

IN THE SUPREME COURT OF THE STATE OF NEVADA

In Re: D.O.T. Litigation,

WELLNESS CONNECTION OF
NEVADA, LLC,

Appellant,

vs.

CLARK NATURAL MEDICINAL
SOLUTIONS, LLC dba NUVEDA; NYE
NATURAL MEDICINAL SOLUTIONS,
LLC dba NUVEDA; CLARK NMSD, LLC
dba NUVEDA; INYO FINE CANNABIS
DISPENSARY LLC dba INYO FINE
CANNABIS DISPENSARY; DH
FLAMINGO INC.; SURTERRA
HOLDINGS INC.; TGIG, LLC; NEVADA
HOLISTIC MEDICINE, LLC; GBS
NEVADA PARTNERS, LLC; FIDELIS
HOLDINGS, LLC; GRAVITAS
NEVADA, LLC; NEVADA PURE, LLC;
MEDIFARM, LLC; MEDIFARM IV LLC;
RURAL REMEDIES LLC; THC
NEVADA LLC; HERBAL CHOICE INC.;
TRYKE COMPANIES SO NV, LLC;
NULEAF INCLINE DISPENSARY, LLC;
GREEN LEAF FARMS HOLDINGS LLC;
GREEN THERAPEUTICS LLC;
NEVCANN LLC; RED EARTH LLC;
LONE MOUNTAIN PARTNERS, LLC;
INTEGRAL ASSOCIATES, LLC dba
ESSENCE CANNABIS DISPENSARIES,
ESSENCE TROPICANA, LLC, ESSENCE
HENDERSON, LLC; THE STATE OF
NEVADA DEPARTMENT OF

Electronically Filed
Apr 01 2024 11:32 AM
Elizabeth A. Brown
Clerk of Supreme Court

**Supreme Court Case No.:
85314**

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

TAXATION; NEVADA ORGANIC
REMEDIES, LLC; and GREENMART OF
NEVADA NLV LLC,

Respondents.

APPELLANT’S APPENDIX – VOLUME 12 OF 14

HOWARD & HOWARD ATTORNEYS PLLC

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Attorneys for Appellant Wellness Connection of Nevada, LLC

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

Vol.	Date	Document	Pages
1	01/04/2019	Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	APP00001 – APP00017
1	01/04/2019	Complaint filed by 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. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00018 – APP00166
2	01/04/2019	Complaint filed by 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. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00167 – APP00332
3	2/8/2019	Amended Complaint filed by 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.	APP00333 – APP00492

		dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	
4	2/8/2019	Amended Complaint filed by 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. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00493 – APP00652
5	03/19/2019	Motion for Preliminary Injunction filed in case number A-19-786962-B by TGIG Plaintiffs	APP00653 – APP00762
5	07/11/2019	Corrected First Amended Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	APP00763 – APP00780
5	08/23/2019	Findings of Fact and Conclusions of Law Granting Preliminary Injunction filed in Preliminary Injunction filed in case number A-19-786962-B	APP00781 – APP00804
6	09/06/2019	First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari, Mandamus and Prohibition filed by D.H. Flamingo, Inc. dba The Apothecary Shoppe; Clark Natural Medicinal Solutions LLC dba NuVeda; Nye Natural Medicinal Solutions LLC dba NuVeda; Clark NMSD LLC dba	APP00805 – APP00910

		NuVeda; Inyo Fine Cannabis Dispensary LLC dba INYO Fine Cannabis Dispensary; Surterra Holdings, Inc.	
6	11/26/2019	Second Amended Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	APP00911 – APP00933
6	12/31/2019	Order Granting Plaintiffs Leave to File Amended Complaints	APP00934
6	01/28/2020	Defendant Rural Remedies, LLC's Complaint in Intervention, Petition for Judicial Review or Writ of Mandamus	APP00935 – APP00963
7	01/29/2020	Third Amended Complaint filed by 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. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC; MMOF Vegas Retail, Inc.	APP00964 – APP01059
7	02/14/2020	Wellness Connection of Nevada LLC's Answer to Serenity Plaintiffs' Second Amended Complaint	APP01060 – APP01068
7	03/13/2020	Trial Protocol Order	APP01069 – APP01085
7	03/26/2020	Defendant Rural Remedies, LLC's Amended Complaint in Intervention,	APP01086 – APP01122

		Petition for Judicial Review or Writ of Mandamus	
7	06/22/2020	Wellness Connection of Nevada, LLC's Answer to 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. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC; MMOF Vegas Retail, Inc. Third Amended Complaint	APP01123 – APP01136
7	07/01/2020	Wellness Connection of Nevada, LLC's Answer to Defendant Rural Remedies, LLC's Amended Complaint in Intervention, Petition for Judicial Review or Writ of Mandamus	APP01137 – APP01149
7	07/17/2020	Joint Trial Exhibit 84 - 2018 Retail Marijuana Store Application Scores and Rankings	APP01150 – APP01156
8	07/17/2020	Plaintiffs' Trial Exhibit 1005 – 07/06/2018 Recreational Marijuana Establishment License Application	APP01157 – APP01190
8	07/17/2020	Plaintiffs' Trial Exhibit 1302 - E-Mail dated 8/21/2019 from Nevada Department of Taxation to District Court, Department 11 re NRS 453D.200(6)	APP01191 – APP01193
8	09/03/2020	Findings of Fact, Conclusions of Law and Permanent Injunction – Phase 2	APP01194 – APP01223
8	09/16/2020	Findings of Fact, Conclusions of Law and Permanent Injunction – Phase 1	APP01224 – APP01235
8	09/22/2020	Notice of Entry of Judgment re September 3, 2020 Findings of Fact, Conclusions of Law and Permanent Injunction	APP01236 – APP01268

8	09/22/2020	Notice of Entry of Judgment re September 16, 2020 Findings of Fact, Conclusions of Law and Permanent Injunction	APP01269 – APP01283
9	09/25/2020	Memorandum of Costs of Wellness Connection of Nevada LLC	APP01284 – APP01347
9	10/13/2020	Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01348 – APP01361
10	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume I	APP01362 – APP01555
11	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume II	APP01556 – APP01585
11	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume III	APP01586 – APP01611
11	10/21/2020	Defendant / Plaintiff-In-Intervention Rural Remedies, LLC's Opposition to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01612 – APP01622
11	10/21/2020	Exhibits to Defendant / Plaintiff-In-Intervention Rural Remedies, LLC's Opposition to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01623 – APP01717
12	10/23/2020	Notice of Appeal filed by TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC; Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC and Medifarm IV, LLC	APP01718 – APP01767
12	10/23/2020	Case Appeal Statement filed by TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC; Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC and Medifarm IV, LLC	APP01768 – APP01780

12	10/27/2020	Opposition to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees filed by TGIG LLC, Nevada Holistic Medicine, LLC; GBS Nevada Partners; Fidelis Holdings, LLC; Gravitas Nevada; Nevada Pure, LLC; Medifarm LLC; Medifarm IV, LLC	APP01781 – APP01789
12	10/27/2020	Plaintiffs THC Nevada LLC and Herbal Choice, Inc.'s Joinder to TGIG's Opposition to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees and Costs	APP01790 – APP01791
12	10/28/2020	Plaintiff Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, Nevcan, LLC and Red Earth LLC's Joinder to Oppositions to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01792 – APP01794
12	11/04/2020	THC Nevada, LLC and Herbal Choice, Inc.'s Joint Notice of Appeal	APP01795 – APP01797
12	11/05/2020	Notice of Appeal filed by Red Earth LLC, Nevcan LLC, Green Therapeutics, LLC and Green Leaf Farm Holdings LLC	APP01798 – APP01800
12	11/13/2020	Omnibus Reply in Support of Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01801 – APP01821
12	11/20/2020	Minute Order re Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01822
12	08/27/2021	Order Denying Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01823 – APP01834
12	08/30/2021	Notice of Entry of Order Denying Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01835 – APP01849
12	08/30/2021	Order Granting Motions to Retax	APP01850 – APP01861

12	08/04/2022	Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b)	APP01862 – APP01879
12	08/04/2022	Notice of Entry of Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b)	APP01880 – APP01900
13	08/09/2022	Memorandum of Costs and Disbursements of Wellness Connection of Nevada, LLC	APP01901 – APP01964
13	09/02/2022	Wellness Connection of Nevada, LLC's Notice of Appeal	APP01965 – APP02024
13	02/04/2023	Order re: TGIG Plaintiffs' Motion to Retax and Settle Costs and Joinders	APP02025 – APP02042
13	02/07/2023	Notice of Entry of Order re: TGIG Plaintiffs' Motion to Retax and Settle Costs and Joinders	APP02043 – APP02064
14		Register of Actions for Eighth Judicial District Court case In Re: D.O.T. Litigation; Case number: A-19-787004-B	APP02065 – APP02213

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

Vol.	Date	Document	Pages
3	2/8/2019	Amended Complaint filed by 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. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00333 – APP00492
4	2/8/2019	Amended Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms	APP00493 – APP00652

		Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	
10	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume I	APP01362 – APP01555
11	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume II	APP01556 – APP01585
11	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume III	APP01586 – APP01611
12	10/23/2020	Case Appeal Statement filed by TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC; Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC and Medifarm IV, LLC	APP01768 – APP01780
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		Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	
1	01/04/2019	Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	APP00001 – APP00017
5	07/11/2019	Corrected First Amended Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	APP00763 – APP00780
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12	11/20/2020	Minute Order re Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01822
5	03/19/2019	Motion for Preliminary Injunction filed in case number A-19-786962-B by TGIG Plaintiffs	APP00653 – APP00762
12	11/05/2020	Notice of Appeal filed by Red Earth LLC, Nevcan LLC, Green Therapeutics, LLC and Green Leaf Farm Holdings LLC	APP01798 – APP01800

12	10/23/2020	Notice of Appeal filed by TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC; Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC and Medifarm IV, LLC	APP01718 – APP01767
8	09/22/2020	Notice of Entry of Judgment re September 3, 2020 Findings of Fact, Conclusions of Law and Permanent Injunction	APP01236 – APP01268
8	09/22/2020	Notice of Entry of Judgment re September 16, 2020 Findings of Fact, Conclusions of Law and Permanent Injunction	APP01269 – APP01283
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14		Register of Actions for Eighth Judicial District Court case In Re: D.O.T. Litigation; Case number: A-19-787004-B	APP02065 – APP02213
6	11/26/2019	Second Amended Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies	APP00911 – APP00933

		Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	
12	11/04/2020	THC Nevada, LLC and Herbal Choice, Inc.'s Joint Notice of Appeal	APP01795 – APP01797
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7	02/14/2020	Wellness Connection of Nevada LLC's Answer to Serenity Plaintiffs' Second Amended Complaint	APP01060 – APP01068
9	10/13/2020	Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01348 – APP01361
13	09/02/2022	Wellness Connection of Nevada, LLC's Notice of Appeal	APP01965 – APP02024

Dated this 1st day of April, 2024.

HOWARD & HOWARD ATTORNEYS PLLC

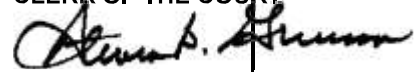
By: /s/ L. Christopher Rose
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Connor J. Bodin, Esq., Nevada Bar No. 16205
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Attorneys for Appellant Wellness Connection of Nevada, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April 2024, I caused a true and correct copy of the **APPELLANT'S APPENDIX, VOLUME 12 OF 14** to be electronically filed and served with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system.

/s/ Kelly McGee

An employee of Howard & Howard Attorneys PLLC



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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

NOTICE OF APPEAL

PLEASE TAKE NOTICE that TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC, Plaintiffs in Case A-19-786962-B ("Plaintiffs"), by and through counsel, of the law firm of CLARK HILL, PLLC, hereby appeal from the following Findings of Fact and Conclusions of Law and Notice of Entry of Judgments, attached hereto, to the Supreme Court of Nevada.

1. "Findings of Fact and Conclusions of Law", entered on September 3, 2020, notice of entry of which was served electronically on September 22, 2020;

- 1 2. "Findings of Fact and Conclusions of Law", entered on September 16, 2020, notice of
2 entry of which was served electronically on September 22, 2020; and
3
4 3. All ruling and interlocutory orders made appealable by any of the foregoing.

5 Dated this 23rd day of October, 2020.

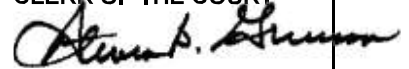
6 **CLARK HILL, PLLC**

7 By /s/ Mark S. Dzarnoski, Esq.
8 Dominic P. Gentile, Esq. (NSBN 1923)
9 Ross Miller, Esq. (NSBN 8190)
10 John A. Hunt, Esq. (NSBN 1888)
11 Mark S. Dzarnoski, Esq. (NSBN 3398)
12 3800 Howard Hughes Pkwy., #500
13 Las Vegas, Nevada 89169
14 Attorneys for Plaintiffs
15
16
17
18

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the 23rd day of October, 2020, I served a true and correct copy of
21 the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic
22 Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic
23 service list.
24

25 /s/ Tanya Bain
26 An Employee of Clark Hill
27
28



AARON D. FORD
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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



1 **FFCL**

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

6
7
8 In Re: D.O.T. Litigation
9

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

12 **Dept. No.** XI

13 **FINDINGS OF FACT, CONCLUSION OF LAW AND PERMANENT INJUNCTION**

14
15 This matter having come before the Court for a non-jury trial on Phase 2 pursuant to the Trial
16 Protocol¹ beginning on July 17, 2020², and occurring day to day thereafter until its completion on
17 August 18, 2020. The following counsel and party representatives participated in this Phase of the
18 Trial:³

19 *The Plaintiffs*

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

22 ¹ Phase 2 as outlined in the Trial protocol includes:

23 Legality of the 2018 recreational marijuana application process (claims for Equal Protection, Due Process,
24 Declaratory Relief, Intentional Interference with Prospective Economic Advantage, Intentional Interference with
Contractual Relations, and Permanent Injunction).

25 ² Prior to the commencement of trial the Court commenced an evidentiary hearing relief to Nevada Wellness motion
26 for case terminating sanctions filed 6/26/2020. The decision in 136 NAO 42 raised issues which caused the Court to
27 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.

28 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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27 ⁴ Although Rural Remedies, LLC claims were severed for this phase, Clarence E. Gamble, Esq., of the law firm
28 Ramos Law participated on its behalf by phone.

