

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

In Re: D.O.T. Litigation

No. 85314

Electronically Filed
Oct 04 2022 06:08 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 31
County Clark Judge Joanna S. Kishner
District Ct. Case No. A-19-787004-B

2. Attorney filing this docketing statement:

Attorney Karson D. Bright Telephone 702-285-1483
Firm Howard & Howard Attorneys, PLLC
Address 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169

Client(s) Wellness Connection of Nevada, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Peter S. Christiansen Telephone 702-240-7979
Firm Christiansen Trial Lawyers
Address 710 South 7th Street, Las Vegas, Nevada 89101

Client(s) Qualcan, LLC

Attorney Will Kemp Telephone 702-385-6000
Firm Kemp Jones LLP
Address 3800 Howard Hughes Parkway, Suite 1700, Las Vegas, Nevada 89169

Client(s) MM Development Company, LLC & LivFree Wellness, LLC

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| ☒ Judgment after bench trial | ☒ Dismissal: |
| ☐ Judgment after jury verdict | ☐ Lack of jurisdiction |
| ☐ Summary judgment | ☐ Failure to state a claim |
| ☐ Default judgment | ☐ Failure to prosecute |
| ☐ Grant/Denial of NRCP 60(b) relief | ☒ Other (specify): <u>Voluntary Dismissal</u> |
| ☐ Grant/Denial of injunction | ☐ Divorce Decree: |
| ☒ Grant/Denial of declaratory relief | ☐ Original ☐ Modification |
| ☐ Review of agency determination | ☐ Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

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

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Nevada Supreme Court Case No. 82014

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

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.

Each of these matters were consolidated into Case No. A-19-787004-B.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This matter arises from various Plaintiffs' lawsuits challenging the State of Nevada's application, evaluation, and license award process in 2018 for the right to operate dispensaries in Nevada. The State did not award these Plaintiffs licenses, so they sued the State of Nevada Department of Taxation and every entity that received a license, including Wellness, claiming an assortment of mistakes and wrongdoings and arguing that the entire process needed to be redone. The various Plaintiffs' respective lawsuits were eventually consolidated into Case No. A-19-787004-B and Judge Gonzalez eventually issued Amended Trial Protocol No.2, which split the trial into three separate phases. The First Phase addressed Plaintiffs' claims for petitions for judicial review. The Second Phase addressed the 2018 recreational marijuana application process, i.e., the Plaintiffs' claims for Equal Protection, Due Process, Declaratory Relief, etc. And the Third Phase, which has not yet occurred, is intended to address certain Plaintiffs' claims against Defendant, Jorge Pupo, personally. Wellness is not involved with the Third Phase. The First and Second Phases were certified as final on August 4, 2022. Complete Description is attached hereto.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

First, after the district court rendered its decision on the First Phase and Second Phase of the trial in September of 2020, Wellness moved to recover its attorneys' fees pursuant to NRS 18.010(2)(b). The court denied Wellness' Motion, and Wellness now appeals that ruling.

Second, Wellness appeals the district court granting Plaintiff's Motion to Retax Wellness' Memorandum of Costs.

Third, Wellness appeals the district court granting Plaintiff DH Flamingo's Motion for Voluntary Dismissal with Prejudice of its First Amended Complaint wherein it sought, in part, for the court to shield it from being required to reimburse any party to this action for their respective attorneys' fees and costs. Wellness opposed this Motion, but it was granted.

Fourth, Wellness appeals the district court denying its Countermotion to Clarify and/or for Additional Findings.

A Complete Description is attached hereto.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Not Applicable.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

NRAP 17(a)(9) - Cases arising from business court.

14. Trial. If this action proceeded to trial, how many days did the trial last? 30

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
Not Applicable.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from August 4, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served August 4, 2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 2, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--|---------------------------------------|
| ☒ NRAP 3A(b)(1) | ☐ NRS 38.205 |
| ☐ NRAP 3A(b)(2) | ☐ NRS 233B.150 |
| ☐ NRAP 3A(b)(3) | ☐ NRS 703.376 |
| ☒ Other (specify) <u>NRAP 3A(b)(7)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) - Final judgment on Trial Phases 1 and 2 were entered on August 4, 2022. Pursuant to NRAP 4(a)(1), Wellness filed its Notice of Appeal on September 2, 2022.

NRAP 3A(b)(7) - The Nevada Supreme Court has ruled that an order relating to issuance of attorney's fees and costs is substantively appealable as a special order after final judgment. See, e.g., *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006); *Winston Prod. Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006). Special orders after final judgment are subject to appeal because they affect the rights of a party growing out of the final judgment. *Id.* Here, the district court entered final judgment on August 4, 2022. Thereafter, the district court denied Wellness' Motion for Attorney's Fees and Memorandum of Costs. Thus, pursuant to *Thomas* and *Winston Prod.*, the Supreme Court holds jurisdiction of the district court's orders in question.

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

(a) Parties:

Wellness Connection of Nevada, LLC;

See Additional Sheet attached for a complete list of all parties involved in the underlying district court action.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Certain parties are not included in this appeal given that they are unrelated to the orders being challenged by Wellness. Specifically, as it relates to the denial of Wellness' Motion for Attorney's Fees and Granting of Plaintiffs' Motion to Retax, Wellness is not seeking to recover its fees and costs for parties that did not bring claims against it in the lawsuit.

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

Trial Phase 1 - Petitions for Judicial Review - Order Certified Ruling as Final on August 4, 2022

Trial Phase 2 - Equal Protection, Due Process, Declaratory Relief, Intentional Interference with Prospective Economic Advance, Intentional Interference with Contractual Relations, and Permanent Injunction - Order Certified Ruling as Final on August 4, 2022

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

Trial Phase 3 has yet to occur; however, it is intended to address certain parties' claims against Defendant Jorge Pupo personally. Wellness has no involvement in Trial Phase 3.

(b) Specify the parties remaining below:

Nevada Wellness Center, LLC (Plaintiff) and Jorge Pupo (Defendant)

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

The district court certified the judgment as a final judgment pursuant to NRCP 54(b) for Trial Phases 1 and 2. While Trial Phase 3 remains ongoing, the Order Certifying Trial Phases 1 and 2 as final renders them subject to appeal.

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

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

VERIFICATION

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

Wellness Connection of Nevada, LLC
Name of appellant

Karson D. Bright
Name of counsel of record

October 4, 2022
Date

Karson D. Bright
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Peter Christiansen, 710 South 7th Street, Las Vegas, Nevada 89101 – Attorney for Qualcan, LLC

Will Kemp, 3800 Howard Hughes Parkway, Suite 1700, Las Vegas, Nevada 89169 – Attorney for MM Development Company, LLC & LivFree Wellness, LLC

Additional names and addresses on attached separate sheet.

Dated this 4th day of October, 2022

Karson D. Bright
Signature

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EXHIBIT PAGE ONLY

EXHIBIT 1
Additional Information Sheet

IN THE SUPREME COURT OF THE STATE OF NEVADA

In Re: D.O.T. Litigation.

Supreme Court No. 85314

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

EXHIBIT 1

DOCKETING STATEMENT – ADDITIONAL INFORMATION

HOWARD & HOWARD ATTORNEYS PLLC

L. Christopher Rose, Esq., Nevada Bar No. 7500

Karson D. Bright, Esq., Nevada Bar No. 14837

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, Nevada 89169

Telephone: (702) 257-1483; Facsimile: (702) 567-1568

lcr@h2law.com; kdb@h2law.com

Attorneys for Appellant

Wellness Connection of Nevada, LLC

Additional Attorneys Representing Respondents and Certificate of Service:¹

A.

Attorney	Theodore Parker, III
Telephone	702-868-8000
Firm	Parker Nelson & Associates, CHTD.
Address	2460 Professional Court, Suite 2000, Las Vegas, Nevada 89128
Client(s)	Nevada Wellness Center, LLC

B.

Attorney	Craig Slater
Telephone	702-367-8899
Firm	Luh & Associates
Address	8987 W. Flamingo Road, Suite 1000, Las Vegas, Nevada 89147
Client(s)	Clark County Natural Medicinal Solutions, LLC d/b/a NuVeda; Nye Natural Medicinal Solutions, LLC d/b/a NuVeda; Clark NMSD, LLC d/b/a NuVeda; INYO Fine Cannabis Dispensary, LLC d/b/a INYO Fine Cannabis Dispensary

C.

Attorney	James A. Beckstrom
Telephone	725-300-0599
Firm	Beckstrom & Beckstrom, LLP
Address	400 South 4 th Street, Las Vegas, Nevada 89101

¹ Each of the listed parties were similarly served and are listed pursuant to the Certificate of Service included in the Docketing Statement.

Client(s)	ETW Management Group, LLC; Global Harmony, LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate, Inc. d/b/a Mother Herb, and Zion Gardens, LLC
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D.

Attorney	Dominic Gentile
Telephone	702-862-8300
Firm	Clark Hill, PLLC
Address	3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169
Client(s)	TGIG, LLC; Nevada Holistic Medicine, LLC; GBS Nevada Partners; Fidelis Holdings, LLC; Gravitas Nevada; Nevada Pure, LLC; Medifarm, LLC, and Medifarm IV, LLC

E.

Attorney	Clarence Gamble
Telephone	303-733-6353
Firm	Ramos Law
Address	10190 Bannock Street, Suite 200, Northglenn, CO 80260
Client(s)	Rural Remedies, LLC

F.

Attorney	Amy Sugden
Telephone	702-625-3605
Firm	Sugden Law
Address	9728 Gilespe Street, Las Vegas, Nevada 89183
Client(s)	THC Nevada, LLC

G.

Attorney	Sigal Chattah
Telephone	702-360-6200
Firm	Chattah Law Group
Address	5875 S. Rainbow Boulevard, Suite 203, Las Vegas, Nevada 89118
Client(s)	Herbal Choice, LLC

H.

Attorney	Paul Conant & Brett Scolari
Telephone	602-508-9010; 800-908-6510 ext. 210
Firm	Conant Law Firm, PLC
Address	2398 E. Camelback Road, Suite 925, Phoenix, AZ 85016
Client(s)	Tryke Companies SO NV, LLC; Tryke Companies Reno, LLC; and NuLeaf Incline Dispensary, LLC

I.

Attorney	Nicolas Donath
Telephone	702-460-0718
Firm	N.R. Donath & Associates, PLLC
Address	871 Coronado Center Drive, Suite 200, Henderson, Nevada 89052
Client(s)	Green Leaf Farms Holdings, LLC; Green Therapeutics, LLC; NevCann, LLC, and Red Earth, LLC

J.

Attorney	Jeffrey Bendavid
Telephone	702-385-6114
Firm	Bendavid Law
Address	7301 Peak Drive, Suite 150, Las Vegas, Nevada 89128
Client(s)	Natural Medicine, LLC

K.

Attorney	Nikki Baker
Telephone	702-786-1001
Firm	Peterson Baker, PLLC
Address	701 South 7 th Street, Las Vegas, Nevada 89101
Client(s)	D.H. Flamingo, Inc., and Surterra Holdings, Inc

L.

