.

DATED: August 17, 2020

KOCH & SCOW, LLC

By: /s/ David R. Koch

David R. Koch, Esq.

*Attorneys for Defendant-Intervenor
Nevada Organic Remedies, LLC*

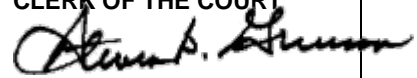
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Koch & Scow and on August 17, 2020, I electronically filed and served the foregoing **NOTICE OF ENTRY OF ORDER** with the Eighth Judicial District Court, County of Clark, State of Nevada EFile system.

Executed on August 17, 2020 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
KOCH & SCOW LLC
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Attorneys for Defendant-Intervenor/Counterclaimant
Nevada Organic Remedies, LLC

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

IN RE D.O.T. LITIGATION

CASE NO.: A-19-787004-B (Lead Case)

A-18-785818-W (Sub Case)
A-18-786357-W (Sub Case)
A-19-786962-B (Sub Case)
A-19-787035-C (Sub Case)
A-19-787540-W (Sub Case)
A-19-787726-C (Sub Case)
A-19-801416-B (Sub Case)

DEPT. 11

**ORDER DENYING EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: July 31, 2020
Time: 8:30 a.m.

THC Nevada LLC's and Herbal Choice Inc.'s Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction (collectively "Application") came on for hearing on shortened time on July 31, 2020. After considering the Application, all Oppositions filed in response, the Reply briefs submitted, and all joinders filed to each of these filings, and after hearing argument by all parties who wished to be heard on the issues raised in the Application, the Court orders as follows:

1 The Court DENIES the Application and will not enjoin the parties or the Nevada
2 Tax Commission with respect to the approval of the settlement agreement among the
3 parties thereto. The Court finds that the settlement agreement does not seek to limit the
4 Court's authority on any remaining claims that may be pursued by any non-settling
5 parties and there are no indemnity or contribution claims sought to be extinguished by
6 the settlement. Accordingly, the Court will not interfere with the business decisions
7 made by the parties and will instead leave it to the Tax Commission to determine
8 whether they have the authority to approve the settlement and to consider and
9 determine whether the settlement agreement presented shall in fact be approved.

10 **IT IS SO ORDERED.**

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13 Dated: August 17, 2020


District Court Judge

14
15
16 Submitted by:

17
18 KOCH & SCOW, LLC

19 /s/ David R. Koch

20 David R. Koch, Esq.

21 *Attorneys for Defendant-Intervenor, Counterclaimant*
22 *Nevada Organic Remedies, LLC*
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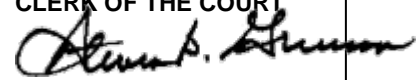
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Koch & Scow and on August 17, 2020, I electronically filed and served the foregoing **ORDER DENYING EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION** with the Eighth Judicial District Court, County of Clark, State of Nevada EFile system.

Executed on August 17, 2020 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh

EXHIBIT C



AARON D. FORD
Attorney General
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Akke Levin (Bar No. 9102)
Senior Deputy Attorney General
Kiel B. Ireland (Bar No. 15368C)
Deputy Attorney General
Office of the Attorney General
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(702) 486-3768 (fax)
sshevorski@ag.nv.gov
alevin@ag.nv.gov
kireland@ag.nv.gov
Attorneys for Defendant
State of Nevada ex rel. its
Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

In re DOT Litigation,

Case No. A-19-787004-B
Dept. No. XI

Consolidated with:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19787540-W
A-19-787726-C
A-19-801416-B

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Denying Motion to Strike Department of Taxation's Notice Removing Entities from Tier 3 was entered on the 25th day of August, 2020, a copy of which is attached hereto as Exhibit "A".

DATED this 25th day of August, 2020.

AARON D. FORD
Attorney General

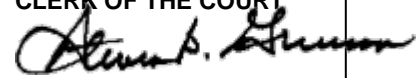
By: /s/ Steven G. Shevorski
Steven G. Shevorski (Bar No. 15368C)
Deputy Attorney General

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/s/ *Eddie Rueda*
Eddie Rueda, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A



AARON FORD
Attorney General
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Akke Levin (Bar No. 9102)
Senior Deputy Attorney General
Kiel B. Ireland (Bar No. 15368C)
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kireland@ag.nv.gov

Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE DOT

Case No. A-19-787004-B
Dept. No. XI

CONSOLIDATED WITH:

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

**ORDER DENYING MOTION TO STRIKE DEPARTMENT OF TAXATION'S
NOTICE REMOVING ENTITIES FROM TIER 3**

The Motion to Strike the Department of Taxation's Notice Removing Entities from Tier 3 ("Motion to Strike") filed by plaintiffs THC Nevada, LLC ("THC") and Herbal Choice, Inc. ("Herbal Choice"), in which the TGIG Plaintiffs joined, came before the Court on August 17, 2020. Amy L. Sugden appeared on behalf of THC. Sigal Chattah appeared on behalf of Herbal Choice. Former Justice A. William Maupin appeared telephonically for the TGIG Plaintiffs. Steven G. Shevorski appeared on behalf of the Department of Taxation. David R. Koch appeared on behalf of intervenor/defendant Nevada Organic Remedies, LLC.

...

1 The Court, having considered the papers and pleadings filed in support of and in
2 opposition to the Motion to Strike, and having heard argument, denies the Motion. The
3 hearing process for the motions that the Court anticipated following the August 29, 2019
4 hearing on certain Tier 3 entities' objections was one involving a pretrial motion related to
5 the preliminary injunction that is currently in place. Given that the parties are now in
6 trial on the injunctive relief issues and all parties have had an opportunity to be heard
7 during this portion of the trial, motion practice to remove entities from Tier 3 is not
8 necessary. Wherefore,

9 IT IS HEREBY ORDERED that the Motion to Strike is DENIED.

10 Dated this 24th day of August, 2020

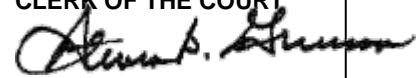
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15 DISTRICT COURT JUDGE

16 Submitted by:

17 AARON D. FORD
18 Attorney General

19 By: /s/ Steve Shevorski
20 Steve Shevorski (Bar No. 8256)
21 Chief Litigation Counsel
22 Akke Levin (Bar No. 9102)
23 Senior Deputy Attorney General
24 Kiel B. Ireland (Bar No. 15368C)
25 Deputy Attorney General
26
27
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EXHIBIT D



AARON D. FORD
Attorney General
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Akke Levin (Bar No. 9102)
Senior Deputy Attorney General
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Attorneys for Defendant
State of Nevada ex rel. its
Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

In re DOT Litigation,

Case No. A-19-787004-B
Dept. No. XI

Consolidated with:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19787540-W
A-19-787726-C
A-19-801416-B

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that a Findings of Fact, Conclusion of Law and Permanent Injunction was entered on the 3rd day of September, 2020, a copy of which is attached hereto as Exhibit "A".