The State

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

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

The Industry Defendants

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

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

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

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

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

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

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

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

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

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

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

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

17 Having read and considered the pleadings filed by the parties, having reviewed the evidence
18 admitted during this phase of the trial⁶, and having heard and carefully considered the testimony of the
19 witnesses called to testify, having considered the oral and written arguments of counsel, and with the
20 intent of deciding the remaining issues⁷ related to Legality of the 2018 recreational marijuana
21 application process only⁸, the Court makes the following findings of fact and conclusions of law:
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24

25 _____
26 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.

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

PROCEDURAL POSTURE

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

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

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

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

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

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

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

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

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

4 PRELIMINARY STATEMENT

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

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

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

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

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

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

21 . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter.
22 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations
23 that make their operation unreasonably impracticable. The regulations shall include:

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

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

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

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

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

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

(g) Requirements for record keeping by marijuana establishments;

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

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

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

5 FINDINGS OF FACT

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

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

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

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

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

21 Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to
22 purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated
23 marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana
24 paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 NRS 453D.020(3).

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

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

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

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

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

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

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

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

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

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

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

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

1 16. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.¹⁴
4

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

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

8 ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ¹⁸ The cover letter reads in part:

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

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

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

28 No citations for illegal activity or criminal conduct; and

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

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

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

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

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

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

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

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

16 30. Some applicants abided by this procedure.

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

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

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

22 List of things for us to talk about when you can call me:
23 Attachment E
24 Attachment I
25 Requirement for a location or physical address
26 Attachment F
Requirement for initial licensing fee

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

1 Transfers of ownership

2
3 Exhibit 1588-052.

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

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

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

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

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

25
26
27 ²⁰ Exhibit 1809-054.

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

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

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

6 41. The identified criteria consisted of organizational structure of the applicant (60 points);
7 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
8 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
9 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.
10

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

21 43. An applicant was permitted to submit a single application for all jurisdictions in which it
22 was applying, and the application would be scored at the same time.
23
24
25
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27 ²² About two weeks into the grading process the Independent Contractors were advised by certain DoT employees
28 that if an identifier was included in the nonidentified section points should be deducted. It is unclear from the testimony
whether adjustments were made to the scores of those applications graded prior to this change in procedure being
established.

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

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

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

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

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

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

19 ²⁴ The email thread reads:

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

21 Jorge –

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

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

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

On Aug 22 at 8:24 pm Amanda Connor wrote

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

On Aug 22 at 8:27 pm Pupo wrote:

Nope. LOCATION IS NOT SCORED DAMN IT!

Exhibit 2064.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25
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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.

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

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

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

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

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

24
25
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:

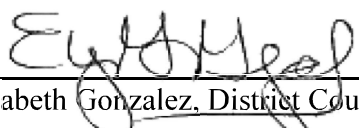
With respect to the decision by the DoT to arbitrarily and capriciously replace the mandatory requirement of BQ2, for the background check of each prospective owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1), the DoT created an unfair process. No monetary damages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

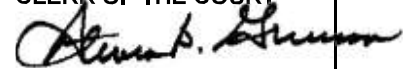
DATED this 3rd day of September 2020.


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



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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

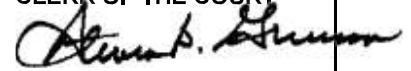
By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel

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

EXHIBIT A

EXHIBIT A



1 **FFCL**

3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

7 In Re: D.O.T. Litigation

6 **Case No.** A-19-787004-B
Consolidated with:
A-18-785818-W
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A-19-801416-B

11 **Dept. No.** XI

12 **FINDINGS OF FACT, CONCLUSION OF LAW AND PERMANENT INJUNCTION**

13
14 This matter having come before the Court for a non-jury trial on Phase 1 pursuant to the Trial
15 Protocol¹ on September 8, 2020². The following counsel and party representatives participated in this
16 Phase of the Trial:³

17 *The Plaintiffs*

18 Mark S. Dzarnoski, Esq. of the law firm Clark Hill, appeared on behalf of TGIG, LLC; Nevada
19 Holistic Medicine, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC;
20 Nevada Pure, LLC; Medifarm, LLC; and Medifarm IV, LLC; (Case No. A786962-B) (the “TGIG
21 Plaintiffs”);
22

23
24 ¹ Phase 1 of the Trial as outlined in the Trial Protocol includes all claims related to the petitions for judicial review
25 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.

26 ² Prior to the commencement of Phase 1 of Trial, the Court completed the Trial of Phase 2 and issued a written
27 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.

28 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
24
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
each individual Plaintiff. These redacted applications do not provide the Court with information needed to make a decision
related to the “completeness” issue as argued during Phase 1. During Phase 2 of the Trial an unredacted application by THC
was admitted.

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

28 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
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.

27 ¹⁰ As the provisions of BQ2 and the sections of NRS 453D in effect at the time of the application process (with the
28 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

14 11. The DoT sent a copy of the revised application through the Listserv used by the DoT.
15 Not all Plaintiffs' correct emails were included on this list.
16

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

20 13. The identified criteria consisted of organizational structure of the applicant (60 points);
21 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
22 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
23 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.
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
27 Phase 2 decision, the Court declines to take any action on the petition for judicial review with respect to this issue.

28 ¹⁴ As the Plaintiffs (with the exception of THC) have not provided their unredacted applications, the Court cannot
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
12 NRS 678B.200.

13 25. The CCB was formed by the legislature and is now the government entity that oversees
14 and regulates the cannabis industry in the State of Nevada. By statute, the CCB now determines if the
15 “person is qualified to receive a license...” NRS 678B.200(1).
16

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

21 27. To the extent that judicial review would be available in this matter, no additional relief is
22 appropriate beyond that contained in the decision entered on September 3, 2020.¹⁶
23

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

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

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.

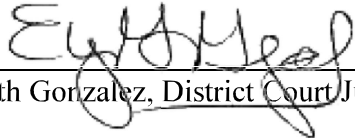
3 **ORDER**

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

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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Pursuant to NRAP 3(f), Plaintiffs TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC, Plaintiffs in Case A-19-786962-B (“Plaintiffs”), by and through counsel, of the law firm CLARK HILL, PLLC, hereby submit this Case Appeal Statement.

1. Name of appellants filing this case appeal statement:

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

2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable Elizabeth Gonzalez

1 3. Identify each appellant and the name and address of counsel for each appellant:

2 TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis
3 Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and
4 Medifarm IV, LLC

5 Mark Dzarnoski, Esq.
6 Dominic P. Gentile, Esq.
7 Ross Miller, Esq.
8 John A. Hunt, Esq.
9 CLARK HILL, PLLC
3800 Howard Hughes Pkwy., Ste. 500
Las Vegas, NV 89169

10 4. Identify each respondent and the name and address of appellate counsel, if known, for
11 each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much
12 and provide the name and address of that respondent's trial counsel):

13 STATE OF NEVADA, DEPARTMENT OF TAXATION ("DOT")

14 Aaron D. Ford
15 Attorney General
16 Steven Shevorski
17 Chief Litigation Counsel
18 Akke Levin
19 Senior Deputy Attorney General
Office of the Attorney General
555 E. Washington, Ste. 3900
Las Vegas, Nevada 89101

20 CANNABIS COMPLIANCE BOARD
21 Counsel Unknown (Not represented at trial)

22 5. Other Affected Parties, and the name and address of appellate counsel, if known, for
23 each:
24

25 Clear River, LLC.
26 Counsel for above party:
27 Brigid M. Higgins, Esq.
28 Rusty J. Graff, Esq
Bref Black & Lobello
10777 W. Twain Ave., 3rd Floor
Las Vegas, NV 89135

1 GreenMart of Nevada NLV, LLC.

2 Counsel for above party:

3 Margaret A. McLetchie, Esq.

4 Alina M. Shell, Esq.

5 McLetchie Law

6 701 E. Bridger Ave., Suite 520

7 Las Vegas, NV 89101

8 Helping Hands Wellness Center, Inc.

9 Counsel for above party:

10 Jared Kahn, Esq.

11 JK Legal & Consulting, LLC

12 9205 W. Russell Rd., Suite 240

13 Las Vegas, NV 89148

14 Lone Mountain Partners, LLC.

15 Counsel for above party:

16 Eric D. Hone, Esq.

17 Jamie L. Zimmerman, Esq.

18 Moorea L. Katz, Esq.

19 H1 Law Group

20 701 N. Green Valley Pkwy., Suite 200

21 Henderson, NV 89074

22 Integral Associates, LLC d/b/a Essence Cannabis Dispensaries;

23 Essence Tropicana, LLC; Essence Henderson, LLC.

24 Counsel for above party:

25 James J. Pisanelli, Esq.

26 Todd L. Bice, Esq.

27 Jordan T. Smith, Esq.

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Henry J. Hymanson, Esq.

Hymanson & Hymanson

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Las Vegas, NV 89148

1 CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace.

2 Counsel for above party:

3 Dennis M. Prince, Esq.

4 Kevin T. Strong, Esq.

5 Prince Law Group

6 8816 Spanish Ridge Ave.

7 Las Vegas, NV 89148

8 Joseph Gutierrez, Esq.

9 Jason R. Maier, Esq.

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15 Las Vegas, NV 89118

16 Eureka Newgen Farms, LLC
17 109 Cortez Circle
18 Carlin, NV 89822

19 Green Therapeutics, LLC
20 848 N. Rainbow Blvd. Ste 12
21 Las Vegas, NV 89107

22 6. Indicate whether any attorney identified above in response to question 3 or 4 is not
23 licensed to practice law in Nevada and, if so, whether the district court granted that attorney
24 permission to appear under SCR 42 (attach a copy of any district court order granting such
25 permission):

26 All attorneys identified above are licensed to practice law in Nevada.

27 7. Indicate whether appellant was represented by appointed or retained counsel in the
28 district court:

Appellates were represented by retained counsel.

8. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained Counsel.

1
2 9. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
3 of entry of the district court order granting such leave:

4 No.

5 10. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
6 indictment, information, or petition was filed):
7

8 This is a consolidated action involving the following matters:

9 a) The Plaintiffs in *MM Development Company, Inc. et. al. v. State of Nevada,*
10 *Department of Taxation*, Case No. A-18-785818-W filed their Complaint on December 10, 2018;

11 b) The Plaintiffs in *Serenity Wellness center, LLC et. al. v. State of Nevada, Department*
12 *of Taxation*, Case No. A-19-786962-B filed their Complaint on January 4, 2019;

13 c) The Plaintiffs in *ETW Management Group, LLC et. al. v. State of Nevada, Department*
14 *of Taxation*, Case No. A-19-787004-B filed their Complaint on January 4, 2019;

15 d) The Plaintiff in *Nevada Wellness Center v. State of Nevada, Department of Taxation,*
16 Case No. A-19-787540-W filed its Complaint on January 15, 2019;

17 e) The Plaintiff in *Compassionate Team of Las Vegas LLC, vs. Nevada Department of*
18 *Taxation*, Case No. A-18-786357-W filed its Complaint on December 19, 2018;

19 f) The Plaintiff *DH Flamingo Inc, vs. State Ex Rel Department of Taxation*, Case No. A-
20 19-787035-C filed its Complaint on January 4, 2019;

21 g) The Plaintiff in *High Sierra Holistics LLC, vs. State of Nevada Department of*
22 *Taxation*, Case No. A-19-787726-C filed its Complaint on January 16, 2019;

23 h) The Plaintiff in *Qualcan, LLC, vs. State of Nevada, Department of Taxation*, Case No.
24 A-19-801416-B filed on September 05, 2019.

25 11. Provide a brief description of the nature of the action and result in the district court,
26 including the type of judgment or order being appealed and the relief granted by the district
27 court:

28 As the government agency charged with the implementation of the Nevada recreational
marijuana program pursuant to NRS 453D.200, DOT accepted and graded applications for

1 licenses to operate recreational retail marijuana dispensaries across the state of Nevada from
2 approximately 463 applicants between September and December 2018 (the “September 2018
3 Application Period”). Because the DOT received more applications than there were licenses
4 available in the various jurisdictions, the award of licenses was subject to “an impartial and
5 numerically scored competitive bidding process to determine which application or applications
6 among those competing will be approved.” See NRS 453D.210(6). Pursuant to the process
7 developed and implemented by the DOT, on December 5, 2018, the DOT announced the results
8 and awarded approximately 64 conditional licenses to successful applicants.
9
10

11 After the DOT announced the license winners, several of the non-winning applicants,
12 including Appellants herein, brought multiple suits against the DOT asserting that the process the
13 DOT used to award licenses violated various provisions of NRS Chapter 453D, violated the
14 losing applicants constitutional rights under both the Federal and Nevada Constitutions, or was
15 otherwise arbitrary and capricious for a multitude of reasons. The various plaintiffs sought to
16 either set aside the application process in total or to obtain licenses under a number of different
17 legal theories.
18

19 Appellants herein filed their initial Complaint on or about January 4, 2019 naming the
20 DOT as the sole party defendant. Several winning applicants, believing that their interests were
21 subject to the outcome of the litigation, sought to and were granted the right to intervene on the
22 defendant DOT side. Following evidentiary hearings on Appellants’ Motion for Preliminary
23 Injunction and various pre-trial motion proceedings, Appellants ultimately filed their operative
24 Second Amended Complaint on or about November 26, 2019 naming the DOT and the
25 intervening successful applicants as party defendants.
26
27
28

1 On May 13, 2019, the District Court coordinated a number of the cases brought by non-
2 winning applicants in Department 11 of the Eighth Judicial District Court in order to determine
3 whether a preliminary injunction should issue against the DOT. After conducting a nearly four
4 month evidentiary hearing on the matter, the District Court granted the preliminary injunction
5 based on the failure of the DOT to conduct background checks of the applicants as required
6 under the ballot initiative. As part of its impartial and numerically scored competitive bidding
7 process, the DOT believed it was not required, pursuant to NAC 453D.255(1), to conduct
8 background checks on owners with less than a five percent beneficial ownership interest in an
9 applicant, the so-called “5% Rule.” The District Court found that the 5% rule set forth in NAC
10 453D.255(1) was an unreasonable limitation of NRS 453D.200(6) and the initiating Ballot
11 Initiative, and, therefore, preliminarily enjoined the DOT from conducting final inspections of
12 the license winners that the DOT determined had not listed owners with a less than 5% interest in
13 their applications.
14

15
16
17 Because of the complexity of the cases and the diversity of the type of claims advanced
18 by the various plaintiffs, the District Court adopted a Trial Protocol separating the trial into three
19 (3) phases. PHASE 1 encompassed all of plaintiffs’ claims for judicial review. Appellants
20 herein made such a claim in its Second Amended Complaint and participated fully in PHASE 1.¹
21 The District Court issued its “Findings of Fact and Conclusions of Law” for PHASE 1 on
22 September 9, 2020. Notice of Entry of Order was served electronically on September 22, 2020.
23

24 PHASE 2 encompassed claims regarding the “(l)egality of the 2018 recreational
25 marijuana application process (claims for Equal Protection, Due Process, Declaratory Relief,
26

27 ¹ Because of issues related to Covid-19 and to accommodate briefing schedules, the trial of PHASE 2
28 actually occurred first. Trial of PHASE 1 followed completion of the trial on PHASE 2.