Attorney	Eric D. Hone
Telephone	702-608-3720
Firm	Hone Law
Address	701 N. Green Valley Parkway, Suite 200, Henderson, Nevada 89074
Client(s)	Lone Mountain Partners, LLC

M.

Attorney	James Pisanelli
Telephone	702-214-2100

Firm	Pisanelli Bice, PLLC
Address	400 S. 4 th Street, Suite 300, Las Vegas, Nevada 89101
Client(s)	Integral Associates, LLC d/b/a Essence Tropicana, LLC, and Essence Henderson, LLC

N.

Attorney	Aaron Ford
Telephone	702-486-3420
Firm	Office of Attorney General
Address	555 E. Washington Avenue, Suite 3900, Las Vegas, NV 89101
Client(s)	State of Nevada ex rel. Department of Taxation and Cannabis Compliance Board

O.

Attorney	Margaret McLetchie
Telephone	702-728-5300
Firm	McLetchie Law
Address	602 S. Tenth Street, Las Vegas Nevada 89101
Client(s)	GreenMart of Nevada NLV, LLC

P.

Attorney	David Koch
Telephone	702-833-1100
Firm	King Scow Koch Durham, LLC
Address	11500 S. Eastern Ave., Suite 210, Henderson, NV 89052

Client(s)	Nevada Organic Remedies, LLC
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8. Nature of the Action:

This matter arises from various Plaintiffs' lawsuits challenging the State of Nevada's application, evaluation, and license award process in 2018 for the right to operate dispensaries in Nevada. The State did not award these Plaintiffs licenses, so they sued the State of Nevada Department of Taxation and every entity that received a license, including Wellness, claiming an assortment of mistakes and wrongdoings and arguing that the entire process needed to be redone. The various Plaintiffs' respective lawsuits were eventually consolidated into the present matter Case No. A-19-787004-B. Judge Gonzalez eventually issued Amended Trial Protocol No.2, which split the trial into three separate phases. The First Phase addressed Plaintiffs' claims for petitions for judicial review. The Second Phase addressed the 2018 recreational marijuana application process, i.e., the Plaintiffs' claims for Equal Protection, Due Process, Declaratory Relief, Intentional Interference with Prospective Economic Advance, Intentional Interference with Contractual Relations, and Permanent Injunction. And the Third Phase, which has not yet occurred, is intended to address certain Plaintiffs' claims against Defendant, Jorge Pupo, personally. Wellness has no involvement in the Third Phase of the trial.

The district court rendered its decision on the Second Phase on September 3, 2020 after a month-long trial that required all parties to participate, then issued its decision on the First Phase on September 16, 2020, which was merely a hearing of a few hours for the judicial review claims. The district court denied all relief to Plaintiffs aside from one narrow aspect. The district court ruled that the Department of Taxation acted in excess of its authority when it improperly replaced the mandatory requirement for a background check of each prospective owner, officer and board

member with the “five percent or greater” standard. On August 4, 2022, the district court issued the Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) (the “Certification Order”).

9. Issues on Appeal:

First, after the district court rendered its decision on the First Phase and Second Phase of the trial in September of 2020, Wellness moved to recover its attorneys’ fees pursuant to NRS 18.010(2)(b). The district court denied Wellness’ Motion, and Wellness now appeals that ruling.

Second, Wellness filed its Memorandum of Costs to recover its costs after the district court rendered its decision on the First Phase and Second Phase of trial. Thereafter, the Plaintiffs filed their respective Motions to Retax Wellness’ Memorandum of Costs. The district court granted the Motions to Retax, and Wellness now appeals that ruling.

Third, Plaintiff DH Flamingo filed its Motion for Voluntary Dismissal with Prejudice of its First Amended Complaint wherein it sought, in part, for the district court to shield it from being required to reimburse any party to this action for their respective attorneys’ fees and costs. Wellness opposed this Motion. The district court granted the Motion and ruled, in part, that “no Party to the Consolidated Action shall be entitled to reimbursement of any costs or attorneys’ fees from DH Flamingo.” Wellness now appeals that ruling.

Fourth, Wellness filed a Countermotion to Clarify and/or for Additional Findings, which the district court denied. Specifically, Wellness requested for the Court to amend its ruling and to order all those applicants who properly obtained licenses for dispensaries to be named in the findings of the order. The district court denied this request. Wellness appeals that ruling.

22. List of All Parties in the Action or Consolidated Actions in the District Court:

- a. Wellness Connection of Nevada, LLC

- b. Dotan Y. Melech
- c. ETW Management Group, LLC
- d. Global Harmony, LLC
- e. Green Leaf Farms Holdings, LLC
- f. Herbal Choice, Inc.
- g. Just Quality, LLC
- h. Libra Wellness Center, LLC
- i. Rombough Real Estate, Inc.
- j. NEVCANN, LLC
- k. Red Earth, LLC
- l. THC Nevada, LLC
- m. Zion Gardens, LLC
- n. Green Therapeutics, LLC MMOF Vegas Retail, Inc.
- o. Tryke Companies Reno, LLC
- p. Tryke Companies SO NV, LLC
- q. NuLeaf Incline Dispensary, LLC
- r. Qualcan, LLC
- s. Nevada Organic Remedies, LLC
- t. Integral Associates, LLC
- u. Essence Tropicana, LLC
- v. Essence Henderson, LLC
- w. CPCM Holdings, LLC
- x. Commerce Park Medical, LLC

- y. Cheyenne Medical, LLC
- z. Lone Mountain Partners, LLC
- aa. GreenMart of Nevada NLV, LLC
- bb. Nevada Department of Taxation
- cc. Deep Roots Medical, LLC
- dd. Circle S Farms, LLC
- ee. Clear River, LLC
- ff. Eureka NewGen Farms, LLC
- gg. Green Therapeutics, LLC
- hh. Helping Hands Wellness Center, Inc.
- ii. Polaris Wellness Center, LLC
- jj. TRNVP098
- kk. Jorge Pupo
- ll. Pure Tonic Concentrates, LLC
- mm. Nevada Cannabis Compliance Board
- nn. Compassionate Team of Las Vegas, LLC
- oo. MM Development Company, Inc.
- pp. LivFree Wellness, LLC
- qq. Fidelis Holdings, LLC
- rr. GBS Nevada Partners, LLC
- ss. Gravitas Nevada, LLC
- tt. Medifarm, LLC
- uu. Nevada Holistic Medicine, LLC

vv. Nevada Pure, LLC

ww. Paradise Wellness Center, LLC

xx. Serenity Wellness Center, LLC

yy. TGIG, LLC

zz. Bioneva Innovations of Carson City, LLC

aaa. Blue Coyote Ranch, LLC

bbb. Clark County Natural Medicinal Solutions, LLC

ccc. Clark NMSD, LLC

ddd. DP Holdings, Inc.

eee. Euphoria Wellness, LLC

fff. Franklin Bioscience NV, LLC

ggg. Good Chemistry Nevada, LLC

hhh. Greenleaf Wellness, Inc.

iii. Harvest of Nevada, LLC

jjj. Inyo Fine Cannabis Dispensary, LLC

kkk. Las Vegas Wellness and Compassion, LLC

lll. Miller Farms, LLC

mmm. NCMM, LLC

nnn. Nye Natural Medicinal Solutions, LLC

ooo. WaveSeer of Nevada, LLC

ppp. Nevada Wellness Center, LLC

qqq. GTI Nevada, LLC

rrr. Physics One, LLC

sss. Thompson Farm One, LLC

ttt. Nevada Botanical Science, Inc.

uuu. Alternative Medicine Association, LC

vvv. Bloosom Group, LLC

www. Diversified Modalities Marketing, Ltd.

xxx. 3AP, LLC

yyy. Forever Green, LLC

zzz. NLVG, LLC

Exhibits Attached to Docketing Statement:

1. Additional Information Sheet
2. The Latest Filed Complaint, Counterclaims, Cross-Claims, and Third-Party Claims
 - a. D.H. Flamingo, Inc., et al.'s First Amended Complaint
 - b. Serenity Wellness Center, LLC, et al.'s Second Amended Complaint
 - c. ETW Management Group, LLC's Third Amended Complaint
 - d. MM Development Company, Inc., et al.'s Second Amended Complaint
 - e. Natural Medicine, LLC's Complaint-in-Intervention
 - f. Qualcan, LLC's Second Amended Complaint
 - g. Nevada Wellness Center, LLC's Second Amended Complaint
 - h. Rural Remedies, LLC's Amended Complaint-in-Intervention
3. Orders of NRCP 41(a) Dismissals
 - a. Notice of Entry of Order Granting Motion for (1) Voluntary Dismissal of Certain Defendants/ Respondents With Prejudice; and (2) Allowing Service by Electronic Means – March 11, 2020

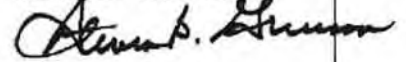
- b. Notice of Entry of Order Granting DH Flamingo, Inc.’s Motion for Voluntary Dismissal With Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition – March 30, 2020
- 4. Orders Challenged on Appeal
 - a. Order Granting DH Flamingo’s Motion for (1) Voluntary Dismissal of Certain Defendants/ Respondents With Prejudice; and (2) Allowing Service by Electronic Means – March 11, 2020;
 - b. Order Granting DH Flamingo’s Motion for Voluntary Dismissal With Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition – March 30, 2020;
 - c. Order Denying Wellness’ Motion to Amend and Countermotion to Clarify Findings of Fact and Conclusions of Law – October 27, 2020;
 - d. Order Denying Wellness’ Motion for Attorneys’ Fees and Costs – August 27, 2021;
 - e. Order Granting Plaintiffs’ Motions to Retax related to Wellness’ Memorandum of Costs and Disbursements – August 30, 2021;
- 5. Notices of Entry for Orders Challenged on Appeal
 - a. Notice of Entry for Order Granting DH Flamingo’s Motion for (1) Voluntary Dismissal of Certain Defendants/ Respondents With Prejudice; and (2) Allowing Service by Electronic Means – March 11, 2020;
 - b. Notice of Entry for Order Granting DH Flamingo’s Motion for Voluntary Dismissal With Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition – March 30, 2020;

- c. Notice of Entry for Order Denying Wellness' Motion to Amend and
Counter-motion to Clarify Findings of Fact and Conclusions of Law – October 27,
2020;
- d. Notice of Entry for Order Denying Wellness' Motion for Attorneys' Fees and
Costs – August 27, 2021;
- e. Notice of Entry for Order Granting Plaintiffs' Motions to Retax related to
Wellness' Memorandum of Costs and Disbursements – August 30, 2021.