DATED this 22nd day of September, 2020.

AARON D. FORD
Attorney General

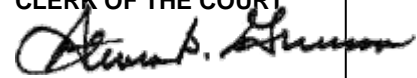
By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel

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/s/ *Eddie Rueda*
Eddie Rueda, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A



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.

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

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

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

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

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

Having read and considered the pleadings filed by the parties, having reviewed the evidence admitted during this phase of the trial⁶, and having heard and carefully considered the testimony of the witnesses called to testify, having considered the oral and written arguments of counsel, and with the intent of deciding the remaining issues⁷ related to Legality of the 2018 recreational marijuana application process only⁸, the Court makes the following findings of fact and conclusions of law:

⁶ Due to the limited amount of discovery conducted prior to the Preliminary Injunction hearing and the large volume of evidence admitted during that 20-day evidentiary hearing, the Court required parties to reoffer evidence previously utilized during that hearing.

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

24 1. When conducting a background check pursuant to subsection 6 of [NRS 453D.200](#), the Department may
25 require each prospective owner, officer and board member of a marijuana establishment license applicant to submit
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
report.
28

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.
15
16
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18

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.
21
22
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24
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26

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

18 ²⁴ The email thread reads:

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

20 Jorge –

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

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

26 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
27 floorplan be like etc etc

28 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
26
27
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

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

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:

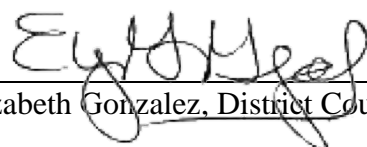
With respect to the decision by the DoT to arbitrarily and capriciously replace the mandatory requirement of BQ2, for the background check of each prospective owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1), the DoT created an unfair process. No monetary damages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

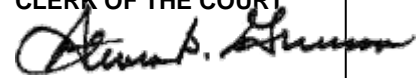

Elizabeth Gonzalez, District Court Judge

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 E



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State of Nevada ex rel. its
Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

In re DOT Litigation,

Case No. A-19-787004-B
Dept. No. XI

Consolidated with:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19787540-W
A-19-787726-C
A-19-801416-B

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that a Findings of Fact, Conclusion of Law and Permanent Injunction was entered on the 16th day of September, 2020, a copy of which is attached hereto as Exhibit "A".

DATED this 22nd day of September, 2020.

AARON D. FORD
Attorney General

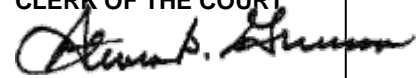
By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel

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/s/ *Eddie Rueda*
Eddie Rueda, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A



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.

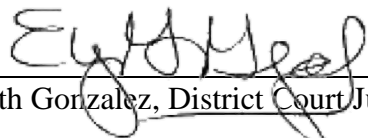
3 **ORDER**

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.

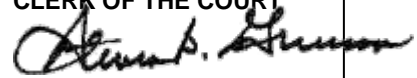
8
9 
10 _____
11 Elizabeth Gonzalez, District Court Judge

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 F



AARON D. FORD
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Attorneys for Defendant
State of Nevada ex rel. its
Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

In re DOT Litigation,

Case No. A-19-787004-B
Dept. No. XI

Consolidated with:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19787540-W
A-19-787726-C
A-19-801416-B

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Denying Motion to Amend and
Countermotion to Clarify Findings of Fact and Conclusions of Law was entered on the 27th
day of October, 2020, a copy of which is attached hereto as Exhibit "A".

DATED this 27th day of October, 2020.

AARON D. FORD
Attorney General

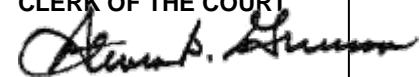
By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Attorneys for Defendant
State of Nevada ex rel. its
Department of Taxation

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

EXHIBIT A

EXHIBIT A



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Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE DOT

Case No. A-19-787004-B
Dept. No. XI

CONSOLIDATED WITH:

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

**ORDER DENYING MOTION TO AMEND AND COUNTERMOTION TO CLARIFY
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Two matters came before the Court in chambers on October 15, 2020: (1) TGIG Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law and Permanent Injunction in which Clark Natural Medicinal Solutions LLC, Nye Natural Medicinal Solutions LLC, Clark NMSD LLC, Inyo Fine Cannabis Dispensary LLC, Green Leaf Farms Holdings LLC, Green Therapeutics LLC, NevCann LLC, Red Earth LLC, Rural Remedies LLC, THC Nevada LLC, and Herbal Choice, Inc. joined ("Motion to Amend"); and (2) Wellness Connection of Nevada, LLC's Countermotion to Clarify and/or for Additional Findings ("Countermotion to Clarify").

...

1 **A. Synopsis of arguments made in support of and in opposition to the**
2 **Motion to Amend**

3 The TGIG plaintiffs asked the Court to amend the September 3, 2020 Findings of
4 Fact and Conclusions of Law and Permanent Injunction (“FFCL”) to clarify that the Court’s
5 permanent injunction—*i.e.*, the Court’s decision “enjoying the State from conducting a final
6 inspection of any of the conditional licenses issued on or about December 2018 for an
7 applicant who did not provide the identification of each prospective owner, officer and board
8 member as required by NRS 453D.200(6)” —applies to the settling and non-settling parties
9 alike. The TGIG plaintiffs further argued that the contemplated license transfers under
10 the Settlement Agreement are unlawful under NAC 453D.315(9) because, *inter alia*, the
11 establishments of the settling plaintiffs receiving conditional licenses may not “meet or
12 exceed” the criteria of the establishments of the settling intervenors whose applications
13 scored (much) higher. The TGIG plaintiffs argued that the Department of Taxation
14 (“Department”) had no “authority to disregard the law in furtherance of any proposed
15 partial settlement” and that the Court should neither dismiss the actions nor the settling
16 defendants.