1 Intentional Interference with Prospective Economic Advantage, Intentional Interference with
2 Contractual Relations and Permanent Injunction.” Again, Appellants made such claims and fully
3 participated in PHASE 2 of the trial. The District Court issued its “Findings of Fact and
4 Conclusions of Law” for PHASE 2 on September 3, 2020. Notice of Entry of Order was served
5 electronically on September 22, 2020.
6

7 PHASE 3 encompassed a more narrowly limited claim for “Writ of Mandamus (Improper
8 scoring of applications related to calculation errors on the 2018 recreational marijuana
9 application.” The Trial Protocol further referenced the mandamus claims of plaintiffs in the
10 consolidated cases other than Appellants (to wit: MM Development and LiveFree) “and any
11 other Plaintiffs with mandamus claims will present their affirmative claims **related to their writ**
12 **of mandamus claim based on their allegation of improper scoring of their applications due**
13 **to calculation errors.”** (emphasis added). While Appellants made claims for mandamus in their
14 Second Amended Complaint, they did not include claims based upon allegations of “improper
15 scoring of their applications due to calculation errors.” Rather, Appellants’ mandamus claim
16 generally related to the arbitrary process utilized by the DOT and more particularly with the
17 failure of the DOT to determine “completeness” of the applications submitted to the DOT by the
18 successful applicants. As to this mandamus claim, Appellants believe that the District Court
19 denied that claim in its September 3, 2020 Findings of Fact and Conclusions of Law relating to
20 PHASE 2 of the trial. At the very end of the September 3, 2020 the District Court states as
21 follows: “The Court declines to issue an extraordinary writ unless a violation of the permanent
22 injunction occurs.” See September 3, 2020 Findings of Fact and Conclusions of Law at pg. 29,
23 lines 20-21. Based upon the above and foregoing, Appellants do not believe they are a party to
24 PHASE 3 of the trial as their mandamus claim was denied in PHASE 2.
25
26
27
28

1 Following the completion of PHASE 2 of the trial, the District Court issued a permanent
2 injunction against the DOT enjoining it from conducting a final inspection of any of the
3 conditional licenses issued in the September 2018 Application Period for any applicant who did
4 not provide the identification of each prospective owner, officer or board member as required by
5 NRS 453D.200(6). Appellants herein assert that the scope of the permanent injunction should
6 have been far broader to prevent final inspection and final issuance of licenses for any successful
7 applicant and that a “redo” of the licensing process should be ordered. At a minimum,
8 Appellants assert that the permanent injunction should have encompassed those successful
9 applicants who failed to submit a truthful and complete application to the DOT during the
10 September 2018 Application Period.
11
12

13 As to PHASE 1 of the trial, the District Court denied any relief to Appellants. At a
14 minimum, the District Court should have remanded the matter back to the DOT to further
15 develop an administrative record demonstrating that it considered the completeness of
16 applications submitted during the September 2018 Application Period before submitting the
17 applications to its supposedly impartial and numerically scored competitive bidding process.
18 The District Court further should have permitted Appellants to supplement the certified
19 administrative record with evidence that fully 70% of the applications were fatally incomplete
20 for failure to include required information and/or contained disclosures that were false and
21 fraudulent statutorily mandating the denial of such applications.
22
23

24 Appellants herein filed their Notice of Appeal on October 23, 2020 to preserve their right
25 to appeal in the event their 30 days to file appeal started running on or about September 22, 2020
26 with service of a Notices of Entry of Order of the Findings of Fact and Conclusions of Law for
27 PHASE 1 and PHASE 2. However, on September 10, 2020, Appellants filed a Motion to Amend
28

the September 3, 2020 Findings of Fact, Conclusions of Law and Permanent Injunction relating to PHASE 2. By Minute Order dated October 15, 2020, the District Court denied the Motion to Amend but clarified the Findings of Fact and Conclusions of Law. The District Court requested the DOT to prepare a written Order encompassing the contents of the Minute Order. Such a written Order has not yet been filed and no Notice of Entry of such Order has been served.

12. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

Yes.

GREENMART OF NEVADA NLV LLC, A
NEVADA LIMITED LIABILITY
COMPANY; NEVADA ORGANIC
REMEDIES, LLC,

Appellants,

vs.

ETW MANAGEMENT GROUP LLC, A
NEVADA LIMITED LIABILITY
COMPANY; GLOBAL HARMONY LLC, A
NEVADA LIMITED LIABILITY
COMPANY; GREEN LEAF FARMS
HOLDINGS LLC, A NEVADA LIMITED
LIABILITY COMPANY; HERBAL CHOICE
INC., A NEVADA LIMITED LIABILITY
COMPANY; JUST QUALITY, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; LIBRA WELLNESS CENTER,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; MOTHER HERB, INC., A
NEVADA LIMITED LIABILITY
COMPANY; GBS NEVADA PARTNERS,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; NEVCANN LLC, A NEVADA

SUPREME COURT CASE NO. 79669

CASE NO.: A-19-787004-B
DEPT NO.: XI

LIMITED LIABILITY COMPANY; RED EARTH LLC, A NEVADA LIMITED LIABILITY COMPANY; THC NEVADA LLC, A NEVADA LIMITED LIABILITY COMPANY; ZION GARDENS LLC, A NEVADA LIMITED LIABILITY COMPANY; and STATE OF NEVADA, DEPARTMENT OF TAXATION,²

Respondents.

ETW MANAGEMENT GROUP LLC, a Nevada limited liability company; GLOBAL HARMONY LLC, a Nevada limited liability company; GREEN LEAF FARMS HOLDINGS LLC, a Nevada limited liability company; GREEN THERAPEUTICS LLC, a Nevada limited liability company; HERBAL CHOICE INC., a Nevada corporation; JUST QUALITY, LLC, a Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a Nevada limited liability company; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, a Nevada corporation; NEVCANN LLC, a Nevada limited liability company; RED EARTH LLC, a Nevada limited liability company; THC NEVADA LLC, a Nevada limited liability company; ZION GARDENS LLC, a Nevada limited liability company; and MMOF VEGAS RETAIL, INC., a Nevada corporation,

Respondent/Cross-Appellants,

² Appellants' caption failed to include GREEN THERAPEUTICS LLC, ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, and MMOF VEGAS RETAIL, INC. and incorrectly named MOTHER HERB, INC. and GBS NEVADA PARTNERS.

1 v.

2 STATE OF NEVADA, DEPARTMENT
3 OF TAXATION, a Nevada
4 administrative agency.

5 *Respondent.*

6
7 13. Indicate whether this appeal involves child custody or visitation:

8 No.

9 14. If this is a civil case, indicate whether this appeal involves the possibility of
10 settlement:

11 Yes there is a possibility of a settlement.

12 Dated this 23rd day of October, 2020.

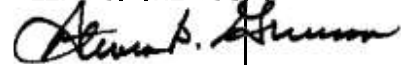
13
14 **CLARK HILL, PLLC**

15
16 By /s/ Mark S. Dzarnoski, Esq.
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23 Attorneys for Plaintiffs

24 **CERTIFICATE OF SERVICE**

25 I hereby certify that on the 23rd day of October, 2020, I served a true and correct copy of
26 the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic
27 Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic
28 service list.

/s/ Tanya Bain
An Employee of Clark Hill



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Nevada Pure, LLC, Medifarm, LLC, and
Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

**OPPOSITION TO
*WELLNESS CONNECTION OF NEVADA, LLC'S MOTION FOR ATTORNEYS' FEES***

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B ("TGIG Plaintiffs"), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Opposition to *Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees* filed November 13, 2020 ("Motion"). This Opposition is made and based upon the following points and authorities, the papers and pleadings on file herein, any attached

1 exhibit, and any oral argument the court may allow.

2 **POINTS & AUTHORITIES**

3 **I.** 4 **INTRODUCTION**

5 Wellness Connection of Nevada, LLC's ("Wellness" or "WCN"), Motion seeks an award
6 of \$426,393.20 in attorneys' fees against Plaintiffs. As more fully referenced below, the Motion
7 should be denied.

8 **II.** 9 **DISCUSSION**

10 **1. As a whole, TGIG Plaintiffs' claims were brought with reasonable grounds.**

11 WGN's Motion for an award of attorneys' fees is based upon NRS 18.010(2)(b). See
12 Motion, 2:22, 7:21, and pgs. 7-9. In Bergmann v. Boyce, 109 Nev. 670, 675, 856 P.2d 560, 563
13 (1993) the Court stated that "[i]n assessing a motion for attorney's fees under NRS 18.010(2)(b),
14 the trial court must determine whether the plaintiff had reasonable grounds for its claims." See
15 also 109 Nev. at 676, 856 P.2d at 564 (analysis required under NRS 18.010(2)(b): the trial court
16 must examine the actual circumstances surrounding the case to determine whether the suspect
17 claims were brought without reasonable grounds).

18 Simply put, TGIG Plaintiffs' claims were brought with reasonable grounds. Evidence of
19 this fact is replete in the court's file. For instance, this Court on August 23, 2019, issued a
20 preliminary injunction with the filing of its *Findings of Fact and Conclusions of Law Granting*
21 *Preliminary Injunction* ("Preliminary Injunction Order"). It runs for twenty-four (24) pages and
22 includes at least ninety-one (91) numbered paragraphs of findings of fact and conclusions of law.
23

24 Id. On the issue of success upon the merits and balance of equities, this Court found, in part:

25
26 86. As Plaintiffs have shown that the DoT clearly violated NRS Chapter
27 453D, the claims for declaratory relief, petition for writ of prohibition, and any
28 other related claims is likely to succeed on the merits.

87. The balance of equities weights in favor of Plaintiffs.

1 Id., ¶¶ 86-87. As to various findings of fact and conclusions of law which further
2 demonstrate Plaintiffs' claims were brought with reasonable grounds, the Preliminary Injunction
3 Order also provides as follows regarding BQ2, NRS 453D.200(6), and NAC 453D.255(1):

4 36. NAC 453D.272(1) required the DoT to determine that an Application is
5 "complete and in compliance" with the provisions of NAC 453D in order to
6 properly apply the licensing criteria set forth therein and the provisions of the
Ballot Initiative and the enabling statute.

7 37. When the DoT received applications, it undertook no effort to determine if
8 the applications were in fact "complete and in compliance."

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

11 39. For purposes of grading the applicant's organizational structure and
12 diversity, if an applicant's disclosure in its application of its owners, officers, and
13 board members did not match the DoT's own records, the DoT did not penalize
14 the applicant. Rather the DoT permitted the grading, and in some cases, awarded a
conditional license to an applicant under such circumstances, and dealt with the
issue by simply informing the winning applicant that its application would have to
be brought into conformity with DoT records.

15 40. The DoT created a Regulation that modified the mandatory BQ2 provision
16 "[t]he Department shall conduct a background check of each prospective owner,
17 officer, and board member of a marijuana establishment license applicant" and
determined it would only require information on the application from persons
18 "with an aggregate ownership interest of 5 percent or more in a marijuana
establishment." NAC 453D.255(1).

19 41. NRS 453D.200(6) provides that "[t]he DoT shall conduct a background
20 check of each prospective owner, officer, and board member of a marijuana
establishment license applicant." The DoT departed from this mandatory language
21 in NAC 453D.255(1) and made no attempt in the application process to verify that
22 the applicant's complied with the mandatory language of the BQ2 or even the
impermissibly modified language.

23 42. The DoT made the determination that it was not reasonable to require
24 industry to provide every owner of a prospective licensee. The DOT's
25 determination that only owners of a 5% or greater interest in the business were
required to submit information on the application was not a permissible regulatory
26 modification of BQ2. This determination violated Article 19, Section 3 of the
Nevada Constitution. The determination was not based on a rational basis.

1 43. The limitation of "unreasonably impracticable" in BQ2¹ does not apply to
2 the mandatory language of BQ2, but to the Regulations which the DoT adopted.

3 44. The adoption of NAC 453D.255(1), as it applies to the application process
4 is an unconstitutional modification of BQ2.² The failure of the DoT to carry out
5 the mandatory provisions of NRS 453D.200(6) is fatal to the application process.³
6 The DoT's decision to adopt regulations in direct violation of BQ2's mandatory
7 application requirements is violative of Article 19, Section 2(3) of the Nevada
8 Constitution.

9 45. Given the lack of a robust investigative process for applicants, the
10 requirement of the background check for each prospective owner, officer, and
11 board member as part of the application process impedes an important public
12 safety goal in BQ2.

13 46. Without any consideration as to the voters mandate in BQ2, the DoT
14 determined that requiring each prospective owner be subject to a background
15 check was too difficult for implementation by industry. This decision was a
16 violation of the Nevada Constitution, an abuse of discretion, and arbitrary and
17 capricious.

18 47. The DoT did not comply with BQ2 by requiring applicants to provide
19 information for each prospective owner, officer and board member or verify the
20 ownership of applicants applying for retail recreational marijuana licenses.
21 Instead the DoT issued conditional licenses to applicants who did not identify
22 each prospective owner, officer and board member.⁴

23 ¹ [Original fn. 12] NRS 453D.200(1) provides in part:

24 The regulations must not prohibit the operation of marijuana establishments, either
25 expressly or through regulations that make their operation unreasonably impracticable.

26 ²[Original fn. 13] For administrative and regulatory proceedings other than the application, the
27 limitation of 5% or greater ownership appears within the DoT's discretion.

28 ³[Original fn. 14] That provision states:

6. The Department shall conduct a background check of each prospective owner,
officer, and board member of a marijuana establishment license applicant.

⁴ [Original fn. 15] Some applicants apparently provided the required information for each
prospective owner, officer and board member. Accepting as truthful these applicants' attestations
regarding who their owners, officers, and board members were at the time of the application,
these applications were complete at the time they were filed with reference to NRS 453D.200(6).
These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC,
Deep Roots Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC,
Polaris Wellness Center LLC, and TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC,
Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC. See Court
Exhibit 3 (post-hearing submission by the DoT).