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EXHIBIT 2
**Latest Filed Complaint, Counterclaims, Cross-
Claims, and Third-Party Claims**

EXHIBIT 2-A



1 **FAC**

2 DENNIS L. KENNEDY
3 Nevada Bar No. 1462

4 JOSHUA M. DICKEY
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20 D.H. FLAMINGO, INC., d/b/a THE
21 APOTHECARY SHOPPE; CLARK NATURAL
22 MEDICINAL SOLUTIONS LLC, d/b/a
23 NuVEDA; NYE NATURAL MEDICINAL
24 SOLUTIONS LLC, d/b/a NuVEDA; CLARK
25 NMSD LLC, d/b/a NuVEDA; and INYO FINE
26 CANNABIS DISPENSARY L.L.C., d/b/a INYO
27 FINE CANNABIS DISPENSARY;
28

DISTRICT COURT

CLARK COUNTY, NEVADA

20 D.H. FLAMINGO, INC., d/b/a THE
21 APOTHECARY SHOPPE, a Nevada
22 corporation; CLARK NATURAL MEDICINAL
23 SOLUTIONS LLC, d/b/a NuVEDA, a Nevada
24 limited liability company; NYE NATURAL
25 MEDICINAL SOLUTIONS LLC, d/b/a
26 NuVEDA, a Nevada limited liability company;
27 CLARK NMSD LLC, d/b/a NuVEDA, a Nevada
28 limited liability company; INYO FINE
CANNABIS DISPENSARY L.L.C., d/b/a INYO
FINE CANNABIS DISPENSARY, a Nevada
limited liability company; and SURTERRA
HOLDINGS, INC., a Delaware corporation,

Case No. A-19-787035-C

Dept. No. VI

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

Exempt from Arbitration NAR 3(A), 5

- Action Seeking Judicial Review of Administrative Decisions
- Action for Declaratory Relief
- Action Presenting a Significant

1 Plaintiffs/Petitioners,

2 vs.

3 STATE EX REL. DEPARTMENT OF
4 TAXATION; STATE EX REL. NEVADA TAX
5 COMMISSION; 3AP INC., a Nevada limited
6 liability company; 5SEAT INVESTMENTS
7 LLC, a Nevada limited liability company;
8 ACRES DISPENSARY LLC, a Nevada limited
9 liability company; ACRES MEDICAL LLC, a
10 Nevada limited liability company; AGUA
11 STREET LLC, a Nevada limited liability
12 company; ALTERNATIVE MEDICINE
13 ASSOCIATION LC, a Nevada limited liability
14 company; BIONEVA INNOVATIONS OF
15 CARSON CITY LLC, a Nevada limited liability
16 company; BLOSSUM GROUP LLC, a Nevada
17 limited liability company; BLUE COYOTE
18 RANCH LLC, a Nevada limited liability
19 company; CARSON CITY AGENCY
20 SOLUTIONS L.L.C., a Nevada limited liability
21 company; CHEYENNE MEDICAL, LLC, a
22 Nevada limited liability company; CIRCLE S
23 FARMS LLC, a Nevada limited liability
24 company; CLEAR RIVER, LLC, a Nevada
25 limited liability company; CN LICENSECO I,
26 Inc., a Nevada corporation; COMMERCE PARK
27 MEDICAL L.L.C., a Nevada limited liability
28 company; COMPASSIONATE TEAM OF LAS
VEGAS LLC, a Nevada limited liability
company; CWNEVADA, LLC, a Nevada limited
liability company; D LUX LLC, a Nevada
limited liability company; DEEP ROOTS
MEDICAL LLC, a Nevada limited liability
company; DIVERSIFIED MODALITIES
MARKETING LTD., a Nevada limited liability
company; .DP HOLDINGS, INC., a Nevada
corporation; ECONEVADA LLC, a Nevada
limited liability company; ESSENCE
HENDERSON, LLC, a Nevada limited liability
company; ESSENCE TROPICANA, LLC, a
Nevada limited liability company; ETW
MANAGEMENT GROUP LLC, a Nevada
limited liability company; EUPHORIA
WELLNESS LLC, a Nevada limited liability
company; EUREKA NEWGEN FARMS LLC, a
Nevada limited liability company; FIDELIS

Issue of Public Policy

- Action Seeking Equitable or Extraordinary Relief

1 HOLDINGS, LLC., a Nevada limited liability
2 company; FOREVER GREEN, LLC, a Nevada
3 limited liability company; FRANKLIN
4 BIOSCIENCE NV LLC, a Nevada limited
5 liability company; FSWFL, LLC, a Nevada
6 limited liability company; GB SCIENCES
7 NEVADA LLC, a Nevada limited liability
8 company; GBS NEVADA PARTNERS, LLC, a
9 Nevada limited liability company; GFIVE
10 CULTIVATION LLC, a Nevada limited liability
11 company; GLOBAL HARMONY LLC, a
12 Nevada limited liability company; GOOD
13 CHEMISTRY NEVADA, LLC, a Nevada limited
14 liability company; GRAVITAS HENDERSON
15 L.L.C., a Nevada limited liability company;
16 GRAVITAS NEVADA LTD., a Nevada limited
17 liability company; GREEN LEAF FARMS
18 HOLDINGS LLC, a Nevada limited liability
19 company; GREEN LIFE PRODUCTIONS LLC,
20 a Nevada limited liability company; GREEN
21 THERAPEUTICS LLC, a Nevada limited
22 liability company; GREENLEAF WELLNESS,
23 INC., a Nevada corporation; GREENMART OF
24 NEVADA NLV, LLC, a Nevada limited liability
25 company; GREENPOINT NEVADA INC., a
26 Nevada corporation; GREENSCAPE
27 PRODUCTIONS LLC, a Nevada limited liability
28 company; GREENWAY HEALTH
COMMUNITY L.L.C., a Nevada limited liability
company; GREENWAY MEDICAL LLC, a
Nevada limited liability company; GTI
NEVADA, LLC, a Nevada limited liability
company; H & K GROWERS CORP., a Nevada
corporation; HARVEST OF NEVADA LLC; a
Nevada limited liability company;
HEALTHCARE OPTIONS FOR PATIENTS
ENTERPRISES, LLC, a Nevada limited liability
company; HELIOS NV LLC, a Nevada limited
liability company; HELPING HANDS
WELLNESS CENTER, INC., a Nevada
corporation; HERBAL CHOICE INC., a Nevada
corporation; HIGH SIERRA CULTIVATION
LLC, a Nevada limited liability company; HIGH
SIERRA HOLISTICS LLC, a Nevada limited
liability company; INTERNATIONAL
SERVICE AND REBUILDING, INC., a
domestic corporation; JUST QUALITY, LLC, a
Nevada limited liability company; KINDIBLES

1 LLC, a Nevada limited liability company; LAS
2 VEGAS WELLNESS AND COMPASSION
3 LLC; a Nevada limited liability company;
4 LIBRA WELLNESS CENTER, LLC, a Nevada
5 limited liability company; LIVFREE
6 WELLNESS LLC, a Nevada limited liability
7 company; LNP, LLC, a Nevada limited liability
8 company; LONE MOUNTAIN PARTNERS,
9 LLC, a Nevada limited liability company; LUFF
10 ENTERPRISES NV, INC., a Nevada
11 corporation; LVMC C&P LLC, a Nevada limited
12 liability company; MALANA LV L.L.C., a
13 Nevada limited liability company; MATRIX NV,
14 LLC, a Nevada limited liability company;
15 MEDIFARM IV, LLC, a Nevada limited liability
16 company; MILLER FARMS, LLC, a Nevada
17 limited liability company; MM
18 DEVELOPMENT COMPANY, INC., a Nevada
19 corporation; MM R & D, LLC, a Nevada limited
20 liability company; MMNV2 HOLDINGS I, LLC,
21 a Nevada limited liability company; MMOF
22 VEGAS RETAIL, INC. a Nevada corporation;
23 NATURAL MEDICINE L.L.C., a Nevada
24 limited liability company; NCMM, LLC, a
25 Nevada limited liability company; NEVADA
26 BOTANICAL SCIENCE, INC., a Nevada
27 corporation; NEVADA GROUP WELLNESS
28 LLC, a Nevada limited liability company;
NEVADA HOLISTIC MEDICINE LLC, a
Nevada limited liability company; NEVADA
MEDICAL GROUP LLC, a Nevada limited
liability company; NEVADA ORGANIC
REMEDIES LLC, a Nevada limited liability
company; NEVADA WELLNESS CENTER
LLC, a Nevada limited liability company;
NEVADAPURE, LLC, a Nevada limited liability
company; NEVCANN LLC, a Nevada limited
liability company; NLV WELLNESS LLC, a
Nevada limited liability company; NLVG, LLC,
a Nevada limited liability company; NULEAF
INCLINE DISPENSARY LLC, a Nevada limited
liability company; NV 3480 PARTNERS LLC, a
Nevada limited liability company; NV GREEN
INC., a Nevada corporation; NYE FARM TECH
LTD., a Nevada limited liability company;
PARADISE WELLNESS CENTER LLC, a
Nevada limited liability company;
PHENOFARM NV LLC, a Nevada limited

1 liability company; PHYSIS ONE LLC, a Nevada
2 limited liability company; POLARIS
3 WELLNESS CENTER L.L.C., a Nevada limited
4 liability company; PURE TONIC
5 CONCENTRATES LLC, a Nevada limited
6 liability company; QUALCAN L.L.C., a Nevada
7 limited liability company; RED EARTH, LLC, a
8 Nevada limited liability company; RELEAF
9 CULTIVATION, LLC, a Nevada limited liability
10 company, RG HIGHLAND ENTERPRISES
11 INC., a Nevada corporation; ROMBOUGH
12 REAL ESTATE INC., a Nevada corporation;
13 RURAL REMEDIES LLC, a Nevada limited
14 liability company; SERENITY WELLNESS
15 CENTER LLC, a Nevada limited liability
16 company; SILVER SAGE WELLNESS LLC, a
17 Nevada limited liability company; SOLACE
18 ENTERPRISES, LLLP, a Nevada limited-
19 liability limited partnership; SOUTHERN
20 NEVADA GROWERS, LLC, a Nevada limited
21 liability company; STRIVE WELLNESS OF
22 NEVADA, LLC, a Nevada limited liability
23 company; SWEET GOLDY LLC, a Nevada
24 limited liability company; TGIG, LLC, a Nevada
25 limited liability company; THC NEVADA LLC,
26 a Nevada limited liability company; THE
27 HARVEST FOUNDATION LLC, a Nevada
28 limited liability company; THOMPSON FARM
ONE L.L.C., a Nevada limited liability company;
TRNVP098 LLC, a Nevada limited liability
company; TRYKE COMPANIES RENO, LLC, a
Nevada limited liability company; TRYKE
COMPANIES SO NV, LLC, a Nevada limited
liability company; TWELVE TWELVE LLC, a
Nevada limited liability company; VEGAS
VALLEY GROWERS LLC, a Nevada limited
liability company; WAVESEER OF NEVADA,
LLC, a Nevada limited liability company;
WELLNESS & CAREGIVERS OF NEVADA
NLV, LLC, a Nevada limited liability company;
WELLNESS CONNECTION OF NEVADA,
LLC, a Nevada limited liability company;
WENDOVERA LLC, a Nevada limited liability
company; WEST COAST DEVELOPMENT
NEVADA, LLC, a Nevada limited liability
company; WSCC, INC., a Nevada corporation;
YMY VENTURES LLC, a Nevada limited
liability company; ZION GARDENS LLC, a

Nevada limited liability company; DOES 1-100;
and Roes 1-100.