17 The Department opposed the TGIG Plaintiffs’ motion. Rule 59(e) motions fail unless
18 the moving party demonstrates manifest errors of law or fact, newly discovered evidence
19 or previously unavailable evidence, manifest injustice or the controlling law has changed.
20 *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010).
21 The TGIG Plaintiffs seek to amend the permanent injunction order to bar Nevada Organic
22 Remedies, LLC (“NOR”), Greenmart of Nevada NLV, LLC (“Greenmart”), Lone Mountain
23 Partners, LLC (“Lone Mountain”), and Helping Hands Wellness Center, Inc. (“Helping
24 Hands”) from achieving final inspection on their conditional licenses. But Rule 59(e) cannot
25 be misused to regurgitate arguments rejected in the Court’s preliminary injunction and
26 permanent injunction orders. Similarly, the TGIG Plaintiffs assert the license transfers
27 pursuant to the partial settlement are invalid, but ignore that this Court already rejected
28 those arguments when denying THC Nevada, LLC’s motion for temporary restraining

1 order to block administrative approval of that partial settlement agreement. In sum, the
2 Court cannot grant relief against settling parties the TGIG Plaintiffs did not sue and as to
3 whom they provided no evidence. The Settling Plaintiffs, Circle S Farms, LLC (“Circle S”),
4 NOR, and Lone Mountain joined in the Department’s Opposition. Clear River joined in
5 Lone Mountain’s joinder.

6 Lone Mountain and Helping Hands filed separate oppositions but both argued that
7 there is no legal basis to enjoin them, because: (1) the Department already made a
8 determination that Lone Mountain and Helping Hands should be removed from Tier 3
9 status, to which the Court should and did defer; (2) the TGIG Plaintiffs offered no evidence
10 at trial concerning Lone Mountain’s ownership or that Helping Hands failed to disclose
11 owners, officers or board members to support an injunction; and (3) the TGIG Plaintiffs did
12 not meet any of the four grounds for granting a Rule 59(e) motion to amend. Circle S, NOR,
13 and Greenmart joined in their Oppositions.

14 Finally, the Essence Parties (“Essence”) filed a Limited Opposition, opposing any
15 request to amend or alter a finding invalidating the Department’s ranking of applications.
16 Essence agreed with the TGIG Plaintiffs, however, that the Court’s FFCL apply to and bind
17 all Plaintiffs, including the settling plaintiffs, because the FFCL were entered before any
18 party was dismissed and all Plaintiffs proceeded to trial on their claims. Circle S and
19 Greenmart joined in Essence’s Limited Opposition.

20 **B. Synopsis of arguments made in support of and in opposition to the**
21 **Countermotion to Clarify and for Additional Findings**

22 Wellness Connection of Nevada, LLC (“Wellness Connection”) in its Countermotion
23 to Clarify asked the Court to make clear which of the entities were affected by its injunction
24 because the Court held that, “[t]he DoT did not comply with BQ2 by requiring applicants
25 to provide information for each prospective owner, officer and board member or verify the
26 ownership of applicants applying for retail recreational marijuana licenses. Instead the
27 DoT issued conditional licenses to applicants who did not identify each prospective owner,
28 officer and board member.” Specifically, Wellness Connection asked the Court to identify

1 the applicants who did not identify each prospective owner, officer and board member
2 during the 2018 recreational marijuana application process. Wellness Connection argued
3 clarification or additional findings were necessary to uphold the impartial and numerically
4 scored bidding process, and because Wellness Connection is “numerically ranked as the
5 next most qualified applicant in certain jurisdictions” and would take the place of any
6 enjoined applicant.

7 Lone Mountain filed an opposition (which the Department joined), which argued: (1)
8 there is no basis to subject Lone Mountain to the permanent injunction and the Court
9 should defer to the Department (and now CCB) to determine how licensees are categorized
10 in connection with the Court’s preliminary and permanent injunction; (2) no evidence was
11 adduced at trial concerning Lone Mountain’s ownership, or any alleged failure to properly
12 disclose its owners, officers, and board members; (3) Wellness Connection did not provide
13 evidence at trial to support the specific findings it now seeks in its post-trial motion; and
14 (4) Wellness Connection lacks standing as an intervenor defendant to request specific
15 findings on claims it did not make. The Department, Greenmart, Essence, and NOR joined
16 in Lone Mountain’s Opposition. In their respective joinders, NOR and Greenmart added
17 that the Court had specifically “left it to the State to make an administrative
18 determination” as to whether applicants identified each owner, officer, and board member
19 as required by NRS 453D.200(6). NOR also argued that neither the Plaintiffs nor Wellness
20 Connection had provided the Court with evidence to make an independent determination
21 as to whether they had complied with NRS 463D.200(6).

22 In reply, Wellness Connection argued that it did provide evidence of its own
23 compliance with NRS 453D.200(6), that the Court had evidence to make a determination,
24 that none of the Opposing Parties challenged the Court’s Injunction, and that it had
25 standing as a party to seek clarification. Wellness Connection also argued that based on
26 the district court’s finding that the Department violated BQ2 and the permanent injunction
27 enjoining the Department from granting final approval to any applicant that improperly
28 . . .

received a conditional license, clarification or additional findings were necessary to make the permanent injunction meaningful.

C. The Court's findings and order

The Court, having considered the papers filed in support of and in opposition to the Motion to Amend and Countermotion to Clarify, denies both Motions. However, the Court clarifies its FFCL as follows: The order (and its analysis) applies to all Plaintiffs, whether they settled or not. The Court finds that there is no need to specifically identify the entities because the State is the enjoined party—not any of the applicants, whether they settled or not.