1
2 Id., ¶¶ 36-47. This Court's conclusions of law as contained in its Preliminary Injunction Order
3 also address BQ2, NRS 453D.200(6), and NAC 453D.255(1), including:

4 81. Certain of DoT's actions related to the licensing process were
5 nondiscretionary modifications of BQ2's mandatory requirements. **The evidence**
6 **establishes DoT's deviations constituted arbitrary and capricious conduct**
without any rational basis for the deviation.

7 82. The DoT's decision to not require disclosure on the application and to not
8 conduct background checks of persons owning less than 5% prior to award of a
9 conditional license is **an impermissible deviation from the mandatory**
10 **language of BQ2**, which mandated "a background check of each prospective
owner, officer, and board member of a marijuana establishment license
applicant." NRS 453D.200(6).

11 83. The argument that the requirement for each owner to comply with the
12 application process and background investigation is "unreasonably impracticable"
13 is misplaced. The limitation of unreasonably impracticable applied only to the
Regulations not to the language and compliance with BQ2 itself.

14 84. Under the circumstances presented here, the Court concludes that **certain**
15 **of the Regulations created by the DoT are unreasonable, inconsistent with**
16 **BQ2 and outside of any discretion permitted to the DoT.**

17 85. **The DoT acted beyond its scope of authority when it arbitrarily and**
18 **capriciously replaced the mandatory requirement of BQ2**, for the background
19 check of each prospective owner, officer and board member with the 5% or
20 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.

21 86. **As Plaintiffs have shown that the DoT clearly violated NRS Chapter**
22 **453D, the claims for declaratory relief, petition for writ of prohibition, and**
any other related claims is likely to succeed on the merits.

23 87. **The balance of equities weighs in favor of Plaintiffs.**

24 Id., at ¶¶ 81-87 (bold emphasis added).

25 TGIG Plaintiffs' operative Second Amended Complaint filed November 26, 2019,
26 ("SAC") alleges six (6) claims for relief:

- 27 1. Violation of Civil Rights – Due Process: Deprivation of Property – U.S. Const.,
28 Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. 1983. See SAC,
¶¶ 53-79, at 12:21 to 16:24.

2. 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. See SAC, ¶¶ 80-87, at 17:1 to 18:11.
3. Violation of Civil Rights – Equal Protection – U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1; Title 42 U.S.C. 1983. See SAC, ¶¶ 88-92, at 18:13 to 19:5.
4. Petition for Judicial Review. See SAC, ¶¶ 93-98, at 19:6 to 20:1.
5. Petition for Writ of Mandamus. See SAC, ¶¶ 99-104, at 20:2-25.
- 6.⁵ Declaratory Relief. See SAC, ¶¶ 105-110, at 20:27 to 21:12.

A party prevails “if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” Valley Elec. Ass’n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”).

The *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 3, 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part) and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, including TGIG Plaintiffs, who fall within the definition of a “prevailing party” and because such claims were granted, there can be no serious argument the claims were not brought without reasonable grounds.

Even before the Court’s filing of its Preliminary Injunction Order on August 23, 2019, and before Phase 2 of the trial which resulted in the 9-3-2020 FFCL&PI, this Court had denied various summary judgment motions against TGIG Plaintiffs’ claims. This also demonstrates TGIG Plaintiffs’ claims were brought with reasonable grounds.

⁵ The SAC incorrectly titles this as the fifth claim for relief. Id., at 20:26.

1 For instance, the Court at a hearing on July 23, 2019, addressed a motion for summary
2 judgment against Plaintiffs' first (1st) (violation of civil rights, due process: deprivation of
3 property), second (2nd) (violation of civil rights, due process: deprivation of liberty), and third
4 (3rd) (violation of civil rights, equal protection). See Transcript of Proceedings for hearing held
5 July 23, 2019. Following argument, the Court, in part, stated/ordered as follows:

6 Here the license which was applied for in and of
7 itself is not a property right that confers
8 jurisdiction upon this Court to the extent that the
9 claim is for loss of a property right. **For that reason**
10 **the Court grants the motion in part as to those**
11 **portions of the first cause of action in the Serenity**
12 **claim and the second cause of action in the ETW claim**
13 **that are based on the loss of a property right, as**
14 **opposed to the other alternative issues pled in that**
15 **claim.**

16 Id., at 20:15-22 (bold emphasis added).

17 Also, on or about October 14, 2019, TGIG Plaintiffs sought leave to file their at-issue
18 SAC. Lone Mountain filed an opposition to Plaintiffs request based on futility of amendment.
19 The Court, however, granted Plaintiffs leave to file its SAC.

20 This Court also previously denied dispositive motions against the SAC's fourth (4th), fifth
21 (5th) and sixth (6th) claims for relief and/or has found same are likely to succeed on the merits. As
22 noted above, the Preliminary Injunction Order provides, in part:

23 86. As Plaintiffs have shown that the DoT clearly violated NRS Chapter
24 453D, the claims for declaratory relief, petition for writ of prohibition, and any
25 other related claims is likely to succeed on the merits.

26 See Preliminary Injunction Order, ¶ 86, at 22:24-26.

27 Further, with regards to the sixth (6th) claim for relief, declaratory relief, the Nevada
28 Supreme Court has stated applicants seeking a judicial determination regarding the proper
construction of a statute, like TGIG Plaintiffs here, are not precluded from seeking "... judicial
relief, including but not limited to ... declaratory relief." State, Dep't of Health and Human Servs.
v. Samantha Inc., 133 Nev. —, —, 407 P.3d 327, 328, 332 (2017). Specifically, declaratory
relief is available under NRS 30.040, which provides, in relevant part, that any person "whose

rights, status or other legal relations are affected by a statute, ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder.”

Because the record clearly demonstrates TGIG Plaintiffs’ claims were brought with reasonable grounds, WCN’s Motion is without merit.

2. TGIG Plaintiffs’ SAC only alleged a claim for declaratory relief as against WCN.

The Court’s 9-3-2020 FFCL&PI granted declaratory relief. Therefore, TGIG Plaintiffs’ only claim against WCN was brought with reasonable grounds.

As just noted, all of TGIG Plaintiffs’ SAC claims were brought with reasonable grounds and, therefore, WCN’s Motion should be denied. Even more specifically, however, WCN’s Motion is without merit because TGIG Plaintiffs’ only claim alleged against WCN was granted by the Court. A successful claim cannot be deemed to be brought without reasonable grounds. WCN’s Motion fails for this reason too.

At pages 4-6 of TGIG Plaintiffs’ SAC, there are allegations which identify “Parties Who Received Conditional Recreational Retail Marijuana Establishment Licenses (“Defendant Applicants”).” *Id.*, 4:1-2. WCN is identified as one of the “Defendant Applicants.” *Id.*, ¶ 30, at 5:19-21. The only claim that pertains to “Defendant Applicants” in TGIG Plaintiffs’ SAC is the claim for declaratory relief. *Id.*, ¶¶ 105-110, at 20:26 to 21:12.

Because the declaratory relief claim was the only claim in TGIG Plaintiffs’ SAC that was alleged as against WCN, that is the only claim that can be addressed under NRS 18.010(2)(b) analysis in relation to WCN’s Motion, to the extent it applies to TGIG Plaintiffs. Afterall, Bergmann teaches that “[i]n assessing a motion for attorney’s fees under NRS 18.010(2)(b), the trial court must determine whether the plaintiff had reasonable grounds for its claims.” See also 109 Nev. at 676, 856 P.2d at 564 (analysis required under NRS 18.010(2)(b): the trial court must examine the actual circumstances surrounding the case to determine whether the **suspect claims** were brought without reasonable grounds).

1 Here, with regards to WCN and TGIG Plaintiffs' SAC, there is only one "suspect claim."
2 That being the declaratory relief claim. As noted above, the Court's 9-3-2020 FFCL&PI granted
3 Plaintiffs declaratory relief. Thus, as that claim was granted, it cannot be said that the claim was
4 brought without reasonable grounds. Attorney's fees are not warranted on this claim – the only
5 claim alleged against WCN in TGIG Plaintiffs' SAC – because the claim was granted. WCN's
6 Motion must, therefore, be denied.

7 **III.**
8 **CONCLUSION**

9 Wherefore, as addressed above, WCN's Motion should be denied.

10 Dated this 27th day of October, 2020.

11
12 **CLARK HILL, PLLC**

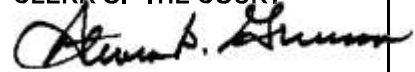
13 By /s/ John A. Hunt, Esq.
14 Dominic P. Gentile, Esq. (NSBN 1923)
15 Ross Miller, Esq. (NSBN 8190)
16 John A. Hunt, Esq. (NSBN 1888)
17 3800 Howard Hughes Pkwy., #500
18 Las Vegas, Nevada 89169
19 Attorneys for Plaintiffs in case A-19-786962-B

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on the 27th day of October, 2020, I served a true and correct copy of
22 the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic
23 Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic
24 service list.

25 /s/ Tanya Bain
26 An Employee of Clark Hill

27 261118627.1 J2153-383272
28



JOIN

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Amy L. Sugden, Bar No. 9983

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Attorney for Plaintiff

Herbal Choice, Inc.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. 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-19-787540-W

) A-19-787726-C

) A-19-801416-B

**PLAINTIFFS THC NEVADA LLC AND HERBAL CHOICE, INC'S JOINDER TO TGIG'S
OPPOSITION TO WELLNESS CONNECTION OF NEVADA LLC'S MOTION FOR
ATTORNEYS FEES AND COSTS**

1 COME NOW, THC NEVADA, LLC ("THC NV"), by and through its counsel, Amy L. Sugden
2 Esq., and HERBAL CHOICE, INC. (hereinafter HERBAL CHOICE) by and through their Counsel,
3 SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submit their Joinder to Plaintiff
4 TGIG's OPPOSITION TO WELLNESS CONNECTION OF NEVADA LLC'S MOTION FOR
5 ATTORNEYS FEES AND COSTS.
6

7 THC NEVADA LLC and HERBAL CHOICE hereby join in full, the evidence and legal
8 arguments in the Plaintiff's Motion. THC NEVADA LLC and HERBAL CHOICE hereby incorporate
9 by reference the arguments and evidence set forth in the Brief, as if fully set forth herein. This Joinder
10 is also based on the papers and pleadings on file, and any oral argument of Counsel at the time of trial.
11

12 DATED this 27th day of October, 2020

13 SIGAL CHATTAH, ESQ.

AMY L. SUGDEN, ESQ.

14
15 /s/ Sigal Chattah
16 Sigal Chattah
17 Nevada Bar No. 8264
18 5875 S. Rainbow Blvd #203
19 Las Vegas, NV 89118
20 *Attorney for Plaintiff*
21 *Herbal Choice, Inc.*

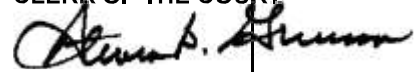
/s/ Amy L. Sugden
Amy L. Sugden
Nevada Bar No 9983
9728 Gilespe Street
Las Vegas, NV 89183
Attorney for Plaintiff
THC Nevada, LLC

22 **CERTIFICATE OF MAILING**

23 I hereby certify that on the 27th day of October, 2020, I personally served a true copy of the
24 foregoing PLAINTIFF HERBAL CHOICE, INC.'S and THC NEVADA LLC'S JOINDER by the
25 Courts electronic service system pursuant to Administrative Order 14-2 to all registered parties.

26 /s/ Sigal Chattah

27 An Agent of Chattah Law Group
28



1 **JOIN**

2 **NICOLAS R. DONATH, ESQ.**

3 Nevada Bar No. 13106

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10 *Attorney for Green Leaf Farms Holdings, LLC,*
11 *Green Therapeutics, LLC, NevCann LLC, Red Earth LLC*

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

13 In Re: D.O.T. Litigation:

14 CASE NO.: A-19-787004-B

15 Consolidated with: A-785818

16 A-786357

17 A-786962

18 A-787035

19 A-787540

20 A-787726

21 A-801416

22 DEPT. NO.: XI

23 **PLAINTIFFS GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS**
24 **LLC, NEVCANN LLC AND RED EARTH LLC'S JOINDER TO OPPOSITIONS TO**
25 **WELLNESS CONNECTION OF NEVADA, LLC'S MOTION FOR ATTORNEYS'**
26 **FEES**

27 COME NOW, Plaintiffs Green Leaf Farms Holdings LLC, Green Therapeutics LLC,
28 NevCann LLC, and Red Earth LLC ("GLFH Plaintiffs") by and through their counsel of record,

1 Nicolas R. Donath, Esq. of N.R. Donath & Associates PLLC, and file their JOINDER TO
2 OPPOSITIONS TO WELLNESS CONNECTION OF NEVADA, LLC'S MOTION FOR
3 ATTORNEYS' FEES to the following oppositions:

- 4 1. TGIG Plaintiffs' Opposition to Wellness Connection of Nevada, LLC's Motion for
5 Attorneys' Fees filed October 27, 2020; and
6
- 7 2. ETW Plaintiffs' Opposition to Wellness Connection of Nevada, LLC's Motion for
8 Attorney Fees filed October 27, 2020.

9 Pursuant to EDCR 2.20(d), GLFH Plaintiffs hereby adopt and incorporate by reference
10 herein all of the points and authorities therein, including the evidence presented and all written
11 and oral legal arguments.
12

13 DATED this 28th day of October, 2020.

14 **N.R. DONATH & ASSOCIATES PLLC**

15
16 /s/ Nicolas R. Donath

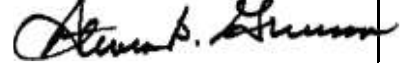
17
18 **NICOLAS R. DONATH, ESQ.**
19 Attorney for Plaintiffs
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2020, I served a true and correct copy of the foregoing PLAINTIFFS GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS LLC, NEVCANN LLC AND RED EARTH LLC'S JOINDER TO OPPOSITIONS TO WELLNESS CONNECTION OF NEVADA, LLC'S MOTION FOR ATTORNEYS' FEES through the Court's electronic filing system pursuant to Administrative Order 14-2 to all parties currently receiving service in this matter on the electronic service list.