Defendants/Respondents.

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to Nev. Const. art. 6, § 6, NRS 233B.130, NRS 34.020, NRS 34.160, and NRS 34.330.

2. Venue is proper in that the aggrieved parties are businesses whose principal places of business are located in Clark County, Nevada, and/or the causes of action arose in Clark County, Nevada.

II. THE PARTIES

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

A. Plaintiffs/Petitioners

4. Plaintiff/Petitioner D.H. Flamingo, Inc., d/b/a The Apothecary Shoppe (“DH Flamingo”) is a Nevada corporation.

5. Plaintiffs/Petitioners Clark Natural Medicinal Solutions LLC, d/b/a NuVeda; Nye Natural Medicinal Solutions LLC d/b/a NuVeda; and Clark NMSD LLC, d/b/a NuVeda (collectively, “NuVeda”) are each a Nevada limited liability company.

6. Plaintiff/Petitioner Inyo Fine Cannabis Dispensary L.L.C., d/b/a Inyo Fine Cannabis Dispensary (“Inyo”) is a Nevada limited liability company.

B. Defendants/Respondents

7. Defendant/Respondent State of Nevada, Department of Taxation (the “Department”) is an agency of the State of Nevada.

8. Defendant/Respondent Nevada Tax Commission (the “Commission”) is the head of the Department.

1. Defendants Who Received Conditional Recreational Retail Marijuana Establishment Licenses.

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

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

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

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

13. Upon information and belief, Defendant/Respondent Deep Roots Medical LLC is a Nevada limited liability company doing business under the fictitious firm name Deep Roots Harvest.

14. Upon information and belief, Defendant/Respondent Essence Henderson, LLC is a Nevada limited liability company doing business under the fictitious firm name Essence Cannabis Dispensary.

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1 15. Upon information and belief, Defendant/Respondent Essence Tropicana, LLC is a
2 Nevada limited liability company doing business under the fictitious firm name Essence.

3 16. Upon information and belief, Defendant/Respondent Eureka NewGen Farms LLC is
4 a Nevada limited liability company doing business under the fictitious firm name Eureka NewGen
5 Farms.

6 17. Upon information and belief, Defendant/Respondent Green Therapeutics LLC is a
7 Nevada limited liability company doing business under the fictitious firm name Provisions.

8 18. Upon information and belief, Defendant/Respondent Greenmart of Nevada NLV,
9 LLC is a Nevada limited liability company doing business under the fictitious firm name Health for
10 Life.

11 19. Upon information and belief, Defendant/Respondent Helping Hands Wellness
12 Center, Inc. is a Nevada corporation doing business under the fictitious firm names Cannacare,
13 Green Heaven Nursery, and/or Helping Hands Wellness Center.

14 20. Upon information and belief, Defendant/Respondent Lone Mountain Partners, LLC
15 is a Nevada limited liability company doing business under the fictitious firm names Zenleaf, Siena,
16 Encore Cannabis, Bentleys Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

17 21. Upon information and belief, Defendant/Respondent Nevada Organic Remedies
18 LLC is a Nevada limited liability company doing business under the fictitious firm names The
19 Source and/or The Source Dispensary.

20 22. Upon information and belief, Defendant/Respondent Polaris Wellness Center L.L.C.
21 is a Nevada limited liability company doing business under the fictitious firm names Polaris MMJ.

22 23. Upon information and belief, Defendant/Respondent Pure Tonic Concentrates LLC
23 is a Nevada limited liability company doing business under the fictitious firm names Green Heart
24 and/or Pure Tonic.

25 24. Upon information and belief, Defendant/Respondent TRNVP098 LLC is a Nevada
26 limited liability company doing business under the fictitious firm names Grassroots and/or Taproot
27 Labs.

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1 25. Upon information and belief, Defendant/Respondent Wellness Connection of
2 Nevada, LLC is a Nevada limited liability company doing business under the fictitious firm name
3 Cultivate Dispensary.

4 26. On information and belief, DOES 1-100 are each Nevada individuals and residents
5 or Nevada entities whose identities are unknown.

6 27. Upon information and belief, the Defendants/Respondents identified in Paragraphs
7 9-26 were granted conditional recreational dispensary licenses by the Department on or after
8 December 5, 2018 (the "Successful Applicants").

9 **2. Defendants Who Were Denied Conditional Recreational Dispensary**
10 **Licenses**

11 28. Upon information and belief, Defendant/Respondent 3AP Inc. is a Nevada
12 corporation doing business under the fictitious firm names Nature's Chemistry, Sierra Well, and/or
13 Nevada Cannabis.

14 29. Upon information and belief, Defendant/Respondent 5Seat Investments LLC is a
15 Nevada limited liability company doing business under the fictitious firm name Kanna.

16 30. Upon information and belief, Defendant/Respondent Acres Dispensary LLC is a
17 Nevada limited liability company doing business under the fictitious firm name Acres Dispensary.

18 31. Upon information and belief, Defendant/Respondent Acres Medical LLC is a
19 Nevada limited liability company doing business under the fictitious firm name Acres Cannabis.

20 32. Upon information and belief, Defendant/Respondent Agua Street LLC is a Nevada
21 limited liability company doing business under the fictitious firm names Curaleaf and/or Agua
22 Research & Wellness Center.

23 33. Upon information and belief, Defendant/Respondent Alternative Medicine
24 Association, LC is a Nevada limited liability company doing business under the fictitious firm
25 name AMA MFG, AMA Production, and/or AMA Cultivation.

26 34. Upon information and belief, Defendant/Respondent Bioneva Innovations of Carson
27 City LLC is a Nevada limited liability company doing business under the fictitious firm name
28 BioNeva.

1 35. Upon information and belief, Defendant/Respondent Blossum Group LLC is a
2 Nevada limited liability company doing business under the fictitious firm name Healing Herb.

3 36. Upon information and belief, Defendant/Respondent Blue Coyote Ranch LLC is a
4 Nevada limited liability company doing business under the fictitious firm name Blue Coyote Ranch.

5 37. Upon information and belief, Defendant/Respondent Carson City Agency Solutions
6 L.L.C. is a Nevada limited liability company doing business under the fictitious firm name CC
7 Agency Solutions.

8 38. Upon information and belief, Defendant/Respondent CN Licenseco I, Inc. is a
9 Nevada corporation doing business under the fictitious firm names CanaNevada and/or Flower One.

10 39. Upon information and belief, Defendant/Respondent Compassionate Team Of Las
11 Vegas LLC is a Nevada limited liability company;

12 40. Upon information and belief, Defendant/Respondent CWNevada, LLC is a Nevada
13 limited liability company doing business under the fictitious firm name Canopi.

14 41. Upon information and belief, Defendant/Respondent D Lux LLC is a Nevada limited
15 liability company doing business under the fictitious firm name D Lux.

16 42. Upon information and belief, Defendant/Respondent Diversified Modalities
17 Marketing Ltd. is a Nevada limited liability company doing business under the fictitious firm names
18 Galaxy Growers and/or Diversified Modalities Marketing.

19 43. Upon information and belief, Defendant/Respondent DP Holdings, Inc. is a Nevada
20 corporation doing business under the fictitious firm name Compassionate Team of Las Vegas.

21 44. Upon information and belief, Defendant/Respondent EcoNevada, LLC is a Nevada
22 limited liability company doing business under the fictitious firm name Marapharm.

23 45. Upon information and belief, Defendant/Respondent ETW Management Group LLC
24 is a Nevada limited liability company doing business under the fictitious firm name Gassers.

25 46. Upon information and belief, Defendant/Respondent Euphoria Wellness LLC is a
26 Nevada limited liability company doing business under the fictitious firm names Euphoria
27 Wellness, Even Cannabis, Euphoria Marijuana, and/or Summa Cannabis.

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1 47. Upon information and belief, Defendant/Respondent Fidelis Holdings, LLC. is a
2 Nevada limited liability company doing business under the fictitious firm name Pisos.

3 48. Upon information and belief, Defendant/Respondent Forever Green, LLC is a
4 Nevada limited liability company doing business under the fictitious firm name Forever Green.

5 49. Upon information and belief, Defendant/Respondent Franklin Bioscience NV LLC is
6 a Nevada limited liability company doing business under the fictitious firm names Lucky Edibles,
7 Altus, and/or Beyond Hello.

8 50. Upon information and belief, Defendant/Respondent FSWFL, LLC is a Nevada
9 limited liability company doing business under the fictitious firm name Green Harvest.

10 51. Upon information and belief, Defendant/Respondent GB Sciences Nevada LLC is a
11 Nevada limited liability company doing business under the fictitious firm name GB Science.

12 52. Upon information and belief, Defendant/Respondent GBS Nevada Partners LLC is a
13 Nevada limited liability company doing business under the fictitious firm name ShowGrow.

14 53. Upon information and belief, Defendant/Respondent GFive Cultivation LLC is a
15 Nevada limited liability company doing business under the fictitious firm names G5 and/or
16 GFiveCultivation.

17 54. Upon information and belief, Defendant/Respondent Global Harmony LLC is a
18 Nevada limited liability company doing business under the fictitious firm names as Top Notch
19 Health Center, Top Notch, The Health Center, Tetra Research, The Health Center, and/or Top
20 Notch.

21 55. Upon information and belief, Defendant/Respondent Good Chemistry Nevada, LLC
22 is a Nevada limited liability company doing business under the fictitious firm name Good
23 Chemistry.

24 56. Upon information and belief, Defendant/Respondent Gravitas Henderson L.L.C. is a
25 Nevada limited liability company doing business under the fictitious firm name Better Buds.

26 57. Upon information and belief, Defendant/Respondent Gravitas Nevada Ltd. is a
27 Nevada limited liability company doing business under the fictitious firm names The Apothecarium
28 Las Vegas, The Apothecarium Nevada, and/or the Apothecarium Henderson.

1 58. Upon information and belief, Defendant/Respondent Green Leaf Farms Holdings
2 LLC is a Nevada limited liability company doing business under the fictitious firm name Players
3 Network.

4 59. Upon information and belief, Defendant/Respondent Green Life Productions LLC is
5 a Nevada limited liability company doing business under the fictitious firm name Green Life
6 Productions.

7 60. Upon information and belief, Defendant/Respondent Greenleaf Wellness, Inc. is a
8 Nevada corporation doing business under the fictitious firm name GreenleafWellness.

9 61. Upon information and belief, Defendant/Respondent Greenpoint Nevada Inc. is a
10 Nevada corporation doing business under the fictitious firm name Chalice Farms.

11 62. Upon information and belief, Defendant/Respondent Greenscape Productions LLC is
12 a Nevada limited liability company doing business under the fictitious firm name Herbal Wellness
13 Center.

14 63. Upon information and belief, Defendant/Respondent Greenway Health Community
15 L.L.C. is a Nevada limited liability company doing business under the fictitious firm name
16 Greenway Health Community LLC.

17 64. Upon information and belief, Defendant/Respondent Greenway Medical LLC is a
18 Nevada limited liability company doing business under the fictitious firm names GWM and/or
19 Greenway Las Vegas.