Wherefore, IT IS HEREBY ORDERED that the Motion to Amend and the Countermotion to Clarify are DENIED.

Dated this 26th day of October, 2020


DISTRICT COURT JUDGE

Submitted by:

AARON D. FORD
Attorney General

By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Akke Levin (Bar No. 9102)
Senior Deputy Attorney General
Kiel B. Ireland (Bar No. 15368C)
Deputy Attorney General
Attorneys for the State of Nevada

Traci A. Plotnick

Subject: FW: In re DOT-draft order on motion to amend and counter-motion to clarify
Attachments: 2020-10-26 Order re Motion to Amend and Counter-motion to Clarify.docx
Importance: High

From: Akke Levin

Sent: Monday, October 26, 2020 12:09 PM

To: 'Kirill V. Mikhaylov' <kvm@h2law.com>; 'Gentile, Dominic' <dgentile@ClarkHill.com>; 'Hunt, John A.' <jhunt@clarkhill.com>; 'Amy Sugden' <amy@sugdenlaw.com>; 'clarence@ramoslaw.com' (<clarence@ramoslaw.com>); <clarence@ramoslaw.com>; 'Todd Bice' <tlb@pisanellibice.com>; 'Jordan T. Smith' <JTS@pisanellibice.com>; 'Nathanael Rulis' <n.rulis@kempjones.com>; 'Pat Stoppard' <p.stoppard@kempjones.com>; 'Dennis Prince' <dprince@thedplg.com>; 'Bult, Adam K.' <ABult@BHFS.com>; 'Fetaz, Maximilien' <MFetaz@BHFS.com>; 'Teddy Parker' <TParker@pnalaw.net>; 'David R. Koch' <dkoch@kochscow.com>; 'Jared Kahn' <jkahn@jk-legalconsulting.com>; 'Eric Hone' <eric@h1lawgroup.com>; 'Alina' <Alina@nvlitigation.com>; 'Rusty Graf' <rgraf@blacklobello.law>; 'rgraf@blackwadhams.law' <rgraf@blackwadhams.law>; 'bhiggins@blackwadhams.law' <bhiggins@blackwadhams.law>; 'chattahlaw@gmail.com' <chattahlaw@gmail.com>; 'nick@nrdarelaw.com' <nick@nrdarelaw.com>; 'Joel Schwarz' <joel@h1lawgroup.com>; 'Jamie Zimmerman' <jamie@h1lawgroup.com>; 'afulton@jfnvlaw.com' <afulton@jfnvlaw.com>; 'Jennifer Braster' <jbraster@nblawnv.com>; 'Andrew Sharples' <asharples@nblawnv.com>; 'L. Christopher Rose' <lcr@h2law.com>
Cc: Steven G. Shevorski <sshevorski@ag.nv.gov>; 'Miller, Ross' <rmiller@ClarkHill.com>; 'Dzarnoski, Mark' <mdzarnoski@clarkhill.com>; 'sscow@kochscow.com' <sscow@kochscow.com>; 'Gail@ramoslaw.com' <Gail@ramoslaw.com>; Traci A. Plotnick <TPlotnick@ag.nv.gov>

Subject: RE: In re DOT-draft order on motion to amend and counter-motion to clarify

Importance: High

All:

I have not received any additional comments from anyone since circulating the revised order Friday. Unless we hear from you by **2 p.m.** today, we will assume all parties approve and submit the attached order to the Court.

Akke

From: Akke Levin

Sent: Friday, October 23, 2020 10:18 AM

To: 'Kirill V. Mikhaylov' <kvm@h2law.com>; 'Gentile, Dominic' <dgentile@ClarkHill.com>; 'Hunt, John A.' <jhunt@clarkhill.com>; 'Amy Sugden' <amy@sugdenlaw.com>; 'clarence@ramoslaw.com' (<clarence@ramoslaw.com>); <clarence@ramoslaw.com>; 'Todd Bice' <tlb@pisanellibice.com>; 'Jordan T. Smith' <JTS@pisanellibice.com>; 'Nathanael Rulis' <n.rulis@kempjones.com>; 'Pat Stoppard' <p.stoppard@kempjones.com>; 'Dennis Prince' <dprince@thedplg.com>; 'Bult, Adam K.' <ABult@BHFS.com>; 'Fetaz, Maximilien' <MFetaz@BHFS.com>; 'Teddy Parker' <TParker@pnalaw.net>; 'David R. Koch' <dkoch@kochscow.com>; 'Jared Kahn' <jkahn@jk-legalconsulting.com>; 'Eric Hone' <eric@h1lawgroup.com>; 'Alina' <Alina@nvlitigation.com>; 'Rusty Graf' <rgraf@blacklobello.law>; 'rgraf@blackwadhams.law' <rgraf@blackwadhams.law>; 'bhiggins@blackwadhams.law' <bhiggins@blackwadhams.law>; 'chattahlaw@gmail.com' <chattahlaw@gmail.com>; 'nick@nrdarelaw.com' <nick@nrdarelaw.com>; 'Joel Schwarz' <joel@h1lawgroup.com>; 'Jamie Zimmerman' <jamie@h1lawgroup.com>; 'afulton@jfnvlaw.com' <afulton@jfnvlaw.com>; 'Jennifer Braster' <jbraster@nblawnv.com>; 'Andrew Sharples' <asharples@nblawnv.com>; 'L. Christopher Rose' <lcr@h2law.com>
Cc: Steven G. Shevorski <sshevorski@ag.nv.gov>; 'Miller, Ross' <rmiller@ClarkHill.com>; 'Dzarnoski, Mark' <mdzarnoski@clarkhill.com>; 'sscow@kochscow.com' <sscow@kochscow.com>; 'Gail@ramoslaw.com' <Gail@ramoslaw.com>; Traci A. Plotnick

<TPlotnick@ag.nv.gov>

Subject: RE: In re DOT-draft order on motion to amend and counter-motion to clarify

Please see attached a revised draft order incorporating Wellness Connection's substantive changes and fixing a few typos (thanks Max). My only counter-suggestions are to omit repeating the full title of Wellness Connection's counter-motion, because we already identify and define it on page 1