/s/ Nicolas R. Donath

An Employee of N.R. Donath & Associates PLLC



1 NOAS

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15 Chattahlaw@gmail.com

16 *Attorney for Plaintiff*

17 *Herbal Choice, Inc.*

18 EIGHTH JUDICIAL DISTRICT COURT

19 CLARK COUNTY, NEVADA

20 *****

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

22) Case No.: A-19-787004-B

23)
24) Dept. No: XI

25)
26) CONSOLIDATED WITH:

27) A-18-785818-W

28) A-18-786357-W

) A-19-786962-B

) A-19-787035-C

) A-19-787540-W

) A-19-787726-C

) A-19-801416-B

)

29 **THC NEVADA, LLC AND HERBAL CHOICE, INC.'S JOINT NOTICE OF APPEAL**

30 PLEASE TAKE NOTICE that Plaintiff THC NEVADA, LLC ("THC NV") by and through its
31 undersigned counsel of record, Amy L. Sugden of SUGDEN LAW, and Plaintiff HERBAL CHOICE,

1 INC. (“HERBAL CHOICE”) by and through its Counsel, SIGAL CHATTAH, ESQ. of CHATTAH
2 LAW GROUP, hereby jointly appeal to the Supreme Court of Nevada from:

- 3 1. “Order Denying Ex Parte Application for Temporary Restraining Order and Motion for
4 Preliminary Injunction”, entered on August 17, 2020, notice of entry of which was served
5 electronically on August 17, 2020
6
7 2. “Order Denying Motion to Strike Department of Taxation’s Notice Removing Entities
8 From Tier 3”; entered on August 25, 2020, notice of entry of which was served
9 electronically on August 25, 2020;
10
11 3. “Findings of Fact and Conclusions of Law”, entered on September 3, 2020, notice of entry
12 of which was served electronically on September 22, 2020;
13
14 4. “Findings of Fact and Conclusions of Law”, entered on September 9, 2020, notice of entry
15 of which was served electronically on September 22, 2020; and
16
17 5. All ruling and interlocutory orders made appealable by any of the foregoing.

18 Dated this 4th day of November, 2020.

19 SIGAL CHATTAH, ESQ

AMY L. SUGDEN, ESQ.

20 /s/ Sigal Chattah
21 Sigal Chattah
22 Nevada Bar No. 8264
23 5875 S. Rainbow Blvd #203
24 Las Vegas, NV 89118
25 *Attorney for Plaintiff*
26 *Herbal Choice, Inc.*

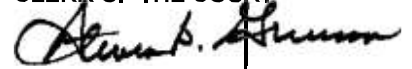
27 /s/ Amy L. Sugden
28 Amy L. Sugden
Nevada Bar No 9983
9728 Gilespe Street
Las Vegas, NV 89183
Attorney for Plaintiff
THC Nevada, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused a true and correct copy of the foregoing **THC NEVADA, LLC AND HERBAL CHOICE, INC.’S JOINT NOTICE OF APPEAL** to be served to all registered parties, via the Court’s Electronic Filing System.

Dated: November 4, 2020

/s/ Amy L. Sugden
Attorney



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2 **NICOLAS R. DONATH, ESQ.**
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7 *Attorney for Plaintiffs* Red Earth LLC,
8 NEVCANN LLC, Green Therapeutics LLC,
9 and Green Leaf Farms Holdings LLC

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

12
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15 In Re: D.O.T. Litigation
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CASE NO.: A-19-787004-B

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

DEPT. NO.: XI

NOTICE OF APPEAL

1 Notice is hereby given that Plaintiffs Red Earth LLC, NEVCANN LLC, Green Leaf Farms
2 Holdings LLC, and Green Therapeutics LLC ("Notice Plaintiffs"), by and through their counsel
3 of record, the law firm of N.R. Donath and Associates, PLLC, appeal to the Supreme Court of
4 Nevada from the following District Court orders:

5 1. *Findings of Fact and Conclusions of Law*, entered September 3, 2020, with notice of
6 entry of served electronically on September 22, 2020 (*see* Exhibit 1 attached hereto);

7 2. *Findings of Fact and Conclusions of Law*, entered on September 16, 2020, with notice
8 of entry served electronically on September 22, 2020 (*see* Exhibit 2 attached hereto);

9 3. *Order Denying Motion to Amend and Countermotion to Clarify Findings of Fact and*
10 *Conclusions of Law*, entered October 27, 2020, with notice of entry served electronically on October
11 27, 2020 (*see* Exhibit 3 attached hereto);

12 4. All other interlocutory orders, determinations and rulings by the District Court
13 made appealable by the foregoing.

14 DATED this 5th day of November, 2020.

15
16 **N.R. DONATH & ASSOCIATES, PLLC**

17 By: /s/ Nicolas R. Donath
18 **NICOLAS R. DONATH**
19 Nevada Bar No. 13106
20 871 Coronado Center Dr. #200
21 Henderson, Nevada 89052
22 702-460-0718

23 *Attorney for Plaintiffs* Red Earth LLC,
24 NEVCANN LLC,
25 Green Therapeutics LLC, and
26 Green Leaf Farms Holdings LLC
27
28

CERTIFICATE OF MAILING

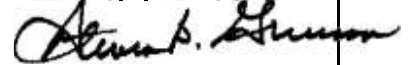
I HEREBY CERTIFY that on the 5th day of November, 2020, I filed the foregoing **NOTICE OF APPEAL** with the Clerk of the Court and e-served the same on all parties listed on the Court's Master Service List.

DATED this 5th day of November, 2020.

N.R. DONATH & ASSOCIATES PLLC

/s/ Nicolas R. Donath

An employee of N.R. Donath & Associates
PLLC



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10 lcr@h2law.com
11 kvm@h2law.com
12 *Attorneys for Defendant*
13 *Wellness Connection of Nevada, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 In Re: D.O.T. 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-19-787540-W
A-19-787726-C
A-19-801416-B

**OMNIBUS REPLY IN SUPPORT OF
WELLNESS CONNECTION OF
NEVADA, LLC'S MOTION FOR
ATTORNEYS' FEES**

Hearing Date: November 20, 2020
Hearing Time: in chambers

24 **I. INTRODUCTION**

25 Wellness Connection of Nevada, LLC's ("Wellness") Motion for Attorneys' Fees
26 ("Motion") sought answers to three simple questions: 1) why did each Plaintiff sue Wellness? 2)
27 what factual/evidentiary grounds did each Plaintiff have to sue Wellness? 3) what legal grounds
28 did each Plaintiff have to sue Wellness? Not a single Plaintiff answered any of these questions.

1 In their Oppositions to Wellness' Motion, Plaintiffs completely fail to identify any factual,
2 evidentiary, or legal basis for suing Wellness. Although Plaintiffs concoct various, meritless
3 arguments in a desperate attempt to avoid Wellness' attorney's fees, Plaintiffs simply fail to
4 provide *any* justification for bringing their claims against Wellness. Therefore, Plaintiffs admit
5 that there was *no* factual, evidentiary, or legal basis for suing Wellness, much less a "reasonable"
6 basis required to avoid attorney's fees pursuant to NRS 18.010.¹

7 Plaintiffs also fail to address their 30(b)(6) witnesses' deposition testimony, which
8 confirmed that none of them had any evidence that the Department of Taxation (the
9 "Department") showed preferential treatment to Wellness, that Wellness' applications were
10 improper or incomplete, or that Wellness engaged in any wrongdoing.² Similarly, Plaintiffs do
11 not address their failure to present any evidence or arguments regarding Wellness at trial. None
12 of the Plaintiffs even sought discovery from Wellness; not a deposition, not a single document
13 request, not a single interrogatory. These circumstances establish as a matter of law that Plaintiffs
14 had no grounds (reasonable or otherwise) to name Wellness in this case.

15 Instead, Plaintiffs argue that their claims were brought with reasonable grounds because
16 the Court entered limited relief against the Department, including its preliminary injunction in
17 August 2019. However, Plaintiffs' claims against the Department do not provide a basis for
18 Plaintiffs to sue Wellness. Plaintiffs cannot conflate their justification, if any, for suing the
19 Department with their non-existent justification for suing Wellness.

20 Moreover, Plaintiffs erroneously argue that Wellness is not a prevailing party. Wellness
21 prevailed on the major issue of the case. Plaintiffs sought to overturn the entire application
22 process (a "do-over") and therefore to deprive Wellness of its license. Plaintiffs did not obtain
23 such relief, or any relief against Wellness. Plaintiffs argue that this Court's finding that the
24

25 ¹ Wellness submits this "Omnibus" reply in response to all Oppositions filed by the various
26 Plaintiffs/Plaintiffs groups and Joinders thereto.

27 ² Nevada Wellness Center, LLC ("NWC") argues that its 30(b)(6) witness "explained the basis for NWC's
28 allegations and the reasoning behind naming Wellness." However, NWC does not attach the relevant
deposition transcript or an affidavit to attesting the same. Contrary to NWC's assertion, NWC's 30(b)(6)
witness, Frank Hawkins testified that he did not have any evidence of any wrongdoing on behalf of
Wellness, no proof that Wellness' applications were deficient, and no proof that the Department showed
favoritism to Wellness. (See Declaration of L. Christopher Rose, Esq. attached hereto as Exhibit S.)

1 Department acted beyond its scope when it replaced the mandatory requirement to conduct a
2 background check of each prospective owner, officer, and board member with the five percent or
3 greater standard in NAC 453D.255(1) and entering a permanent injunction prevents Wellness
4 from being the prevailing party. However, Plaintiffs once again conflate their claims against the
5 Department with those against Wellness. The Court did not grant any relief to Plaintiffs against
6 Wellness. Indeed, the Court's preliminary injunction in August 2019 proves unequivocally that
7 the Plaintiffs knew they had no grounds for suing Wellness. More specifically, in the preliminary
8 injunction, the district court found based on information from the Department that Wellness'
9 application was complete and in compliance with the five percent rule of NAC 453D.255(1). No
10 Plaintiff had grounds to challenge that nor did they ever even attempt to do so.

11 In the end, Plaintiffs fail to explain why they named Wellness in this case and what factual
12 and legal basis supported their claims against Wellness. With no basis whatsoever for naming
13 Wellness in this lawsuit (much less a "reasonable" basis), NRS 18.010(2)(b) squarely applies, and
14 Wellness must be awarded its attorneys' fees.

15 **II. WELLNESS IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES BECAUSE**
16 **PLAINTIFFS SUED WELLNESS WITHOUT REASONABLE GROUNDS.**

17 A claim not supported by any credible evidence is "brought without reasonable grounds"
18 under NRS 18.010(2)(b). *See Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 720,724
19 (1993) (*citing Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984));
20 *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (reversing denial of attorneys'
21 fees under NRS 18.010(2)(b) where evidence showed claims were groundless) (superseded by
22 statute on other grounds). NRS 18.010(2)(b) specifically allows parties to seek attorneys' fees
23 when claims are brought or maintained without reasonable grounds. Here, the Plaintiffs' decision
24 to sue Wellness with no basis to do so, and its decision to move forward without seeking any
25 discovery, without presenting any evidence, and without making any arguments as to Wellness
26 to support their claims warrants an award of attorneys' fees under NRS 18.010(2)(b).

27 ///

28 ///

A. The Settling Plaintiffs Are Liable for Wellness' Attorneys' Fees As They Failed to Show Any Factual or Legal Basis for Naming Wellness.

Although the Settling Plaintiffs filed the lengthiest Opposition, in all of those words they fail to provide any factual, evidentiary, or legal basis for suing Wellness. The Settling Plaintiffs' argument that Wellness is not a prevailing party because "the Settling Plaintiffs' claims were settled, not litigated" is precisely why Wellness is a prevailing party. The Settling Plaintiffs did not settle with Wellness and their claims proceeded to trial, resulting in Wellness prevailing on every issue pertaining to Wellness. The fact that there is no order declaring Wellness as a prevailing party is irrelevant. Wellness prevailed on the major issue of the case about a "do-over" and the Settling Plaintiffs did not obtain any relief against Wellness. Therefore, Wellness is clearly the prevailing party against the Settling Plaintiffs.

Further, the Court does not need to entertain the Settling Plaintiffs' argument that NRS 233B precludes Wellness' request for attorney's fees. Had the Settling Plaintiffs read the Declarations of counsel in support of Wellness' Motion for Attorneys' Fees they would have discovered that, "Wellness is not seeking to recover attorneys' fees for attending the hearing on Plaintiffs' Petition for Judicial Review." (Decl. of L. Christopher Rose, ¶6, Oct. 13, 2020, on file.) Furthermore, NRS Chapter 30 does not preclude Wellness' attorney's fees because NRS 18.010(2)(b) applies to all frivolous and groundless claims, including under NRS Chapter 30. Further, the Settling Plaintiffs alleged numerous other claims against Wellness in addition to declaratory relief.

The Settling Plaintiffs' argument that Wellness is not entitled to attorneys' fees because there is no order declaring the claims frivolous or vexatious also lack merit. NRS 18.010(2)(b) requires no such ruling at trial because such analysis is almost always conducted post trial. And the Settling Plaintiffs' argument that they prevailed on several motions (even over Wellness joinders) does not demonstrate that they prevailed against Wellness. No Plaintiff at any time filed a motion or ever obtained relief through a motion against Wellness (including MM Development and LivFree, which seem to champion this argument). The Settling Plaintiffs merely obtained partial relief against the Department. Thus, the Settling Plaintiffs' arguments that they prevailed on motions having nothing to do with Wellness still avoid (understandably) the questions of why

1 they named Wellness, what factual/evidentiary basis they had to name Wellness, and what legal
2 basis they had to name Wellness in this case.

3 Additionally, the Settling Plaintiffs’ argument that their claims are not groundless because
4 their claims involve interpretation of newly enacted statutes and complex legal questions again is
5 pure misdirection. Their claims and allegations against the Department (whether or not they are
6 based on newly enacted statutes and complex legal questions) does not absolve them from the
7 now undisputed fact that they did not have any grounds to sue Wellness. As a matter of law and
8 as a matter of undisputed fact, the Settling Plaintiffs cannot avoid their liability for Wellness’
9 attorneys’ fees.

10 **1. The Settling Plaintiffs Brought Claims Against Wellness and Sought**
11 **Draconian Relief Against Wellness.**

12 The Settling Plaintiffs’ arguments that: (1) they only alleged claims for petition for judicial
13 review and declaratory judgment against Wellness; (2) they “did not seek any specific relief
14 against Wellness in the first place”; and (3) they “never requested” to strip Wellness of its license
15 are disingenuous and irrelevant. (Settling Plaintiff’s Opp., 5:7-8, 7:13-14, 8:18-19, Oct. 27, 2020,
16 on file.)