20 65. Upon information and belief, Defendant/Respondent GTI Nevada, LLC is a Nevada
21 limited liability company doing business under the fictitious firm name Rise.

22 66. Upon information and belief, Defendant/Respondent H&K Growers Corp. is a
23 Nevada corporation doing business under the fictitious firm name H&K Growers.

24 67. Upon information and belief, Defendant/Respondent Harvest of Nevada LLC is a
25 Nevada limited liability company doing business under the fictitious firm name Harvest.

26 68. Upon information and belief, Defendant/Respondent Healthcare Options for Patients
27 Enterprises, LLC is a Nevada limited liability company doing business under the fictitious firm
28 names Shango and/or Hope.

69. Upon information and belief, Defendant/Respondent Helios NV LLC is a Nevada limited liability company doing business under the fictitious firm names Hydrovize, Helios NV and/or Helios Nevada.

70. Upon information and belief, Defendant/Respondent Herbal Choice Inc. is a Nevada corporation doing business under the fictitious firm name Herbal Choice.

71. Upon information and belief, Defendant/Respondent is a High Sierra Cultivation LLC is a Nevada limited liability company doing business under the fictitious firm name High Sierra.

72. Upon information and belief, Defendant/Respondent High Sierra Holistics, LLC is a Nevada limited liability company doing business under the fictitious firm names HSH, and/or High Sierra Holistics.

73. Upon information and belief, Defendant/Respondent International Service and Rebuilding, Inc. is a Nevada corporation doing business under the fictitious firm name VooDoo.

74. Upon information and belief, Defendant/Respondent Just Quality, LLC is a Nevada limited liability company doing business under the fictitious firm name Panacea Cannabis.

75. Upon information and belief, Defendant/Respondent Kindibles LLC is a Nevada limited liability company doing business under the fictitious firm name Area 51.

76. Upon information and belief, Defendant/Respondent Las Vegas Wellness and Compassion LLC is a Nevada limited liability company doing business under the fictitious firm name Pegasus Nevada.

77. Upon information and belief, Defendant/Respondent Libra Wellness Center, LLC is a Nevada limited liability company doing business under the fictitious firm name Libra Wellness.

78. Upon information and belief, Defendant/Respondent Livfree Wellness LLC is a Nevada limited liability company doing business under the fictitious firm name The Dispensary.

79. Upon information and belief, Defendant/Respondent LNP, LLC is a Nevada limited liability company doing business under the fictitious firm names LPN and/or Lynch Natural Products, LLC.

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1 80. Upon information and belief, Defendant/Respondent Luff Enterprises NV, Inc. is a
2 Nevada corporation doing business under the fictitious firm name Sweet Cannabis.

3 81. Upon information and belief, Defendant/Respondent LVMC C&P, LLC is a Nevada
4 limited liability company doing business under the fictitious firm name CannaCopia.

5 82. Upon information and belief, Defendant/Respondent Malana LV L.L.C. is a Nevada
6 limited liability company doing business under the fictitious firm name Malana LV.

7 83. Upon information and belief, Defendant/Respondent Matrix NV, LLC is a Nevada
8 limited liability company doing business under the fictitious firm name Matrix NV.

9 84. Upon information and belief, Defendant/Respondent Medifarm IV, LLC is a Nevada
10 limited liability company doing business under the fictitious firm name Blum Reno.

11 85. Upon information and belief, Defendant/Respondent Miller Farms LLC is a Nevada
12 limited liability company doing business under the fictitious firm name Lucid.

13 86. Upon information and belief, Defendant/Respondent MM Development Company,
14 Inc. is a Nevada corporation doing business under the fictitious firm names Planet 13 and/or
15 Medizin.

16 87. Upon information and belief, Defendant/Respondent MM R&D LLC is a Nevada
17 limited liability company doing business under the fictitious firm names Sunshine Cannabis and/or
18 the Green Cross Pharmacy.

19 88. Upon information and belief, Defendant/Respondent MMNV2 Holdings I, LLC is a
20 Nevada limited liability company doing business under the fictitious firm name Medmen.

21 89. Upon information and belief, Defendant/Respondent MMOF Las Vegas Retail, Inc.
22 is a Nevada corporation doing business under the fictitious firm names Panacea, MedMen,
23 MedMen Las Vegas, Medmen the Airport, and/or MedMen Paradise.

24 90. Upon information and belief, Defendant/Respondent Natural Medicine L.L.C. is a
25 Nevada limited liability company doing business under the fictitious firm name Natural Medicine
26 No. 1.

27 91. Upon information and belief, Defendant/Respondent NCMM, LLC is a Nevada
28 limited liability company doing business under the fictitious firm name NCMM.

1 92. Upon information and belief, Defendant/Respondent Nevada Botanical Science, Inc.
2 is a Nevada corporation doing business under the fictitious firm name Vigor Dispensaries.

3 93. Upon information and belief, Defendant/Respondent Nevada Group Wellness LLC
4 is a Nevada limited liability company doing business under the fictitious firm names Prime and/or
5 NGW.

6 94. Upon information and belief, Defendant/Respondent Nevada Holistic Medicine LLC
7 is a Nevada limited liability company doing business under the fictitious firm names MMJ America
8 and/or Nevada Holistic Medicine.

9 95. Upon information and belief, Defendant/Respondent Nevada Medical Group LLC is
10 a Nevada limited liability company doing business under the fictitious firm names The Clubhouse
11 Dispensary, Bam-Body, and/or Mind and King Cannabis.

12 96. Upon information and belief, Defendant/Respondent Nevada Wellness Center LLC
13 is a Nevada limited liability company doing business under the fictitious firm name NWC.

14 97. Upon information and belief, Defendant/Respondent NevadaPure, LLC is a Nevada
15 limited liability company doing business under the fictitious firm names Shango Las Vegas and/or
16 Shango.

17 98. Defendant/Respondent Nevcan, LLC is a Nevada limited liability company doing
18 business under the fictitious firm name Nev Cann.

19 99. Defendant/Respondent NLV Wellness LLC is a Nevada limited liability company
20 doing business under the fictitious firm name ETHCX.

21 100. Defendant/Respondent NLVG, LLC is a Nevada limited liability company doing
22 business under the fictitious firm name Desert Bloom Wellness Center.

23 101. Defendant/Respondent Nuleaf Incline Dispensary LLC is a Nevada limited liability
24 company doing business under the fictitious firm name Nuleaf.

25 102. Defendant/Respondent NV 3480 Partners LLC is a Nevada limited liability company
26 doing business under the fictitious firm name Evergreen Organix.

27 103. Defendant/Respondent NV Green Inc. is a Nevada corporation doing business under
28 the fictitious firm name NV Green.

1 104. Defendant/Respondent Nye Farm Tech Ltd. is a Nevada limited liability company
2 doing business under the fictitious firm name URBN Leaf.

3 105. Defendant/Respondent Paradise Wellness Center LLC is a Nevada limited liability
4 company doing business under the fictitious firm name Las Vegas Releaf.

5 106. Defendant/Respondent Phenofarm NV LLC is a Nevada limited liability company
6 doing business under the fictitious firm name Marapharm Las Vegas.

7 107. Defendant/Respondent Physis One LLC is a Nevada limited liability company doing
8 business under the fictitious firm names Physis One and/or LV Fortress.

9 108. Defendant/Respondent Qualcan, L.L.C. is a Nevada limited liability company doing
10 business under the fictitious firm name Qualcan.

11 109. Defendant/Respondent Red Earth, LLC is a Nevada limited liability company doing
12 business under the fictitious firm name Red Earth

13 110. Defendant/Respondent Releaf Cultivation, LLC is a Nevada limited liability
14 company doing business under the fictitious firm name Releaf Cultivation.

15 111. Defendant/Respondent RG Highland Enterprises Inc. is a Nevada corporation doing
16 business under the fictitious firm name Tweedleaf.

17 112. Defendant/Respondent Rombough Real Estate Inc. is a Nevada corporation doing
18 business under the fictitious firm name Mother Herb.

19 113. Defendant/Respondent Rural Remedies LLC is a Nevada limited liability company
20 doing business under the fictitious firm name Doc's Apothecary.

21 114. Defendant/Respondent Serenity Wellness Center LLC is a Nevada limited liability
22 company doing business under the fictitious firm names Oasis Cannabis and/or Oasis Cannabis
23 Dispensary.

24 115. Defendant/Respondent Silver Sage Wellness LLC is a Nevada limited liability
25 company.

26 116. Defendant/Respondent Solace Enterprises, LLP is a Nevada limited liability limited
27 partnership doing business under the fictitious firm names Thallo, Aether Gardens, @Hith LP
28 and/or Aether Extracts.

1 117. Defendant/Respondent Southern Nevada Growers, LLC is a Nevada limited liability
2 company doing business under the fictitious firm name Bowtie Cannabis.

3 118. Defendant/Respondent Strive Wellness of Nevada, LLC is a Nevada limited liability
4 company doing business under the fictitious firm name Strive.

5 119. Defendant/Respondent Sweet Goldy LLC is a Nevada limited liability company,

6 120. Defendant/Respondent TGIG, LLC is a Nevada limited liability company doing
7 business under the fictitious firm names The Grove, The Grove Wellness Center, Vert Infusibles
8 and/or Vert Edibles.

9 121. Defendant/Respondent THC Nevada LLC is a Nevada limited liability company
10 doing business under the fictitious firm names Canna Vibe, FloraVega, and/or Welleaf.

11 122. Defendant/Respondent The Harvest Foundation LLC is a Nevada limited liability
12 company doing business under the fictitious firm name Harvest Foundation.

13 123. Defendant/Respondent Thompson Farm One L.L.C. is a Nevada limited liability
14 company doing business under the fictitious firm names Green Zon, Gold Leaf, and/or Thompson
15 Farm.

16 124. Defendant/Respondent Tryke Companies Reno, LLC is a Nevada limited liability
17 company doing business under the fictitious firm name Reef.

18 125. Defendant/Respondent Tryke Companies SO NV, LLC is a Nevada limited liability
19 company doing business under the fictitious firm name Reef Dispensaries.

20 126. Defendant/Respondent Twelve Twelve LLC is a Nevada limited liability company
21 doing business under the fictitious firm names 12/12 Dispensary and/or Twelve Twelve.

22 127. Defendant/Respondent Vegas Valley Growers LLC is a Nevada limited liability
23 company doing business under the fictitious firm name Kiff Premium Cannabis.

24 128. Defendant/Respondent Waveseer of Nevada, LLC is a Nevada limited liability
25 company doing business under the fictitious firm name Jenny's Dispensary.

26 129. Defendant/Respondent Wellness & Caregivers of Nevada NLV, LLC is a Nevada
27 limited liability company doing business under the fictitious firm names MMD Las Vegas and/or
28 Las Vegas Cannabis.

3 131. Defendant/Respondent West Coast Development Nevada, LLC is a Nevada limited
4 liability company doing business under the fictitious firm name Sweet Goldy.