From: Kirill V. Mikhaylov <kvm@h2law.com>

Sent: Thursday, October 22, 2020 1:16 PM

To: Akke Levin <ALevin@ag.nv.gov>; 'Gentile, Dominic' <dgentile@ClarkHill.com>; 'Hunt, John A.' <jhunt@clarkhill.com>; 'Amy Sugden' <amy@sugdenlaw.com>; 'clarence@ramoslaw.com' (clarence@ramoslaw.com) <clarence@ramoslaw.com>; Todd Bice <tlb@pisanellibice.com>; Jordan T. Smith <JTS@pisanellibice.com>; Nathanael Rulis <n.rulis@kempjones.com>; Pat Stoppard <p.stoppard@kempjones.com>; Dennis Prince <dprince@thedplg.com>; Bult, Adam K. <ABult@BHFS.com>; 'Fetaz, Maximilien' <MFetaz@BHFS.com>; 'Teddy Parker' <TParker@pnalaw.net>; David R. Koch <dkoch@kochscow.com>; Jared Kahn <jkahn@jk-legalconsulting.com>; Eric Hone <eric@h1lawgroup.com>; Alina <Alina@nvlitigation.com>; Rusty Graf <rgraf@blacklobello.law>; rgraf@blackwadhams.law; bhiggins@blackwadhams.law; chattahlaw@gmail.com; nick@nrdarelaw.com; Joel Schwarz <joel@h1lawgroup.com>; Jamie Zimmerman <jamie@h1lawgroup.com>; 'afulton@jfnvlaw.com' <afulton@jfnvlaw.com>; Jennifer Braster <jbraster@nblawnv.com>; Andrew Sharples <asharples@nblawnv.com>; L. Christopher Rose <lcr@h2law.com>

Cc: Steven G. Shevorski <SShevorski@ag.nv.gov>; Miller, Ross <rmiller@ClarkHill.com>; Dzarnoski, Mark <mdzarnoski@clarkhill.com>; sscow@kochscow.com; 'Gail@ramoslaw.com' <Gail@ramoslaw.com>; Traci A. Plotnick <TPlotnick@ag.nv.gov>

Subject: RE: In re DOT-draft order on motion to amend and counter-motion to clarify

Good Afternoon Akke,

Attached please find Wellness Connection's changes to the proposed Order. Please let us know if you have any comments or concerns.

Thank you.



Kirill V. Mikhaylov
Attorney

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

D: 702.667.4831 | F: 702.567.1568

kvm@h2law.com | Bio | vCard

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Sent: Wednesday, October 21, 2020 11:49 AM

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Jamie Zimmerman <jamie@h1lawgroup.com>; 'Chris Rose' <LCR@juwlaw.com>; Kirill V. Mikhaylov <kvm@h2law.com>;
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<TPlotnick@ag.nv.gov>

Subject: In re DOT-draft order on motion to amend and countermotion to clarify

CAUTION: EXTERNAL EMAIL

All:

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Thank you,

Akke Levin
Senior Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas NV 89101
Tel.: 702-486-8727

Traci A. Plotnick

From: Akke Levin
Sent: Monday, October 26, 2020 12:52 PM
To: Traci A. Plotnick
Subject: FW: In re DOT-draft order on motion to amend and countermotion to clarify

From: David Koch <dkoch@kochscow.com>
Sent: Thursday, October 22, 2020 8:17 AM
To: Akke Levin <ALevin@ag.nv.gov>
Subject: Re: In re DOT-draft order on motion to amend and countermotion to clarify

Looks great to me. Thanks, Akke.

David R. Koch

Koch & Scow LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Tel: (702) 318-5040
Fax: (702) 318-5039
[e-mail: dkoch@kochscow.com](mailto:dkoch@kochscow.com)

On Oct 21, 2020, at 11:49 AM, Akke Levin <alevin@ag.nv.gov> wrote:

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<2020-10-21 Order re Motion to Amend and Countermotion to Clarify.docx><Minute Order 10-15-20.pdf>

Traci A. Plotnick

From: Akke Levin
Sent: Monday, October 26, 2020 12:52 PM
To: Traci A. Plotnick
Subject: FW: In re DOT-draft order on motion to amend and counter motion to clarify

From: Amy Sugden <amy@sugdenlaw.com>
Sent: Friday, October 23, 2020 1:43 PM
To: Akke Levin <ALevin@ag.nv.gov>
Subject: Re: In re DOT-draft order on motion to amend and counter motion to clarify

Thanks Akke. I have no suggested changes.

Have a nice weekend.

Amy

From: Akke Levin <ALevin@ag.nv.gov>
Date: Friday, October 23, 2020 at 12:19 PM
To: "Kirill V. Mikhaylov" <kvm@h2law.com>, "Gentile, Dominic" <dgentile@ClarkHill.com>, "Hunt, John A." <jhunt@clarkhill.com>, Amy Sugden <amy@sugdenlaw.com>, "clarence@ramoslaw.com" (clarence@ramoslaw.com) <clarence@ramoslaw.com>, Todd Bice <tlb@pisanellibice.com>, "Jordan T. Smith" <JTS@pisanellibice.com>, Nathanael Rulis <n.rulis@kempjones.com>, Pat Stoppard <p.stoppard@kempjones.com>, Dennis Prince <dprince@thedplg.com>, "Bult, Adam K." <ABult@BHFS.com>, "Fetaz, Maximilien" <MFetaz@BHFS.com>, 'Teddy Parker' <TParker@pnalaw.net>, "David R. Koch" <dkoch@kochscow.com>, Jared Kahn <jkahn@jk-legalconsulting.com>, Eric Hone <eric@h1lawgroup.com>, Alina <Alina@nvlitigation.com>, Rusty Graf <rgraf@blacklobello.law>, "rgraf@blackwadhams.law" <rgraf@blackwadhams.law>, "bhiggins@blackwadhams.law" <bhiggins@blackwadhams.law>, "chattahlaw@gmail.com" <chattahlaw@gmail.com>, "nick@nrdarelaw.com" <nick@nrdarelaw.com>, Joel Schwarz <joel@h1lawgroup.com>, Jamie Zimmerman <jamie@h1lawgroup.com>, "afulton@jfnvlaw.com" <afulton@jfnvlaw.com>, Jennifer Braster <jbraster@nblawnv.com>, Andrew Sharples <asharples@nblawnv.com>, "L. Christopher Rose" <lcr@h2law.com>
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Subject: RE: In re DOT-draft order on motion to amend and counter motion to clarify

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Thank you.