17 In its Fourth Claim for Relief for Intentional Interference with Contractual Relations,
18 Qualcan, LLC, who is one of the Settling Plaintiffs alleges that, “the DOT and **Applicant**
19 **Defendants** have committed intentional acts intended to disrupt Plaintiff’s contracts with third
20 parties related to Plaintiff’s operation of retail marijuana establishments in Nevada.” (Qualcan’s
21 Sec. Am. Compl., ¶120, Feb. 11, 2020, on file.) In its Fifth Claim for Relief for Writ of
22 Mandamus, Qualcan seeks to deprive Wellness’ and other successful applicants’ conditional
23 licenses. Qualcan alleges that the Department “denied Plaintiff’s applications solely to approve
24 other competing applicants without regard to the merit of Plaintiff’s application.” (*Id.* at ¶136(b).)
25 To that end, Qualcan requested this Court to “issue a Writ of Mandamus directing the DOT to
26 approve Plaintiff’s license applications and issue Plaintiff conditional licenses in Clark County –
27 Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County –
28 Unincorporated, Washoe County – Reno, and Elko County.” (*Id.* at ¶137.) As this Court may
recall, Wellness received a conditional license in City of Las Vegas and there were only 10

1 licenses awarded in this jurisdiction. (*See* Joint Trial Exhibit 84.) Qualcan ranked eleventh in
2 the City of Las Vegas and therefore, its request for a Writ of Mandamus directly sought to deprive
3 Wellness and the other nine successful applicants of their licenses in this jurisdiction.

4 Moreover, in its Seventh Claim for Relief for Violation of Procedural Due Process,
5 Qualcan alleges that the Department showed “administrative partiality or favoritism” to certain
6 applicants. (*Id.* at ¶142.) Similarly, in its Ninth Claim for Relief for Equal Protection Violation,
7 Qualcan alleges that the Department “improperly grant[ed] applications [to] Defendants...” (*Id.*
8 at ¶156.) Qualcan’s Second Amended Complaint clearly demonstrates that the Settling Plaintiffs
9 alleged more than just declaratory relief and petition for judicial review claims and specifically
10 sought to deprive Wellness of its license.

11 In fact, the other Settling Plaintiffs also sought to strip Wellness of its license through
12 their Writ of Mandamus claims. (NWC’s Sec. Am. Compl., ¶¶301-302, Mar. 26, 2020, on file.;
13 ETW Plaintiffs’ Third Am. Compl., ¶¶153-154, Jan. 29, 2020, on file.; MM Develop. and
14 LivFree’s Sec. Am. Compl., ¶¶105-106, Jan. 29, 2020, on file.; Natural Medicine’s Compl., ¶90,
15 Feb 7, 2020, on file.) Therefore, the Settling Plaintiffs’ argument that they did not seek Wellness’
16 license is untrue. And it once again begs the question of why they even named Wellness in this
17 suit in the first place.

18 **2. The Settling Plaintiffs Were Required to Show A Factual and Legal**
19 **Basis for their Claims, Not Wellness.**

20 Incredibly, in their Opposition the Settling Plaintiffs argue that Wellness did not
21 “specifically identify facts or evidence in the record to support its assertion that this case was
22 brought and maintained without reasonable ground.” (Settling Plaintiffs’ Opp., 7:5-7, 8-9, Oct.
23 27, 2020, on file.) But the absence of any facts and evidence against Wellness is precisely the
24 reason why Wellness is entitled to its attorneys’ fees. As set forth in Wellness’ Motion, the
25 Settling Plaintiffs presented no evidence and made no arguments in support of their claims against
26 Wellness at any point in this case, including at trial. It is undisputed that Wellness engaged in no
27 misconduct, the Department showed no favoritism to Wellness, and there were no problems with
28 Wellness’ applications – not a single Plaintiff contended otherwise. In light of these undisputed
facts, it was the Settling Plaintiffs’ duty to show that they had a factual, evidentiary, or legal basis

1 for suing Wellness. None exists. Indeed, not a single Plaintiff even attempted to show a factual
2 or legal basis for naming Wellness. The reason is clear: they simply cannot do so. Their attempt
3 to flip that burden and lay it at Wellness' feet was creative but misses the mark.

4 Moreover, the Settling Plaintiffs argue – and in doing so thereby confess – that
5 “Wellness’s license was not a dispositive issue in this case” and that “every cause of action turned
6 on the Department’s conduct.” (*Id.* at 7.) Consequently, the Settling Plaintiffs concede that they
7 had no factual or legal basis to name Wellness in the first place. They therefore have furthered
8 their admission that they in fact had no need to bring Wellness into this suit as their issue and
9 dispute was always with the Department.

10 Unable to explain any basis (factual, legal, reasonable, or otherwise) for naming Wellness
11 in this case, and attempting to overcome the fact that Wellness did not intervene, the Settling
12 Plaintiffs suggest that Wellness would have jumped in on its own initiative at some point. More
13 specifically, the Settling Plaintiffs argue that “it is unreasonable to propose or believe that
14 Wellness would have otherwise permitted the propriety of the entire licensing process, from
15 which it was awarded its sole license, to be litigated and finally determined without any of its
16 participation.” (*Id.*) However, Wellness was fully aware of the ongoing litigation and had no
17 reason to intervene. That is especially so after the Court issued its preliminary injunction in
18 August 2019 finding that Wellness’ application was complete and ordering a very narrow
19 injunction that had no effect on Wellness. The choice not to intervene was for Wellness to make,
20 not the Settling Plaintiffs to bring up in this attempt to avoid liability for inexplicably dragging
21 Wellness into this case.

22 **3. An Admission that A Settling Plaintiff Would Have Dismissed Anyone**
23 **Who Requested Dismissal Is A Further Admission that Wellness Was**
24 **Named Without Any Grounds (Reasonable or Otherwise). Likewise**
25 **as to the Settling Plaintiffs’ Agreement to Defend Against Their Own**
26 **Claims.**

26 The groundless nature of the Settling Plaintiffs’ claims is further highlighted by their
27 argument that “NWC dismissed any named applicant that requested.” (*Id.* at 8, fn. 13.) Natural
28 Medicine, LLC makes the same argument. (*Id.*) This startling admission begs the question: if
NWC and Natural Medicine were willing to dismiss any applicant Defendant that requested

1 dismissal, then why did they file suit against those Defendants in the first place? And after filing
2 suit, why did you not dismiss each Defendant or at least announce to all of them that you were
3 willing to do so? The “we-would-have-dismissed-anyone-who-asked” argument is a fatal
4 admission that the Settling Plaintiffs had absolutely no basis to file suit against Wellness in the
5 first place. And the notion that Wellness “voluntarily chose” to participate in this litigation is
6 contradicted by each and every Complaint that named Wellness, alleged corruption and
7 favoritism, and sought to strip Wellness of its license.

8 The Nevada Supreme Court recently ruled on a similar scenario and affirmed an award of
9 attorneys’ fees for voluntary dismissing a party. In *145 E. Harmon II Tr. v. Residences at MGM*
10 *Grand - Tower A Owners' Ass'n*, 136 Nev. 115, 460 P.3d 455 (2020), a condominium unit owner
11 brought action against owners' association arising out of mold damage in unit that required
12 extensive repairs. *Id.* at 456. The parties resolved the matter by stipulating to dismiss association
13 from the case with prejudice. *Id.* at 457. The association then moved for attorney fees and costs.
14 *Id.* The district court granted the association’s motion for attorney’s fees and the unit owner
15 appealed. *Id.* On appeal, the Nevada Supreme Court affirmed the award of attorney’s finding
16 that the unit owner’s voluntary dismissal conferred “prevailing party status to the Association”
17 and therefore, the “Association was the prevailing party for purposes of NRS 18.010(2) and
18 18.020.” *Id.* at 459-460. Here, the Settling Plaintiffs’ admission that they would have dismissed
19 Wellness only supports the notion that Wellness is entitled to its attorney’s fees.

20 Further proof of the baseless nature of the Settling Plaintiffs’ claims against Wellness is
21 found in their partial settlement agreement with the Department and certain defendants. The
22 Settling Plaintiffs signed a Settlement Agreement (not with Wellness) agreeing to switch sides
23 and defend against the very claims they brought and that still remained pending against all non-
24 settling Defendants! More specifically, the Settling Plaintiffs contractually agreed: “Further,
25 upon the execution of this Agreement, the Settling Plaintiffs will file a Motion to Intervene as
26 Defendants/Intervenors in the Lawsuit and participate in the Lawsuit in good faith and shall use
27 best efforts to defend against the Lawsuit.” (Settlement Agreement, ¶13, attached as Exhibit 1 to
28 Motion to Strike the Department’s Notice, Aug. 14, 2020, on file.) If the Settling Plaintiffs’

1 claims had any validity at all, how do they possibly justify agreeing to settle those claims by
2 joining as a defendant to defend against their own claims? This unprecedented maneuver is yet
3 another open admission that the Settling Plaintiffs' claims against Wellness never should have
4 been brought – and Plaintiffs were willing to toss their claims aside and fight against their own
5 claims once they got what they wanted through their settlement. Just recently, NWC and Qualcan
6 opposed TGIG's motion seeking enforcement of the injunction that all Settling Plaintiffs obtained
7 against the DOT. These points raise questions whether the Settling Plaintiffs ever had a basis for
8 their claims against the Department, but they doubly prove that there was no basis for claims
9 against Wellness.

10 **4. As A Matter of Undisputed Law and Fact, Wellness is the Prevailing**
11 **Party.**

12 Despite arguing that Wellness is not a prevailing party, the Settling Plaintiffs fail to
13 demonstrate that they are the prevailing party against Wellness. They cannot because they did
14 not succeed on any issues against Wellness. Instead, Wellness prevailed on the most significant
15 issue in this case, the 2018 recreational marijuana application process was not overturned, and
16 Wellness retained its license. The Settling Plaintiffs' argument that they settled and their claims
17 did not proceed to judgment is disingenuous. The Settling Plaintiffs did not settle with Wellness
18 and have not been dismissed from this case to this day. Their claims remained pending and were
19 adjudicated. Wellness is the prevailing party against all Plaintiffs, including the Settling
20 Plaintiffs.

21 The term "prevailing party" is "broadly construed" to encompass both plaintiffs and
22 defendants. *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). A party
23 prevailing on the significant issue in the litigation is the party that should be considered the
24 prevailing party. *Id.*; see also *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807, 810 (Fla. 1992).
25 *Davis v. Beling*, 128 Nev. 301, 278 P.3d 501 (2012) is particularly instructive regarding this issue.
26 In *Davis*, homeowners sought to recover attorney's fees against their former real estate agent for
27 successfully defending against the agent's claims of breach of the listing agreement between the
28 parties. *Id.* at 307, 278 P. 3d at 506. The Nevada Supreme Court noted that the matter was
straightforward:

[B]ecause the [homeowners] successfully defended against [the agent's] breach of contract action[], pursuant to the clear language of the[] agreements, the [homeowners] were entitled to recover reasonable attorney's fees incurred in the defense of those particular claims.

Id. at 515. The Nevada Supreme Court affirmed these attorney's fees and costs even though the agent had recovered \$115,455 against the homeowners on a related unjust enrichment cause of action. *Id.* at 507. This ruling demonstrates the common sense meaning of “prevailing party,” the homeowners won on the major issue of the case even though they lost on another secondary issue.

Here, Wellness prevailed on the most important issue of the case. In fact, Wellness prevailed as to every issue pertaining to Wellness. The Settling Plaintiffs sought to overturn the entire 2018 recreational marijuana application process and to strip Wellness of its conditional license in their bid for a “do-over.” The Settling Plaintiffs did not obtain such relief, nor did they obtain any relief whatsoever against Wellness. Although the Court found that the Department improperly replaced the mandatory requirement for a background check of each prospective owner, officer and board member with five percent or greater standard, that had nothing to do with Wellness – a fact Plaintiffs were all aware of by virtue of the August 2019 preliminary injunction order long before Plaintiffs named Wellness in this case.

The Settling Plaintiffs’ argument that Wellness cannot recover its attorneys’ fees from them because their claims “were not litigated, they were settled” has no merit. Again, no party settled with Wellness. The reason why the Settling Plaintiffs settled with other defendants but have not dismissed their claims is clear.³ They saw no chance of getting the relief they wanted, and even if they overturned the entire process, they scored so low that they would not get licenses anyway or would be precluded from obtaining licenses for the same reasons advanced in their Complaints. However, they could not dismiss their claims because such dismissal would amount to a judgment on the merits and render Wellness as the prevailing party. The Nevada Supreme Court recently held that a voluntary dismissal with prejudice confers prevailing party status on

³ The Settlement Agreement required the Settling Plaintiffs to dismiss their claims. However, they have not done so.

1 the opposing party for an award of attorney fees and costs. *145 E. Harmon II Tr.*, 136 Nev. Adv.
2 Op. 14, 460 P.3d at 459.

3 The Settling Plaintiffs did not settle with Wellness or a number of the other Defendants
4 and have not been dismissed from this case. The Court's docket clearly indicates that none of the
5 Settling Plaintiffs have been dismissed, and therefore their claims were litigated to conclusion of
6 both of the phases of trial. In fact, the Settling Plaintiffs are still parties in this case to this day.
7 Therefore, Wellness is clearly the prevailing party against the Settling Plaintiffs because they are
8 still parties to this case, did not settle with Wellness, did not prevail on any claim against
9 Wellness, and obtained no relief or remedy against or that even affected Wellness.

10 **5. Wellness is Not Seeking Attorneys' Fees for the Petition for**
11 **Judicial Review Phase.**

12 The Settling Plaintiffs clearly did not read L. Christopher Rose, Esq.'s Declaration in
13 Support of Wellness' Motion for Attorneys' Fees that states that, "Wellness is not seeking to
14 recover attorneys' fees for attending the hearing on Plaintiffs' Petition for Judicial Review."
15 (Decl. of L. Christopher Rose, Esq. ¶6, Oct. 13, 2020, on file.) Accordingly, Wellness does not
16 need to respond to the Settling Parties' argument that attorneys' fees are barred by NRS Chapter
17 233B.

18 **6. Wellness' Attorneys' Fees Are Not Barred by NRS Chapter 30.**

19 NRS Chapter 30 does not preclude Wellness attorney's fees because NRS 18.010(2)(b)
20 applies to all frivolous and groundless claims, and the Settling Plaintiffs alleged numerous other
21 claims against Wellness in addition to a declaratory judgment claim. To hold otherwise would
22 render NRS 18.010(2)(b) meaningless. The Settling Plaintiffs do not supply any case law or
23 rational for why NRS 18.010(2)(b) does not apply to their groundless claims, including for
24 declaratory relief.