132. Defendant/Respondent WSCC, Inc. is a Nevada corporation doing business under the fictitious firm name Sierra Well.

7 133. Defendant/Respondent YMY Ventures, LLC is a Nevada limited liability company
8 doing business under the fictitious firm names Stem and/or Cannavore.

9 134. Defendant/Respondent Zion Gardens LLC is a Nevada limited liability company
10 doing business under the fictitious firm name Zion Garden.

11 135. On information and belief, ROES 1-100 are each Nevada individuals and residents
12 or Nevada entities whose identities are unknown.

13 136. On information and belief, the Defendants/Respondents identified in Paragraphs 28-
14 135 are natural persons or entities who are qualified holders of Medical Marijuana Establishment
15 (“MME”) Certificates, who submitted an application to operate a recreational retail marijuana
16 establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on
17 September 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the
18 “Denied Applicants”).

III. FACTUAL ALLEGATIONS

A. The Department.

137. During Nevada’s 2016 General Election, the voters approved an initiative petition to legalize the recreational use of marijuana by persons 21 years of age or older. This initiative petition has been codified as Chapter 453D of the Nevada Revised Statutes (“Ballot Initiative”).

138. The Department, which administers Nevada's medical and adult-use marijuana programs, is charged with the following responsibilities:

- a. Overseeing the licensing of marijuana establishments and agents (establishing licensing qualifications; granting, transferring, suspending, revoking, and reinstating licenses);

- b. Establishing standards and procedures for the cultivation, production, testing, distribution, and sale of marijuana in Nevada; and
- c. Ensuring compliance of marijuana establishments with state laws and regulations.

139. In 2018, the Department reportedly collected more than \$82 million in taxes, fees, and penalties.

140. The Department's Marijuana Enforcement Division ("Division") reports that during the 2018 fiscal year, it had 44 budgeted positions.¹

141. Despite its responsibility to oversee 659 final medical and adult-use certificates/licenses; 245 provisional certificates/conditional licenses; and 11,932 holders of marijuana agent cards, the Division does not have a licensing department or any employees specifically responsible for licensing, and only has 31 employees to monitor compliance and enforcement.

142. Between July 1, 2017 – June 30, 2018, the Division initiated only 234 investigations (146 of which were substantiated).

143. The resources of the Department are not adequate to competently and effectively regulate the number of MME and adult use licensees.

B. The Ballot Initiative

144. The Ballot Initiative requires that "[w]hen competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall use an *impartial and numerically scored competitive bidding process* to determine which application or applications among those competing will be approved." NRS 453D.210(6).

145. It also requires that "[t]he Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." NRS 453D.200(6).

¹ Upon information and belief, the Gaming Control Board is charged with overseeing approximately 2,900 facilities that hold gaming licenses and employed almost 400 people during the same time period (50 in the Administrative Division, 90 in the Audit Division; 118 in the Enforcement Division, 76 in the Investigations Division, 27 in the Tax and License Division, and 26 in the Technology Division).

1 146. It also sets forth certain requirements for granting a marijuana establishment license
2 application, including, “[p]roof that the physical address where the proposed marijuana
3 establishment will operate is owned by the applicant or the applicant has the written permission of
4 the property owner to operate the proposed marijuana establishment on that property.” NRS
5 453D.210(5)(b).

6 147. Additionally, the Ballot Initiative requires the Department² to adopt all regulations
7 necessary or convenient to carry out the Act no later than January 1, 2018, including regulations
8 that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a license to
9 operate a marijuana establishment” and “[q]ualifications for licensure that are directly and
10 demonstrably related to the operation of a marijuana establishment.” NRS 453D.200(1)(a)-(b).

11 148. However, Article 19, Section 2 of the Constitution of the State of Nevada provides,
12 in pertinent part, that “[a]n initiative measure so approved by the voters shall not be amended,
13 annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes
14 effect.”

15 149. Likewise, “administrative regulations cannot contradict the statute they are designed
16 to implement.” *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. 362, 368, 373 P.3d 66, 70
17 (2016) (quoting (*Nev. Attorney for Injured Workers v. Nev. Self-Insurers Ass'n*, 126 Nev. 74, 84,
18 225 P.3d 1265, 1271 (2010) (internal quotations omitted).) Therefore, the Department’s regulations
19 may not contravene any provisions of the Ballot Initiative.

20 **C. The Approved Regulations.**

21 150. On or about May 8, 2017, the Department adopted temporary regulations that
22 expired on November 1, 2017.

23 151. Marijuana establishments became licensed under the temporary regulation to sell
24 adult-use marijuana starting July 1, 2017.

25 152. The Department drafted proposed regulations and held public workshops from July
26 24, 2017 through July 27, 2017 on proposed permanent regulations.

27 ² Pursuant to Nevada law, the Commission shall prescribe regulations for carrying on the business of the
28 Commission and of the Department.

1 153. The draft permanent regulations were submitted to the Legislative Counsel Bureau
2 on September 9, 2017, and assigned LCB File No. R092-17.

3 154. On December 16, 2017, the Commission gave notice of its intent to adopt final
4 marijuana regulations.

5 155. On January 16, 2018, the Commission unanimously approved the proposed
6 permanent regulations (“Approved Regulations”).

7 156. The Approved Regulations became effective February 27, 2018. All provisions
8 related to the procedures for the issuance, suspension, or revocation of licenses issued by the
9 Department of Taxation for marijuana establishments were implemented immediately.

10 157. Subsection 1 of Section 76 of the Approved Regulations provides that “[a]t least
11 once each year, the Department will determine whether a sufficient number of marijuana
12 establishments exist to serve the people of this State and, if the Department determines that
13 additional marijuana establishments are necessary, the Department will issue a request for
14 applications to operate a marijuana establishment.”

15 158. Pursuant to Subsection 3 of Section 76 of the Approved Regulations, the Department
16 will accept applications in response to such a request for applications “for 10 business days
17 beginning on the date which is 45 business days after the date on which the Department issued the
18 request for applications.”

19 159. Section 77 of the Approved Regulations provides the procedures for an existing
20 MME registration certificate holder to apply for one license, of the same type, for recreational
21 marijuana.

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

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

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

- b. A list of all owners, officers and board members of the proposed marijuana establishment;
- c. Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details (Section 78(1)(f) of the Approved Regulations);
- d. Proof that the physical address of the prospective marijuana establishment is owned by the applicant or that the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property (NRS 453D.210(5)(b); and
- e. A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be allocated to the applicable portions of the application pursuant to subsection 2 of Section 76 of the Approved Regulations (Section 78(1)(l) of the Approved Regulations).

162. Section 80 of the Approved Regulations (now codified at NAC 453D.272) provides that when the Department receives more than one complete and qualified application for a license for a retail marijuana store in response to its request for applications, the Department will rank the applicants in order from first to last based on numerous categories of information including, but not limited to:

- a. Whether the owners, officers, or board members have experience operating another kind of business that has given them experience which is applicable to the operation of a marijuana establishment;
- b. The diversity of the owners, officers, or board members of the proposed marijuana establishment;
- c. The educational achievements of the owners, officers, or board members of the proposed marijuana establishment;
- d. The financial plan and resources of the applicant, both liquid and illiquid;

- e. Whether the applicant has an adequate integrated plan for the care, quality, and safekeeping of marijuana from seed to sale;
- f. The amount of taxes paid and other beneficial financial contributions, including, without limitation, civic or philanthropic involvement with this State or its political subdivisions, by the applicant or the owners, officers, or board members of the proposed marijuana establishment;
- g. Whether the owners, officers, or board members of the proposed marijuana establishment have direct experience with the operation of a medical marijuana establishment or marijuana establishment in this State and have demonstrated a record of operating such an establishment in compliance with the laws and regulations of this State for an adequate period of time to demonstrate success; and
- h. The experience of key personnel that the applicant intends to employ in operating the type of marijuana establishment for which the applicant seeks a license.

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

D. The Department's Request for License Applications.

164. Pursuant to NRS 453D.210, for the first 18 months after the Department began to receive applications for recreational marijuana establishments, applications for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities could only be submitted by holders of MME certificates.

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

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

167. The request for applications was limited to existing MME certificate holders seeking a retail recreational marijuana establishment license pursuant to Section 78 of the Approved

Regulations, and the Notice required that all applications be submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

168. Pursuant to Subsection 2 of Section 76 of the Approved Regulations, the Original Application included the following point values associated with each category of requested information:

Nevada Recreational Marijuana Application Criteria	Total Points Possible
The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member including key personnel of the proposed marijuana establishment including the information provided pursuant to R092-17.	60 ³
Evidence of the amount of taxes paid or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.	25
A financial plan which includes: - Financial statements showing the resources of the applicant, both liquid and illiquid. - If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. - Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation	30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: - That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. - The source of those liquid assets.	10
Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including:	40

³ The Division recently disclosed that 20 of the 60 points were allocated to diversity of the applicant's owners, officers, and board members.

• A plan for testing recreational marijuana. • A transportation plan. • Procedures to ensure adequate security measures for building security. • Procedures to ensure adequate security measures for product security.	
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: • A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. • An operations manual that demonstrates compliance with the regulations of the Department. • An education plan which must include providing educational materials to the staff of the proposed establishment. • A plan to minimize the environmental impact of the proposed establishment	30
A plan which includes: • A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. • A description of the inventory control system of the proposed marijuana establishment.	20
Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: • Building plans with supporting details.	20
A proposal demonstrating: • The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. • The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana.	15
Application Total	250
Unweighted: • Review plan for all names and logos for the establishment and any signage or advertisement. • Review results of background check(s). Applicant has until the end of the 90-day application period to resolve background check information which may cause the	

application to be rejected.

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

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

171.

172. Just like the Original Application, the footer of the Revised Application states: “Version 5.4 – 06/22/2018 Recreational Marijuana Establishment License Application” and consists of 34 pages.

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

- a. Elimination of the requirement that the application include the proposed physical address of the prospective marijuana establishment;
- b. Elimination of the requirement that applicants prove ownership of the physical address of the prospective marijuana establishment or written permission of the property owner to operate the proposed marijuana establishment on that property; and
- c. Revision to the highest-scored category of information in the application (regarding the organizational structure of the proposed marijuana establishment) to now require information about “key personnel” of the proposed marijuana establishment.

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

1 **E. Plaintiffs/Petitioners' Applications.**

2 175. Plaintiffs/Petitioners are each existing MME certificate holders.

3 176. Plaintiffs/Petitioners each sought retail store licenses for recreational marijuana and
4 each submitted a Recreational Marijuana Establishment License Application: Recreational Retail
5 Marijuana Store Only ("Application") between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on
6 September 20, 2018.

7 177. DH Flamingo, which currently holds a retail shop license in Unincorporated Clark
8 County, submitted three applications seeking licenses for the following locations:

- 9 a. 5701 West Charleston Boulevard in Las Vegas;
10 b. Sunset Road & Decatur Boulevard in Unincorporated Clark County; and
11 c. 1901 Civic Center in North Las Vegas.