Kirill V. Mikhaylov
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Tel.: 702-486-8727

Traci A. Plotnick

From: Akke Levin
Sent: Monday, October 26, 2020 12:53 PM
To: Traci A. Plotnick
Subject: FW: In re DOT-draft order on motion to amend and counter motion to clarify

From: Joel Schwarz <joel@h1lawgroup.com>
Sent: Wednesday, October 21, 2020 12:18 PM
To: Akke Levin <ALevin@ag.nv.gov>
Cc: Eric Hone <eric@h1lawgroup.com>; Jamie Zimmerman <jamie@h1lawgroup.com>; Karen Morrow <karenscoott2morrrows@gmail.com>
Subject: RE: In re DOT-draft order on motion to amend and counter motion to clarify

Thanks Akke, looks okay from our perspective.

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

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Traci A. Plotnick

From: Akke Levin
Sent: Monday, October 26, 2020 1:09 PM
To: Traci A. Plotnick
Subject: FW: In re DOT-draft order on motion to amend and countermotion to clarify

From: Alina <Alina@nvlitigation.com>
Sent: Monday, October 26, 2020 1:07 PM
To: Akke Levin <ALevin@ag.nv.gov>
Subject: RE: In re DOT-draft order on motion to amend and countermotion to clarify

Good afternoon Akke:

I don't have any issues regarding the last version of the proposed order you circulated. I hope all is well with you!

Alina

Alina M. Shell



ATTORNEYS AT LAW
701 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

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<TPlotnick@ag.nv.gov>

Subject: RE: In re DOT-draft order on motion to amend and counter-motion to clarify

Importance: High

All:

I have not received any additional comments from anyone since circulating the revised order Friday. Unless we hear from you by **2 p.m.** today, we will assume all parties approve and submit the attached order to the Court.

Akke

From: Akke Levin

Sent: Friday, October 23, 2020 10:18 AM

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From: Akke Levin <ALevin@ag.nv.gov>
Sent: Wednesday, October 21, 2020 11:49 AM
To: 'Gentile, Dominic' <dgentile@ClarkHill.com>; 'Hunt, John A.' <jhunt@clarkhill.com>; 'Amy Sugden' <amy@sugdenlaw.com>; 'clarence@ramoslaw.com' (<clarence@ramoslaw.com> <clarence@ramoslaw.com>); Todd Bice <tlb@pisanellibice.com>; Jordan T. Smith <JTS@pisanellibice.com>; Nathanael Rulis <n.rulis@kempjones.com>; Pat Stoppard <p.stoppard@kempjones.com>; Dennis Prince <dprince@thedplg.com>; Bult, Adam K. <ABult@BHFS.com>; 'Fetaz, Maximilien' <MFetaz@BHFS.com>; 'Teddy Parker' <TParker@pnalaw.net>; David R. Koch <dkoch@kochscow.com>; Jared Kahn <jkahn@jk-legalconsulting.com>; Eric Hone <eric@h1lawgroup.com>; Alina <Alina@nvlitigation.com>; Rusty Graf <rgraf@blacklobello.law>; rgraf@blackwadhams.law; bhiggins@blackwadhams.law; chattahlaw@gmail.com; nick@nrdarelaw.com; Joel Schwarz <joel@h1lawgroup.com>; Jamie Zimmerman <jamie@h1lawgroup.com>; 'Chris Rose' <LCR@juwlaw.com>; Kirill V. Mikhaylov <kvm@h2law.com>; 'afulton@jfnvlaw.com' <afulton@jfnvlaw.com>; Jennifer Braster <jbraster@nblawnv.com>; Andrew Sharples <asharples@nblawnv.com>
Cc: Steven G. Shevorski <sshevorski@ag.nv.gov>; Miller, Ross <rmiller@ClarkHill.com>; Dzarnoski, Mark <mdzarnoski@clarkhill.com>; sscow@kochscow.com; 'Gail@ramoslaw.com' <Gail@ramoslaw.com>; Traci A. Plotnick <TPlotnick@ag.nv.gov>
Subject: In re DOT-draft order on motion to amend and counter motion to clarify

CAUTION: EXTERNAL EMAIL

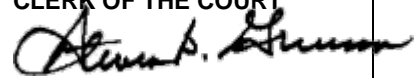
All:

Attached is the DOT's proposed order on the Motion to Amend and Counter motion to Clarify for your review and approval. It is due Monday under the Minute Order (also attached), so if possible, please return any comments to us by the close of business **Friday October 23**.

Thank you,

Akke Levin
Senior Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas NV 89101
Tel.: 702-486-8727

EXHIBIT G



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

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

Facsimile: 702.214.2101

Attorneys for 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 Granting Motion to Certify Trial Phases 1 and 2
2 as Final Under NRCP 54(b)" was entered in the above-captioned matter on August 4, 2022, a true
3 and correct copy of which is attached hereto.

4 DATED this 4th day of August, 2022.

5 PISANELLI BICE PLLC

6
7 By: /s/ Jordan T. Smith
8 James J. Pisanelli, Esq., Bar No. 4027
9 Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

10 *Attorneys for Defendants in Intervention,*
11 *Integral Associates LLC d/b/a Essence Cannabis*
12 *Dispensaries, Essence Tropicana, LLC, Essence*
13 *Henderson, LLC*
14
15
16
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 4th day of August, 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

OGM

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

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097

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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

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

This matter came before the Court on Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC's ("the Essence Entities") Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) and Request for an Order Shortening Time (the "Motion") on July 20, 2022.

Having considered the briefing, the relevant legal authorities, the oral arguments of counsel, and good cause appearing, THE COURT HEREBY FINDS as follows:

1. The Motion is substantively unopposed under EDCR 2.20(e).
2. The requirements of NRCP 54(b) have been substantively met to certify as final the Trial Phase 1 Findings of Fact and Conclusions of Law and Permanent Injunction, dated

September 16, 2020, and the Trial Phase 2 Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020.