25 Although there is no Nevada Supreme Court case discussing the application of NRS
26 18.010(2)(b) to declaratory relief, the Eighth Judicial District Court judges have done so. *See*
27 *Sanchez v. Heishman*, No. 15A725303, 2017 WL 1093862, at *7 (Nev. Dist. Ct. Feb. 22, 2017)
28 (finding that attorney's fees were warranted pursuant to NRS 18.010(2)(b), for claims that

1 included declaratory relief). Despite NRS 18.010(2)(b) being applicable to declaratory relief
2 claims, the Settling Plaintiffs ignore that they also sought a writ of mandamus to strip Wellness
3 of its license. Additionally, some of the Settling Plaintiffs also discreetly named Wellness in their
4 substantive and procedural due process claims alleging that successful applicants (including
5 Wellness) participated in corruption and favoritism, which led to a violation of the Settled
6 Plaintiffs' constitutional rights.

7 Ultimately, this Court did not grant declaratory relief, a writ of mandamus, or any claims
8 or remedies against Wellness. Therefore, Wellness is not barred from seeking its attorneys' fees
9 by NRS Chapter 30.

10 **7. The Settling Plaintiffs' Brought Their Claims Against Wellness**
11 **Without Reasonable Grounds.**

12 Despite being the most important issue of Wellness' Motion for Attorneys' Fees, the
13 Settling Plaintiffs cower by not addressing it first. The Settling Plaintiffs cite various cases
14 regarding what reasonable grounds might be, but they do not provide any factual, evidentiary, or
15 legal grounds for suing Wellness. Instead, the Settling Plaintiffs argue that the Court has not
16 made a finding that their claims were brought or maintained without reasonable ground. The
17 Settling Plaintiffs are correct that the Court has not made this determination yet. The time for it
18 to make that determination is now.

19 NWC's argument that its 30(b)(6) witness, Frank Hawkins "clearly explained the basis of
20 NWC's allegations and the reasoning behind naming Wellness" (Settling Plaintiffs' Opp., 14, fn.
21 20, Oct. 27, 2020, on file.) is curious because NWC does not explain what that supposed basis
22 was. The Settling Plaintiffs did not attach Mr. Hawkins' deposition transcript. NWC's counsel
23 also does not provide a declaration attesting to what Mr. Hawkins testified in his deposition. If
24 Mr. Hawkins provided such valuable information, then the Settling Plaintiffs would have surely
25 attached it to their Opposition at this important time where no Plaintiff, including NWC, has
26 explained any basis for naming Wellness. To the contrary, Mr. Hawkins testified that he did not
27 have any evidence of any wrongdoing on behalf of Wellness, no proof of favoritism to Wellness,
28 and no information that Wellness' applications were improper or incomplete. (See Declaration
of L. Christopher Rose, Esq. attached hereto as Exhibit S.)

1 The Settling Plaintiff misconstrue the standard of NRS 18.010(2)(b) and argue that nature
2 of the matter precludes finding unreasonable grounds. However, this is not the standard. The
3 proper standard of NRS 18.010(2)(b) is that a claim not supported by any credible evidence is
4 “brought without reasonable grounds” under NRS 18.010(2)(b). *Allianz Ins. Co.*, 109 Nev. at 996,
5 860 P.2d at 724. The Settling Plaintiffs do not argue that they were pursuing novel or complex
6 legal issues against Wellness (they concede they were not litigating *any* issues against Wellness).
7 The Settling Plaintiffs argued against the Department. They were free to pursue their novel and
8 complex legal issues against the Department but had no basis to add Wellness to this dispute. The
9 NRS 18.010(2)(b) standard specifically requires the Settling Plaintiffs to have some form of
10 reasonable grounds for suing Wellness. They fail to identify it and their arguments about the
11 complex legal theories against the Department do not create “reasonable grounds” for their claims
12 against Wellness.

13 **8. Wellness’ Claimed Fees Satisfy the Brunzell Factors.**

14 Wellness was forced in this case and had to defend itself against the Settling Plaintiffs’
15 claims. As fully discussed above, the Settling Plaintiffs specifically sought to obtain Wellness’
16 and the other successful applicants’ conditional licenses. Wellness had to conduct discovery,
17 attend depositions, participate at trial, and defend itself to demonstrate that the Department did
18 not show any favoritism or partiality towards Wellness, that there was no wrongdoing on the part
19 of Wellness, and that the Department properly issued its license to Wellness.

20 The Settling Plaintiffs’ argument that Wellness did not produce its application has no
21 bearing on the instant Motion. Wellness’ application is confidential, and the Settling Plaintiffs
22 did not serve Wellness with any discovery requests. Nevertheless, Wellness ultimately produced
23 portions of its application showing the identity of its owners, officers, and board members.
24 (Declaration of L. Christopher Rose, Esq. attached hereto as Exhibit S.) Further, the Settling
25 Plaintiffs’ argument that Wellness failed to participate in discovery is non-sensical. To the
26 contrary, the Settling Plaintiffs did not conduct any discovery by failing to serve any requests for
27 production of documents, interrogatories, requests for admission, or to take Wellness’ deposition.
28 (Declaration of L. Christopher Rose, Esq. attached hereto as Exhibit S.) However, Wellness made

1 all required Rule 16.1 disclosures and supplements thereto. (*See id.*) Wellness also attended
2 every deposition of Plaintiffs' 30(b)(6) witnesses in an attempt to discover whether any of them
3 had any evidence regarding any wrongdoing by Wellness in this case.

4 NWC and the ETW Plaintiffs argue that they did not name Wellness as a defendant until
5 January 2020. (Settling Plaintiffs' Opp., 5, fn. 1, Oct. 27, 2020, on file.) The obvious remedy for
6 this concern is that NWC and the ETW Plaintiffs may be held liable for the attorneys' fees
7 incurred from that date forward if the Court chooses. Thus, this argument is a non-issue and
8 certainly not a basis to avoid attorneys' fees given they named Wellness as a defendant with no
9 factual, evidentiary, or legal basis to do so.

10 Lastly, the Settlement Plaintiffs do not provide an explanation regarding why Wellness
11 should have called its witness at trial when none of the Plaintiffs sought its testimony and no
12 Plaintiffs presented evidence or arguments against Wellness at trial. The Settlement Plaintiffs'
13 failure to call Wellness as a witness while knowing that they had no case against it only supports
14 Wellness' request for fees.

15 **B. The TGIG Plaintiffs Are Liable for Wellness' Attorneys' Fees.**

16 Wellness incorporates its arguments above in responding to the remaining Plaintiffs'
17 arguments. In their Opposition, the TGIG Plaintiffs argue that they had reasonable grounds to
18 sue Wellness because they obtained the preliminary injunction. However, Wellness was not
19 added to this case until after the entry of the preliminary injunction. (Declaration of L.
20 Christopher Rose, Esq. attached hereto as Exhibit S.) That proves that the TGIG Plaintiffs had
21 no basis to sue Wellness because they had already obtained the relief they sought against the
22 Department before adding Wellness. As shown above, the fact that TGIG received the
23 preliminary injunction in August 2019 further shows it had no basis to later name Wellness in
24 this case because the Court found – based on information from the Department – that Wellness
25 had submitted a complete, compliant application. In disregard of these findings, the TGIG
26 Plaintiffs like many others, chose to name Wellness as a defendant anyway.

27 The TGIG Plaintiffs also argue that the entry of the permanent injunction and this Court
28 granting Plaintiffs' Motion for Summary Judgment in part on the "five percent rule" demonstrates

1 that they had a reasonable basis for naming Wellness in their Complaint. As thoroughly discussed
2 above, prevailing against the Department does not demonstrate reasonable grounds for suing
3 Wellness. The TGIG Plaintiffs did not obtain any relief against Wellness.

4 The TGIG Plaintiffs also argue that they only alleged a claim for declaratory relief against
5 Wellness and that this Court granted the declaratory relief in its FFCL issued on September 3,
6 2020. However, the TGIG Plaintiffs asserted more than declaratory relief against Wellness. They
7 asserted a claim for petition for judicial review and sought to obtain Wellness' conditional license
8 through their petition for writ of mandamus claim. (TGIG Sec. Am. Comp., ¶¶102-103, Nov. 26,
9 2019, on file.) Despite the existence of these additional claims, the TGIG Plaintiffs did not obtain
10 any relief against Wellness. (FFCL, Sep. 3, 2020, on file.) Since the Court did not grant the
11 TGIG Plaintiffs any relief against Wellness, they cannot demonstrate any reasonable ground for
12 suing Wellness.

13 Moreover, Wellness is the prevailing party. Wellness prevailed on the most important
14 issue of the case. The TGIG Plaintiffs sought to overturn the entire 2018 recreational marijuana
15 application process and to strip Wellness of its conditional license. The TGIG Plaintiffs did not
16 overturn the process and did not obtain Wellness' license. Although the Court granted limited
17 relief to the TGIG Plaintiffs, they do not benefit from the Court's ruling and did not obtain any
18 relief against Wellness. Therefore, Wellness is the prevailing party.

19 The TGIG Plaintiffs do not oppose Wellness' argument that its requests satisfy the
20 *Brunzell* factors. Accordingly, the TGIG Plaintiffs concede that Wellness' attorney's fees were
21 reasonable.

22 **C. Rural Remedies Sued Wellness Without Reasonable Grounds.**

23 Contrary to Rural Remedies assertion that Wellness' Motion does not identify which
24 Plaintiffs it seek to recover attorneys' fees from, Wellness is explicitly seeking fees from, "every
25 Plaintiff in these consolidated cases, including the "Settling-Plaintiffs" as described in the July
26 28, 2020 Settlement Agreement, and all parties that asserted claims against Wellness and were
27 voluntarily dismissed." (Wellness' Mot. For Att. Fees, Oct. 13, 2020, on file.) Rural Remedies'
28 argument that it "did not bring causes of action against Wellness, but DOT and Defendant Jorge" and

1 that “[t]he only cause of action that implicates Wellness is the Petition for Judicial Review” is untrue.
2 In its Complaint, Rural Remedies seeks declaratory relief that seeks “a declaration from this Court
3 that the DOT must revoke the conditional licenses of those applicants whose applications are not in
4 compliance with Nevada law.” (Compl., ¶76, Jan. 28, 2020, on file.) Rural Remedies also seeks a
5 writ of mandamus to strip Wellness and the other successful applicants of their license. (*Id.* at ¶109-
6 110.) Therefore, Rural Remedies cannot hide behind the Nevada Administrative Procedure Act and
7 attempt to argue that it merely named Wellness as a Defendant for its petition for judicial review
8 claim.⁴

9 Wellness incorporates its argument regarding prevailing party status above as though fully set
10 forth herein. Rural Remedies completely fails to provide any factual, evidentiary, or legal basis for
11 suing Wellness. Therefore, since Rural Remedies cannot demonstrate any reasonable ground for
12 naming Wellness, it should be held liable for Wellness’ attorneys’ fees pursuant to NRS 18.010(b)(2).

13 As Rural Remedies is clearly aware, it is now collaterally estopped from relitigating the
14 same issues and should be bound by this Court’s ruling and also responsible for Wellness’
15 attorneys’ fees for the same reasons set forth in Wellness’ Motion and this Reply.

16 **D. Tryke and Nuleaf are Liable for Wellness’ Attorneys’ Fees.**

17 Tryke Companies So NV, LLC, Tryke Companies Companies Reno, LLC (collectively,
18 “Tryke”) and NuLeaf Incline Dispensary, LLC (“NuLeaf”) attempt to avoid their liability for
19 Wellness’ attorneys’ fees by arguing that Wellness waived its right to seek attorneys’ fees because
20 it did not expressly reserve such right when Tryke and NeLeaf sought their voluntary dismissal.
21 However, when the Court granted Tryke and NuLeaf’s request to be dismissed, the Court
22 specifically ruled that:

23 THE COURT: Tryke's motion is granted on the conditions that if
24 someone wants to seek attorneys' fees or costs in post-trial motions,
25 they may; and, second, that a representative as a 30(b)(6) witness
26 will appear at a deposition that is properly noticed at a convenient
27 time.

28 (Transcript, 9:5-9, July 1, 2020, on file.)

⁴ Natural Medicine also makes a similar argument that it alleged claims that did not involve claims against Wellness. However, Natural Medicine’s Complaint reveals that it alleged declaratory relief and petition for writ of certiorari claims that include Wellness. (Compl. Feb. 7, 2020, on file.)

1 The Court's directive does not limit the right to seek attorney's fees solely to the Essence
2 Entities. Additionally, the Nevada Supreme Court recently held a voluntary dismissal with
3 prejudice equates to a judgment on the merits sufficient to confer prevailing party status upon the
4 defendant. *145 E. Harmon II Tr.*, 136 Nev. 115, 460 P.3d at 459. Here, Tryke and NuLeaf were
5 voluntarily dismissed "with prejudice." (Order, 2, Aug. 14, 2020, on file.) Therefore, pursuant
6 to the Court's directive during the hearing on Tryke and NuLeaf's Motion to be Dismissed and
7 the recent Nevada Supreme Court decision in *145 E. Harmon*, Wellness is free to seek attorney's
8 fees against Tryke and NuLeaf.

9 Tryke and NuLeaf do not provide any reasonable basis for bringing their claims against
10 Wellness. Therefore, based on the reasoning set forth in the Motion and this Reply, Wellness is
11 entitled to its attorneys' fees against Tryke and NuLeaf.

12 **III. CONCLUSION**

13 Attorneys' fees are warranted under NRS 18.010(2)(b) because Plaintiffs sued Wellness
14 without any reasonable grounds, either legally or factually, and failed to produce any evidence
15 against Wellness. Based on the foregoing, Wellness respectfully requests an award of
16 \$426,393.20 in attorneys' fees.

17 DATED this 13th day of November, 2020.

18 **HOWARD & HOWARD ATTORNEYS PLLC**

19
20 /s/ L. Christopher Rose

L. CHRISTOPHER ROSE, ESQ.

KIRILL V. MIKHAYLOV, ESQ.

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, NV 89169

Attorneys for Defendant

Wellness Connection of Nevada, LLC

Howard & Howard
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Las Vegas, NV 89169
(702) 257-1483

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89145.

On November 13, 2020, I served the **REPLY IN SUPPORT OF WELLNESS CONNECTION OF NEVADA, LLC'S MOTION FOR ATTORNEYS' FEES** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File system and e-served the same on all parties listed on the Court's Master Service List.