12 178. Inyo, which currently holds a retail shop license in Las Vegas, submitted four
13 applications seeking licenses for the following locations:

- 14 a. 9744 West Flamingo Road in in Unincorporated Clark County;
15 b. 2301 North Decatur Boulevard in Las Vegas;
16 c. 43 W. Cheyenne Avenue in North Las Vegas; and
17 d. 634 Ryland Street in Reno.

18 179. NuVeda submitted applications for a combination of ten locations on behalf of its
19 three licensed entities: Clark NMSD LLC, which holds two retail shop licenses in Las Vegas and
20 North Las Vegas; Nye Natural Medicinal Solutions LLC, which holds a cultivation and production
21 license; and Clark Natural Medicinal Solutions LLC, which holds a cultivation and production
22 license:

- 23 a. 2180 East Craig Road in North Las Vegas;
24 b. 330 Emery Street in Nye County;
25 c. Two locations to be determined in Unincorporated Clark County;
26 d. A location to be determined in Las Vegas;
27 e. A location to be determined in Henderson;
28 f. A location to be determined in Carson City;

- g. A location to be determined in Reno;
- h. A location to be determined in Unincorporated Washoe County; and
- i. A location to be determined in Sparks.

180. Each of NuVeda's three MME registration certificate holders (Clark NMSD LLC; Nye Natural Medicinal Solutions LLC; and Clark County Medicinal Solutions LLC) submitted an application for eight of the locations. The applications for North Las Vegas and one of the locations in Unincorporated Clark County were submitted only by Nye Natural Medicinal Solutions, LLC and Clark County Medicinal Solutions, LLC.

F. The Department's Decision.

181. On December 5, 2018, the Department provided each applicant with written notice of either the grant or denial of their application for a license.

182. Upon information and belief, the Department awarded approximately 61 recreational retail marijuana store licenses (the "Conditional Licenses"), 31 of which were for Clark County, Nevada:

- a. 6 in Henderson;
- b. 10 in the City of Las Vegas;
- c. 5 in the City of North Las Vegas; and
- d. 10 in unincorporated Clark County.

183. The Department denied each of the Plaintiffs/Petitioners' applications.

184. Although Section 91(4) of the Department's Approved Regulations requires that the Department provide a denied applicant with the specific reasons for the denial of the license, the Department merely informed each of the Plaintiffs/Petitioners that it "did not achieve a score high enough to receive an available license" within the applicable jurisdiction. No "specific reasons" were given.

185. On December 5, 2018, DH Flamingo requested its score total, pursuant to Section 93(1) of the Department's Approved Regulations, and on December 5, 2018, it was informed that its applications received the following number of points:

- a. Las Vegas – 196;

- b. Unincorporated Clark County – 195.67; and
- c. North Las Vegas – 195.67.

186. On December 18, 2018, NuVeda requested its score totals, pursuant to Section 93(1) of the Department’s Regulations, and on that same day, it was informed that its applications received the following number of points:

a. Clark Natural Medicinal Solutions, LLC’s Applications:

- i. North Las Vegas – 191.67;
- ii. Nye County – 191.67;
- iii. Unincorporated Clark County – 191.67;
- iv. Las Vegas – 191.67;
- v. Unincorporated Clark County – 191.67;
- vi. Henderson – 191.67;
- vii. Carson City – 191.67;
- viii. Reno – 191.67;
- ix. Unincorporated Washoe County – 191.67; and
- x. Sparks – 192.01.

b. Nye Natural Medicinal Solutions, LLC’s Applications:

- i. North Las Vegas – 191.67;
- ii. Nye County – 191.67;
- iii. Unincorporated Clark County – 191.67;
- iv. Las Vegas – 191.67;
- v. Unincorporated Clark County – 191.67;
- vi. Henderson – 191.67;
- vii. Carson City – 191.67;
- viii. Reno – 191.67;
- ix. Unincorporated Washoe County – 191.67; and
- x. Sparks – 191.67.

c. Clark NMSD, LLC:

- i. Nye County – 178.84;
- ii. Las Vegas – 178.84;
- iii. Unincorporated Clark County – 178.84;
- iv. Henderson – 178.84;
- v. Carson City – 178.84;
- vi. Reno – 178.84;
- vii. Unincorporated Washoe County – 178.84; and
- viii. Sparks – 178.84.

187. On December 6, 2018, Inyo requested its score total, pursuant to Section 93(1) of the Department's Regulations, and on December 17, 2018, it was informed that each of its applications scored the exact same number of points:

- a. Las Vegas – 189.68;
- b. Unincorporated Clark County – 189.68;
- c. North Las Vegas – 189.68; and
- d. Reno – 189.68.

G. The Department Refuses Plaintiffs' Requests to Review All Scores.

188. If an applicant wishes to know the scores assigned to each criterion included in the Application, the applicant must, pursuant to Section 93(2) of the Department's Regulations, submit a request to the Department to review this scoring information.

189. On December 5, 2018, DH Flamingo submitted such a request to review its scoring information, and the Department scheduled a meeting with one of its employees on January 9, 2019.

190. DH Flamingo requested that the meeting occur prior to January 4, 2019, so that it could timely appeal the Department's denial of its license application, if such an appeal was warranted, but the Department denied this request.

191. On December 6, 2018, NuVeda, pursuant to Section 93(2) of the Department's Approved Regulations, submitted a request to review its scoring information on the earliest available date, and the Department scheduled the meeting with one of its employees on January 11, 2019.

192. On December 6, 2018, Inyo, pursuant to Section 93(2) of the Department's Approved Regulations, submitted a request to review its scoring information on the earliest available date, and the Department scheduled a meeting with one of its employees on January 9, 2019.

193. Pursuant to Section 93(3) of the Department's Regulations, meetings to review scoring information are limited to no more than thirty (30) minutes in duration, and while Plaintiffs/Petitioners are permitted to take notes during the meeting, they cannot photocopy, scan, record, photograph, or otherwise duplicate any of the records and information they review. They are also not permitted to ask the Department's employee to comment on or otherwise discuss:

- a. The scores;
- b. The Department's review of the application; or
- c. The applications submitted by any other applicants.

194. At the scoring meetings, the Department refused to provide Plaintiffs the scores assigned to each criterion included in the Application. Instead, the Division insisted on combining the scores for multiple criteria. Specifically:

- a. The Department refused to separately disclose the points allocated to each applicant's financial plan and the points allocated to providing proof of funds and insisted on providing a combined score for those two criteria.

A financial plan which includes: - Financial statements showing the resources of the applicant, both liquid and illiquid. - If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. - Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation	30	40
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates:	10	

• That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. • The source of those liquid assets.		
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- b. The Department refused to separately disclose the points allocated to the security and care plan, education plan, and operating procedures and insisted on providing a combined score for the three criteria.

Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: • A plan for testing recreational marijuana. • A transportation plan. • Procedures to ensure adequate security measures for building security. • Procedures to ensure adequate security measures for product security.	40	90
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: • A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. • An operations manual that demonstrates compliance with the regulations of the Department. • An education plan which must include providing educational materials to the staff of the proposed establishment. • A plan to minimize the environmental impact of the proposed establishment.	30	
A plan which includes: • A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. • A description of the inventory control system of the proposed marijuana establishment.	20	

195. In addition to requesting the scores for each criterion included in the license application, Plaintiffs also prepared a list of questions about the procedures the Department used for scoring the applications. .

196. The Department refused to answer any of the questions.

197. Notwithstanding the Department's refusal to provide transparency in the scoring process, it did provide the average score (among all applicants) for each of the scoring categories it was willing to disclose.

Nevada Recreational Marijuana Application Criteria	Total Points Possible	Average Points Awarded
Organizational Structure	60	36.87
Taxes paid or other beneficial financial contributions	25	11.98
Financial plan	30	31.53
Proof of at least \$250,000 in liquid assets	10	
Plan care, quality and safekeeping of marijuana	40	
Education Plan	30	68.39
Operating procedures	20	
Adequacy of the size of the proposed marijuana establishment	20	13.95
The likely impact in the community	15	10.64
Application Total	250	173.33

198. Plaintiffs each scored higher than average in the majority of all categories.

- NuVeda scored above average in 5 of the 6 disclosed categories.
- DH Flamingo scored above average in 3 of the 6 disclosed categories.
- Inyo scored above average in 5 of the 6 disclosed categories.

H. Corruption Within the Department.

199. Since the award of Conditional Licenses in December 2018, Plaintiffs have learned of numerous ethical infractions and/or criminal conduct by Department employees which suggest widespread corruption within the Department. Some of this information has been provided to Plaintiffs by Department whistleblowers and other information has been revealed by the testimony

1 of Department employees in an evidentiary hearing (“Preliminary Injunction Hearing”) conducted in
2 another case⁴ alleging defects in the Department’s grant of Conditional Licenses.

3 200. Moreover, Plaintiffs are informed and believe that the FBI is actively investigating
4 and seeking tips on public corruption within the marijuana industry, particularly relating to the
5 license application process at issue in this case.⁵

6 201. Chapter 281A of the Nevada Revised Statutes sets forth a code of ethical standards
7 for government employees. It provides:

- 8 1. A public officer or employee shall not seek or accept any gift,
9 service, favor, *employment*, engagement, emolument or
10 economic opportunity, for the public officer or employee or any
11 person to whom the public officer or employee has a
12 commitment in a private capacity, *which would tend improperly
to influence a reasonable person in the public officer’s or
employee’s position to depart from the faithful and impartial
discharge of the public officer’s or employee’s public duties.*
- 13 2. A public officer or employee shall not use the public officer’s or
14 employee’s position in government to secure or grant
15 unwarranted privileges, preferences, exemptions or advantages
16 for the public officer or employee, any business entity in which
17 the public officer or employee has a significant pecuniary interest
18 or any person to whom the public officer or employee has a
19 commitment in a private capacity. As used in this subsection,
20 “unwarranted” means without justification or adequate reason.
- 21 3. A public officer or employee shall not participate as an agent of
22 government in the negotiation or execution of a contract between
23 the government and the public officer or employee, any business
24 entity in which the public officer or employee has a significant
25 pecuniary interest or any person to whom the public officer or
employee has a commitment in a private capacity.
- 26 4. A public officer or employee shall not accept any salary, retainer,
27 augmentation, expense allowance *or other compensation* from
28 any private source, for the public officer or employee or any
person to whom the public officer or employee has a
commitment in a private capacity, *for the performance of the*

⁴ *Serenity Wellness Center, LLC v. Nev. Dept. of Taxation*, No. A-19-786962-B (Nev. Dist. Ct.) (the “Serenity Case”)

⁵ Such investigations are not limited to Nevada. *See e.g.* FBI Seeks Tips on Marijuana Industry Corruption, *Forbes*, Aug. 16, 2019, *available at* <https://www.forbes.com/sites/tomangell/2019/08/16/fbi-seeks-tips-on-marijuana-industry-corruption/#7671965c4ca7> (last visited Aug. 29, 2019).

public officer's or employee's duties as a public officer or employee.

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further a significant pecuniary interest of the public officer or employee or any other person or business entity.
6. A public officer or employee *shall not suppress any governmental report or other official document* because it might tend to affect unfavorably a significant pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity.