3. There is no just reason for delaying entry of final judgment as to Phase 1 or Phase 2. NRCP 54(b).

ACCORDINGLY, THE COURT HEREBY ORDERS that the Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) is GRANTED.

IT IS SO ORDERED.

DATED this __ day of August, 2022.

Dated this 4th day of August, 2022


DISTRICT COURT JUDGE

Respectfully submitted by:

PISANELLI BICE PLLC

6BA 7AA F272 DCFF
Joanna S. Kushner
District Court Judge

By: /s/ Jordan T. Smith
James J. Pisanelli, Esq., #4027
Todd L. Bice, Esq., #4534
Jordan T. Smith, Esq., #12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

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

Approved as to Form and Content by:

HOWARD & HOWARD ATTORNEYS
PLLC

ROBERTSON, JOHNSON, MILLER &
WILLIAMSON

By: /s/ L. Christopher Rose
L. Christopher Rose, Esq., #7500
3800 Howard Hughes Pkwy,
Suite 1000
Las Vegas, Nevada 89169

By: /s/ Richard D. Williamson
Richard D. Williamson, Esq., #9932
50 West Liberty Street, Suite 600
Reno, Nevada 89501

*Attorneys for Wellness Connection of
Nevada LLC*

Attorneys for Deep Roots Medical, LLC

KING SCOW KOCH DURHAM LLC

OFFICE of the ATTORNEY GENERAL

By: /s/ David Koch
David Koch, Esq., #8830
11500 S. Eastern, Suite 210
Henderson, Nevada 89052

By: /s/ Steven G. Shevorski
Steven G. Shevorski, Esq., #8256
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

Attorneys for Nevada Organic Remedies, LLC

Attorneys for State of Nevada ex rel. its Dept. of Taxation and Cannabis Compliance Board

BLACK & WADHAMS

N.R. DONATH & ASSOCIATES PLLC

By: /s/ Rusty Graf
Rusty Graf, Esq., #6322
10777 W. Twain Ave., Suite 300
Las Vegas, Nevada 89135

By: /s/ Nicolas R. Donath
Nicolas R. Donath, Esq., #13106
871 Coronado Center Dr., Suite 200
Henderson, Nevada 89052

Attorneys for Clear River, LLC

Attorneys for Green Leaf Farms Holdings LLC, Green Therapeutics LLC, NevCann LLC, and Red Earth LLC

CLARK HILL, PLLC

By: /s/ Mark S. Dzarnoski
John A. Hunt, Esq., #1888
Dominic P. Gentile, Esq., #1923
Mark S. Dzarnoski, Esq., #3398
A. William Maupin, Esq., #1150
3800 Howard Hughes Pkwy, #500
Las Vegas, Nevada 89169

Attorneys for TGIG, LLC

From: [L. Christopher Rose](#)
To: [Jordan T. Smith](#)
Subject: Order Granting Motion to Certify
Date: Thursday, July 28, 2022 11:11:54 AM
Attachments: [hh_logo_0f1dbcb0-80ba-4943-b445-368a57555dd0.png](#)

CAUTION: This message is from an EXTERNAL SENDER.

Jordan

You may use my electronic signature for the order granting the motion to certify Phase 1 and 2 as final.

Here is the signature block:

Approved as to form:

/s/ L. Christopher Rose
L. CHRISTOPHER ROSE, ESQ.
Nevada Bar No. 7500
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
(702) 257-1483
Fax (702) 567-1568
lcr@h2law.com



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: [Rich Williamson](#)
To: [Joel Schwarz](#); [Jordan T. Smith](#); [Joseph Gutierrez](#); [Dennis Prince](#); [dkoch.kochscow.com](#); [Steven G. Shevorski](#); [Rusty Graf](#); [Akke Levin](#)
Cc: [Todd Bice](#); [Ashley R. Ellison](#); [Eric Hone](#); [Jamie Zimmerman](#); [Karen Morrow](#)
Subject: RE: In Re DOT
Date: Friday, July 29, 2022 12:47:10 PM

CAUTION: This message is from an EXTERNAL SENDER.

Jordan,

On a separate but related matter, you have my approval as to form and content of the proposed order to certify.

Thanks,

Rich

Richard D. Williamson, Esq.
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
Email: Rich@NVLawyers.com
Please visit our Website at: www.nvlawyers.com

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From: aeshenbaugh@kochscow.com
To: [Jordan T. Smith](#)
Cc: dkoch@kochscow.com
Subject: A-19-787004-B Order on Motion to Certify
Date: Friday, July 29, 2022 9:19:45 AM
Attachments: [2022.07.29 For proposed Order Granting Motion to Certify Trial Phases 1 and 2 as Final.docx](#)

CAUTION: This message is from an EXTERNAL SENDER.
Good Morning,

Attached is a signature block for Mr. Koch on behalf of Nevada Organic Remedies, LLC. Mr. Koch authorizes you to use his e-signature for the proposed *Order Granting Motion to Certify Trial Phases 1 and 2 as Final* in case no.: A-19-787004-B.

Respectfully,
[Andrea W. Eshenbaugh](#)

Legal Assistant
Koch & Scow LLC
11500 S. Eastern Ste. 210
Henderson, NV 89052
702-318-5040
aeshenbaugh@kochscow.com

From: [Steven G. Shevorski](#)
To: [Rich Williamson](#); [Joel Schwarz](#); [Jordan T. Smith](#); [Joseph Gutierrez](#); [Dennis Prince](#); [dkoch kochscow.com](#); [Rusty Graf](#); [Akke Levin](#)
Cc: [Todd Bice](#); [Ashley R. Ellison](#); [Eric Hone](#); [Jamie Zimmerman](#); [Karen Morrow](#)
Subject: Re: In Re DOT
Date: Friday, July 29, 2022 12:52:42 PM

CAUTION: This message is from an EXTERNAL SENDER.
Me too.