/s/ Julia M. Diaz

An employee of HOWARD & HOWARD ATTORNEYS PLLC

4842-2825-9534, v. 1

EXHIBIT S

**DECLARATION OF L. CHRISTOPHER ROSE, ESQ. IN SUPPORT OF
OMNIBUS REPLY IN SUPPORT OF WELLNESS CONNECTION OF NEVADA,
LLC'S MOTION FOR ATTORNEYS' FEES**

1. I am an attorney licensed to practice law in the state of Nevada. I am a member of Howard & Howard Attorneys PLLC, attorneys of record for Defendant Wellness Connection of Nevada, LLC ("Wellness") in this action. I have personal knowledge of the facts stated in this Declaration, except for those facts stated upon information and belief, and as to those matters, I believe them to be true. If called upon, I am competent to testify to the matters set forth herein.

2. I attended the deposition of Nevada Wellness Center, LLC's ("NWC") 30(b)(6) witness Frank Hawkins. I questioned Mr. Hawkins on behalf of Wellness. Mr. Hawkins testified that he did not have any evidence of any wrongdoing on behalf of Wellness during the 2018 application process. He did not have any information that Wellness' applications were incomplete or improper or that the Department of Taxation showed any preference or favoritism toward Wellness. Wellness did not obtain a copy of Mr. Hawkins' deposition transcript.

3. Wellness made initial disclosures under NRCP 16.1 in this case, as well as several supplemental disclosures under Rule 16.1. Included in those supplemental disclosures were portions of Wellness' 2018 recreational marijuana applications showing the identities of its owners, officers, and board members, as well as information to support the assets listed in its applications.

4. Furthermore, none of the current Plaintiffs in this matter ever performed any discovery as to Wellness. They did not serve any requests for documents, interrogatories, requests for admissions, and did not take the deposition of any Wellness representative. The only Plaintiff that performed discovery as to Wellness was D.H. Flamingo, Inc., which was dismissed long ago and did not proceed to trial. Although the ETW Plaintiffs noticed the deposition of a Wellness Rule 30(b)(6) representative, that deposition was vacated and never re-noticed or requested again.

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5. Based on the above, the Plaintiffs' arguments that Wellness did not participate in discovery are not true. No Plaintiff ever accused Wellness of not participating in discovery.

6. Furthermore, no Plaintiff notified Wellness or my office that if Wellness wished to be dismissed from this case it could have been dismissed.

7. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 13th day of November, 2020.

/s/ L. Christopher Rose, Esq.
L. CHRISTOPHER ROSE, ESQ.

4815-2288-6610, v. 1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 20, 2020

A-19-787004-B

In Re: D.O.T. Litigation

November 20, 2020 3:00 AM Minute Order

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

PARTIES

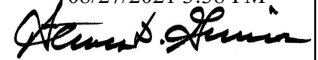
PRESENT:

JOURNAL ENTRIES

- WELLNESS CONNECTION OF NEVADA, LLC'S MOTION FOR ATTORNEYS FEES PLAINTIFFS GREEN LEAF FARMS ET AL JOINDER TO OPPOSITIONS TO WELLNESS CONNECTIONS OF NEVADA, LLC S MOTION FOR ATTORNEYS' FEES

The Court having reviewed Wellness Center's Motion for Attorney's Fees and the related briefing and being fully informed, denies the motion. The claims were brought with a reasonable basis. Other applicants like Wellness were joined as a result of motion practice brought related to joinder issues on the PJR claim. Wellness does not satisfy the analysis for a prevailing party under these circumstances. Counsel for TGIG is directed to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 11-20-20./ /lk


CLERK OF THE COURT

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Attorneys for ETW Management Group LLC; et al.

DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B

Consolidated with: A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept No.: XI

**ORDER DENYING WELLNESS
CONNECTION OF NEVADA, LLC'S
MOTION FOR ATTORNEYS' FEES**

Hearing Date: November 20, 2020

Hearing Time: In Chambers

On November 20, 2020, in chambers, the following matter came on for hearing, Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees.

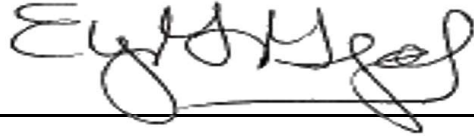
And this Court, having considered the relevant briefing and evidence, the relevant legal authorities, the joinders thereto, and good cause appearing, this Court finds as follows:

1 1. Plaintiffs' claims were brought with a reasonable basis. Other applicants, like
2 Wellness Connection of Nevada, LLC, were joined as a result of motion practice brought related
3 to joinder issues on the Petition for Judicial Review claim. Wellness Connection of Nevada, LLC
4 does not satisfy the analysis for a prevailing party under these circumstances.

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

IT IS HEREBY ORDERED that Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees is **DENIED** in full. **Dated this 27th day of August, 2021**



Submitted by and approved as to form:

439 DB5 4BAF 3D2E
Elizabeth Gonzalez
District Court Judge

BROWNSTEIN HYATT FARBER
SCHECK, LLP

HOWARD & HOWARD ATTORNEYS
PLLC

BY: Maximilien D. Fetaz
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Maximilien D. Fetaz, Esq.,
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BY: /s/ L. Christopher Rose
L. Christopher Rose, Esq., NV Bar No. 7500
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Attorneys for ETW Plaintiffs

Cosby, Wendy C.

From: L. Christopher Rose <lcr@h2law.com>
Sent: Friday, August 27, 2021 12:24 PM
To: Fetaz, Maximilien
Cc: Bult, Adam K.; Chance, Travis F.; Cosby, Wendy C.; Kirill V. Mikhaylov
Subject: RE: In re DOT Litigation: Order re Wellness Connection's Motion for Attorneys' Fees

Max

You may use my electronic signature for this order.



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Subject: In re DOT Litigation: Order re Wellness Connection's Motion for Attorneys' Fees

CAUTION: EXTERNAL EMAIL

Chris,

I have attached for your review and approval the Order Denying Wellness Connection's Motion for Attorneys' Fees. Please let me know if we may affix your e-signature to the attached. Thank you,

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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

CASE NO: A-19-787004-B

7 DEPT. NO. Department 11
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

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11 Court. The foregoing Order Denying 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:

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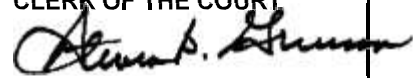
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Attorneys for ETW Management Group LLC; et al.

DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B

Consolidated with: A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept No.: XI

**NOTICE OF ENTRY OF ORDER
DENYING WELLNESS CONNECTION
OF NEVADA, LLC'S MOTION FOR
ATTORNEYS' FEES**

PLEASE TAKE NOTICE that an Order Denying Wellness Connection of Nevada, LLC'
was entered on the 16th day of Fes Motion for Attorneys' Fees was entered on August 27, 2021. A

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copy of said Order is attached hereto.

DATED this 30th day of August, 2021.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Adam K. Bult

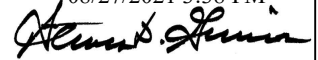
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TRAVIS F. CHANCE, ESQ., NV Bar No. 13800

JENNINGS & FULTON, LTD.
ADAM R. FULTON, ESQ., NV Bar No. 11572
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING WELLNESS CONNECTION OF NEVADA, LLC'S MOTION FOR ATTORNEYS' FEES** to be submitted electronically to all parties currently on the electronic service list on August 30, 2021.

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


CLERK OF THE COURT

ODM

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Dept No.: XI

**ORDER DENYING WELLNESS
CONNECTION OF NEVADA, LLC'S
MOTION FOR ATTORNEYS' FEES**

Hearing Date: November 20, 2020

Hearing Time: In Chambers

On November 20, 2020, in chambers, the following matter came on for hearing, Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees.

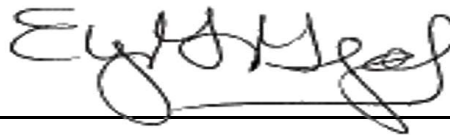
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ORDER

IT IS HEREBY ORDERED that Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees is **DENIED** in full. **Dated this 27th day of August, 2021**



Submitted by and approved as to form:

439 DB5 4BAF 3D2E
Elizabeth Gonzalez
District Court Judge

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

HOWARD & HOWARD ATTORNEYS
PLLC

BY: Maximilien D. Fetaz
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Maximilien D. Fetaz, Esq.,
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BY: /s/ L. Christopher Rose
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Attorneys for ETW Plaintiffs

Cosby, Wendy C.

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Subject: RE: In re DOT Litigation: Order re Wellness Connection's Motion for Attorneys' Fees

Max

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Howard & Howard
law for business®

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2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
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6 In Re: D.O.T. Litigation

CASE NO: A-19-787004-B

7 DEPT. NO. Department 11
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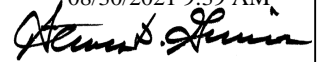
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Attorneys for ETW Management Group LLC; et al.

DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B

Consolidated with: A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept No.: XI

**ORDER GRANTING MOTIONS TO
RETAX**

Hearing Date: November 6, 2020

Hearing Time: In Chambers

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

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

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

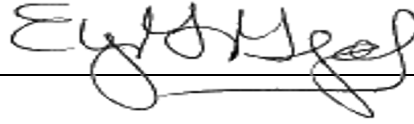
5 2. Final judgment will be issued following completion of Phase 3 scheduled for a jury
6 trial on June 28, 2021.

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

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

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



Submitted by and approved as to form:

0E9 BEF EC69 BA0B
Elizabeth Gonzalez
District Court Judge

BROWNSTEIN HYATT FARBER
SCHECK, LLP

HOWARD & HOWARD ATTORNEYS
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Attorneys for Lone Mountain Partners, LLC

Cosby, Wendy C.

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Cc: Bult, Adam K.; Chance, Travis F.; Cosby, Wendy C.; Kirill V. Mikhaylov; Eric Hone
Subject: RE: In re DOT Litigation: Order re Motions to Retax

You may use mine as well.

Joel Schwarz

Attorney

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Cc: Bult, Adam K. <ABult@BHFS.com>; Chance, Travis F. <tchance@bhfs.com>; Cosby, Wendy C. <wcosby@bhfs.com>; Kirill V. Mikhaylov <kvm@h2law.com>; Eric Hone <eric@h1lawgroup.com>
Subject: RE: In re DOT Litigation: Order re Motions to Retax

Max

You may use my electronic signature for this order.

Howard & Howard
law for business®

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Attorney

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Subject: In re DOT Litigation: Order re Motions to Retax

Chris/Joel,

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

Maximilien D. Fetaz

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-787004-B

7 DEPT. NO. Department 11
8

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Essence Tropicana, LLC, Essence Henderson, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

Case No.: A-19-787004-B

Dept. No.: XXXI

In Re: D.O.T. Litigation,

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.

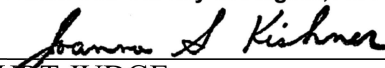
3. There is no just reason for delaying entry of final judgment as to Phase 1 or Phase 2. NRCP 54(b).

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

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

Respectfully submitted by:

PISANELLI BICE PLLC

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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_0f1d9cb0-80ba-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
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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. Shevorsi](#)
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.

-Shevorsi

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. Shevorsi <SShevorsi@ag.nv.gov>; Rusty Graf <rgraf@blackwadham.s.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:

APP01868

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
a: 10777 W. Twain Ave., Suite 300
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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APP01870

to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents, or immediately call [+1.702.460.0718](tel:+17024600718) to arrange for return via U.S. postal delivery at our expense. Thank you.

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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Mark Dzarnoski

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PISANELLI BICE

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
CLARK COUNTY, NEVADA

4
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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18 Peter Christiansen	pete@christiansenlaw.com
19 Whitney Barrett	wbarrett@christiansenlaw.com
20 R. Todd Terry	tterry@christiansenlaw.com
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22 Margaret McLetchie	maggie@nvlitigation.com
23 Teresa Stovak	teresa@nvlawyers.com
24 Eileen Conners	eileen@nvlawyers.com
25 Jonathan Crain	jcrain@christiansenlaw.com

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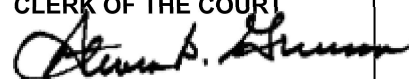
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James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com

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 By: /s/ Jordan T. Smith

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

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

9 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*

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

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

**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.

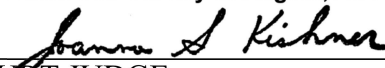
3. There is no just reason for delaying entry of final judgment as to Phase 1 or Phase 2. NRCP 54(b).

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

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

Respectfully submitted by:

PISANELLI BICE PLLC

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
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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_0f1d9cb0-80ba-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
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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@blackwadham.s.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:

APP01889

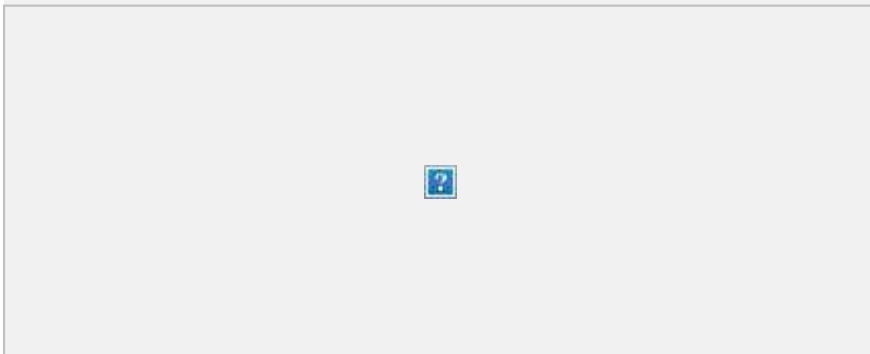
From: [Rusty Graf](#)
To: [Rich Williamson](#); [Joel Schwarz](#); [Jordan T. Smith](#); [Joseph Gutierrez](#); [Dennis Prince](#); [dkoch kochscow.com](#); [Steven G. Shevorski](#); [Akke Levin](#)
Cc: [Todd Bice](#); [Ashley R. Ellison](#); [Eric Hone](#); [Jamie Zimmerman](#); [Karen Morrow](#)
Subject: 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.

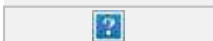
Partner



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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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nick@nrdarelaw.com

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APP01891

to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents, or immediately call [+1.702.460.0718](tel:+17024600718) to arrange for return via U.S. postal delivery at our expense. Thank you.

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)
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PISANELLI BICE

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
CLARK COUNTY, NEVADA

4
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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18 Peter Christiansen	pete@christiansenlaw.com
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25 Jonathan Crain	jcrain@christiansenlaw.com

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