-Shevorski

From: Rich Williamson <rich@nvlawyers.com>
Sent: Friday, July 29, 2022 12:47 PM
To: Joel Schwarz <jschwarz@hone.law>; Jordan T. Smith <JTS@pisanellibice.com>; Joseph Gutierrez <jag@mgalaw.com>; Dennis Prince <dprince@thedplg.com>; dkoch kochscow.com <dkoch@kochscow.com>; Steven G. Shevorski <SShevorski@ag.nv.gov>; Rusty Graf <rgraf@blackwadhamms.law>; Akke Levin <ALevin@ag.nv.gov>
Cc: Todd Bice <tlb@pisanellibice.com>; Ashley R. Ellison <are@pisanellibice.com>; Eric Hone <ehone@hone.law>; Jamie Zimmerman <jzimmerman@hone.law>; Karen Morrow <kmorrow@hone.law>
Subject: RE: In Re DOT

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Jordan,

On a separate but related matter, you have my approval as to form and content of the proposed order to certify.

Thanks,

Rich

Richard D. Williamson, Esq.
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
Email: Rich@NVLawyers.com
Please visit our Website at: www.nvlawyers.com

IMPORTANT NOTICE:

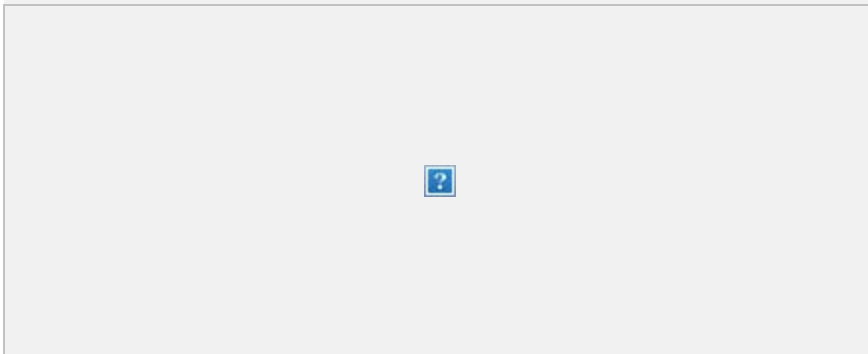
From: [Rusty Graf](#)
To: [Rich Williamson](#); [Joel Schwarz](#); [Jordan T. Smith](#); [Joseph Gutierrez](#); [Dennis Prince](#); [dkoch kochscow.com](#); [Steven G. Shevorski](#); [Akke Levin](#)
Cc: [Todd Bice](#); [Ashley R. Ellison](#); [Eric Hone](#); [Jamie Zimmerman](#); [Karen Morrow](#)
Subject: RE: In Re DOT
Date: Friday, July 29, 2022 1:52:57 PM
Attachments: [image001.png](#)

CAUTION: This message is from an EXTERNAL SENDER.
Same as to Clear River. You have our approval.

Thank you and Stay safe!

Rusty Graf, Esq.

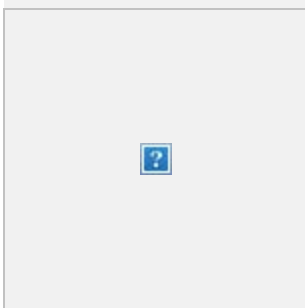
Partner



p: (702)869-8801
f: (702)869-2669
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Las Vegas, NV 89135

W: www.blackwadhams.law

E: rgraf@blackwadhams.law



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From: [Nicolas Donath](#)
To: [Jordan T. Smith](#)
Subject: In Re DOT - Order Granting Mot to Certify Phases 1 and 2
Date: Sunday, July 31, 2022 12:42:14 PM

CAUTION: This message is from an EXTERNAL SENDER.

Hello Jordan,

I am fine with the proposed order as is. You may affix my e-signature:

/s/ Nicolas R. Donath

Nicolas R. Donath Esq.

NVBN 13106

N.R. DONATH & ASSOCIATES PLLC

871 Coronado Center Dr., Ste. 200

Henderson, NV 89052

Attorneys for

Green Leaf Farms Holdings LLC, Green Therapeutics LLC,

NevCann LLC, and Red Earth LLC

Thanks,

Nick

Nicolas Donath, Esq.

Attorney at Law

N.R. Donath & Associates, PLLC



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From: [Dzarnoski, Mark](#)
To: [Jordan T. Smith](#)
Cc: [Bain, Tanya](#)
Subject: Proposed 54b Certification Order
Date: Tuesday, August 2, 2022 3:34:33 PM

CAUTION: This message is from an EXTERNAL SENDER.

I am OK with the Proposed Order for certification e-served upon me on 7/28/22. You have my authority to affix my e-signature to the Proposed Order.

CLARK HILL, PLLC

By /s/ Mark S. Dzarnoski, Esq.
John A. Hunt, Esq. (NSBN 1888)
Dominic P. Gentile, Esq. (NSBN 1923)
Mark S. Dzarnoski, Esq. (NSBN 3398)
A. William Maupin (NSBN 1150)
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Attorneys for TGIG Plaintiffs

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JORDAN T. SMITH
ATTORNEY AT LAW
JTS@PISANELLIBICE.COM

July 28, 2022

VIA E-SERVE

To All Parties:

**Re: *In Re: D.O.T. Litigation –*
 Eighth Judicial District Court Case No. A-19-787004-B**

Counsel:

Please see the attached proposed Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b). Please email any proposed edits to me (jts@pisanellibice.com) by noon next Tuesday, August 2, 2022. If you have no edits, please also email your approval to attach your e-signature and a copy of the signature block that you would like attached. The deadline to submit the order is next Wednesday, August 3, 2022.

Feel free to call me with any questions.

Thank you,

Jordan T. Smith

Jordan T. Smith

JTS/smd

Encl: As Stated

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 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: 8/4/2022

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25 Jonathan Crain

26 jcrain@christiansenlaw.com
27
28

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| 19 | Kenneth Ching | ken@argentumnv.com |
| 20 | Dan Reaser | dwheelen@fclaw.com |
| 21 | D. Neal Tomlinson | neal@hyperionlegal.com |
| 22 | Michael Becker | Michael@702defense.com |
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