NRS 281A.400(1)-(6) (emphasis added).

1. Department Whistleblowers Report Corruption

202. As DH Flamingo's then-principal, Dr. Nicola Spirtos, was leaving the Department of Taxation after DH Flamingo's scoring review meeting, when he was stopped by [Individual #1], a Department employee, who informed Dr. Spirtos that [Individual #2] (a prominent Nevada attorney who had several clients who received Dispensary licenses) was at the Department and meeting with Jorge Pupo, Deputy Executive Director of the Division, every day for a week before the Department announced its decision regarding the Dispensary licenses.

203. Further, shortly after exiting the Department, Dr. Spirtos received a number of text messages from an anonymous individual, believed to be a Department employee. Those texts read as follows:

Dr. Spirtos your [sic] on
the right path Jorge has
been taking kickback[s]
from [Individual #3]
and others keep digging

. . . . Rumor has it
[Individual #3] hired
jorge [sic]. Explains
why they were awarded
8 licenses. Keep
following the scent trail

1 And anybody that was a
2 threat to [Individual
#3's Company] didn't
3 get licenses

4 Just keep digging

5

6 There is an internal
7 investigations Dept
8 within the state
9 . . . u need to get ahold
of jorges [sic] phone
and email records and
get that outfit to
investigate him

10

11 There is [sic] people
12 who know this its [sic]
an open secret
13 . . . [Individual #3] and
Jorge are scaring people
14 from coming out with
threats of retaliation.
15 Jorge has asked many
big operations for
bribes for favors. It
16 [sic] will testify to that
will others

17
18 204. On or about February 1, 2018, Plaintiffs were also contacted on behalf of a current
19 Department employee who reported that he knew of a conspiracy within the Department to protect
20 the clients of [Individual #2] and the individual owners of these clients. The employee informed
21 Plaintiffs that the Department had instructed employees that it should not record violations
22 committed by the clients of [Individual #2]

23 **2. Offers of Employment and Other Perks**

24 205. In addition to being an ethics violation, offering any "compensation, gratuity or
25 reward to any executive or administrative officer . . . with the intent to influence the officer with
26 respect to any act, decision, vote, opinion or other proceeding, as such officer" is a felony in the
27 State of Nevada. NRS 197.010.

28 ///

1 206. During the Preliminary Injunction Hearing, Mr. Pupo testified that he has frequently
2 been offered employment by licensees, including some of the Successful Applicants.

3 207. In particular, Mr. Pupo testified that sometime during 2018 (presumably before the
4 Department notified applicants of its decision regarding the Dispensary applications) he was
5 approached by Armen Yemenidjian, an owner of Defendant/Respondents Essence Tropicana, LLC
6 and Essence Henderson, LLC, with a job offer.

7 208. Mr. Pupo did not report or disclose any of these offers of employment.

8 209. Defendant/Respondents Essence Tropicana, LLC and Essence Henderson, LLC
9 received a total of 8 Conditional Licenses in December 2018.

10 210. In addition to offers of employment, Mr. Pupo benefited in other ways from his
11 relationship with certain licensees.

12 211. Mr. Pupo regularly dined as the guest of Amanda Connor, a lawyer who represented
13 several Successful Applicants (including Defendants/Respondents Essence Henderson, LLC,
14 Essence Tropicana, LLC, Commerce Park Medical L.L.C., Cheyenne Medical, LLC, and Nevada
15 Organic Remedies, LLC), who collectively received 21 of the 61 Conditional Licenses. It was not
16 uncommon for Mr. Pupo to dine with her several times per week.

17 212. In addition to his relationship with Ms. Connor, Mr. Pupo frequently accepted lunch
18 and dinner invitations from licensees (particularly, the owners of Defendants/Respondents Essence
19 Henderson, LLC, Essence Tropicana, LLC, Commerce Park Medical, L.L.C., and Cheyenne
20 Medical LLC.

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

25 214. In particular, Mr. Pupo and Ms. Connor engaged in numerous discussions regarding
26 the physical location criteria required in the application in July 2018—immediately before the
27 Department created the Revised Application, which eliminated the requirement that the application
28 include the proposed physical address of the prospective Dispensary.

1 **3. Scrubbing of Licensee Records**

2 215. Pursuant to Section 80 of the Approved Regulations, one of the factors that the
3 Department must consider when it receives more than one complete and qualified application for a
4 license for a retail marijuana store is:

5 Whether the owners, officers, or board members of the proposed
6 marijuana establishment have direct experience with the operation of a
7 medical marijuana establishment or marijuana establishment in this
8 State and have demonstrated a record of operating such an
establishment in compliance with the laws and regulations of this State
for an adequate period of time to demonstrate success

9 NAC 453D.272(1)(g).

10 216. During the Preliminary Injunction Hearing, Andrew Jolley (an owner of
11 Defendant/Respondent Nevada Organic Remedies LLC) testified that Henderson Organic Remedies
12 LLC (a related entity with some common ownership with Nevada Organic Remedies LLC) had
13 previously sold marijuana to a person under 21 years of age.

14 217. Evidence presented at the Preliminary Injunction Hearing demonstrated that Ms.
15 Connor requested that documentation of this violation be removed from the Department's records
16 regarding Henderson Organic Remedies LLC. The Department did not deny that this information
17 had been removed from its records at Ms. Connor's request.

18 218. This violation was not disclosed on applications submitted by Defendant/Respondent
19 Nevada Organic Remedies LLC, despite the fact that it had some common ownership with
20 Defendant/Respondent Henderson Organic Remedies LLC

21 219. Despite the regulatory requirement that the Department consider the compliance
22 history of an applicant's owners, officers, or board members, the Department did not provide any
23 applicant's compliance information to the Temporary Employees who scored the applications.
24 When questioned, none of the Department employees could identify the person who made the
25 decision to remove compliance information from the application.

26 220. Defendant/Respondent Nevada Organic Remedies, LLC received 7 of the
27 Conditional Licenses awarded in December 2018.

28

1 **4. Destruction of Records in Violation of Court Order**

2 221. In another case alleging defects in the Department’s grant of Conditional Licenses,
3 Judge Bailus ordered that the Department preserve virtually all documents relating to the
4 application process, including “all cell phones (personal and/or business) of each such person that
5 assisted in the processing of applications for dispensary licenses and/or evaluated such license
6 applications.”⁶

7 222. During the Preliminary Injunction Hearing, Department employees testified that they
8 failed to preserve text messages among Department employees, emails, and other records that were
9 subject to the preservation order.

10 223. In addition to violation of the preservation order, it is a gross misdemeanor to
11 willfully destroy, alter, erase, obliterate or conceal any evidence for the purposed of concealing a
12 felony or hindering the administration of the law. NRS 199.220.

13 **I. Public Records Request.**

14 224. Nevada passed the Nevada Public Records Act (“NPRA”), which provides that all
15 state agency records are public unless declared confidential by law.

16 225. “The Legislature has declared that the purpose of the NPRA is to further the
17 democratic ideal of an accountable government by ensuring that public records are broadly
18 accessible.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877–78, 266 P.3d 623, 626 (2011)
19 (citing NRS 239.001(1)).

20 226. Even if a public record contains information that is deemed confidential, the agency
21 may not deny a public records request on the basis that the requested public book or record contains
22 information that is confidential if it can redact, delete, conceal, or separate the confidential
23 information from the information included in the public book or record that is not otherwise
24 confidential.

25
26 ⁶ Order Granting In Part and Denying In Part Emergency Motion for Order Requiring the SMC To Preserve
27 and/or Immediately Turn Over Relevant Electronically Stored Information From Servers, Stand-Alone Computers, and
28 Cell Phones, *MM Dev. Co. v. Nev. Dept. of Taxation*, No. A-18-785818-W (Nev. Dist. Ct. Dec. 13, 2018), attached as
Exhibit 1.

227. On January 23, 2019, Plaintiffs submitted a Public Records Request to the Department for the “[v]isitor sign[-]in logs for the Department of Taxation office located at 555 E. Washington Blvd. Ste. 4100 in Las Vegas, Nevada[,] for the period beginning November 26, 2018 through December 5, 2018.”

228. Defendants believed that the logs would substantiate the information received from [Individual #1].

229. On January 23, 2019, the Department responded to Plaintiffs/Petitioners’ public records request, and claimed that the requested logs were “confidential” under NRS 360.255(1)⁷ because “[t]he visitor sign-in logs identify taxpayers and document taxpayers’ visits to the Taxation office and the business they are there to conduct (e.g., register a business, file a return, make a payment, etc.).”

230. The Department has refused to provide copies of the visitor logs—with or without redactions.

J. Plaintiffs Request Administrative Review by the Tax Commission.

231. Pursuant to NRS 360.245(1), Plaintiffs/Petitioners filed an administrative appeal of the denial of their application with the Commission.

232. To avoid any possible confusion about the proper procedure, Plaintiffs contacted the Department and asked which office would accept service of the notice of an appeal to the Commission. Plaintiffs were informed that a notice of appeal could be served at either of the offices in the Las Vegas Valley or sent via US Mail.

233. Plaintiffs sent a process server to the Department’s office at 555 East Washington Avenue (the Grant Sawyer Building) on January 4, 2019, but no one would accept service.

⁷ NRS 360.255(1) provides that “[e]xcept as otherwise provided in this section and NRS 239.0115 and 360.250, the records and files of the Department concerning the administration or collection of any tax, fee, assessment or other amount required by law to be collected are confidential and privileged. The Department, an employee of the Department and any other person engaged in the administration or collection of any tax, fee, assessment or other amount required by law to be collected or charged with the custody of any such records or files:
(a) Shall not disclose any information obtained from those records or files; and
(b) May not be required to produce any of the records or files for the inspection of any person or governmental entity or for use in any action or proceeding.”

- a. Plaintiffs' process server arrived at the Department's office at 4:30 p.m.
- b. After waiting in line for 18 minutes, he was told that he was in the wrong office, and that the Department needed to make copies of the Notices of Appeal.
- c. Plaintiffs' process server asked why copies were needed if he was in the wrong office, but he was not provided with a response.
- d. It took the Department 12 minutes to make a copy of the Notices of Appeal and notify the process server which office would accept the appeals.
- e. Plaintiffs' process sever was directed to room 1402.
- f. Upon arriving at room 1402, Plaintiffs' process server was told to go to room 1401.
- g. Upon arriving at 1401, Plaintiffs' process server was told that it was closing time and that the person who was responsible for accepting and filing the documents had not been in the office all day.

234. As a result of the Departments' obstruction and refusal to accept service, Plaintiffs were forced to serve the Notices of Appeal by mail.

235. On January 10, 2019, Plaintiffs each received a letter on the letterhead of the Commission—signed by Mr. Pupo—which acknowledged receipt of the Notices of Appeal and stated “[t]here is no statutory or regulatory allowance for appealing the scoring, ranking, or denial [of an application for a retail marijuana store license]. . . . As there is no allowance for an appeal of the denial of your application for the issuance of a retail marijuana store license, no further action will be taken by the Department on your Notice of Appeal.”

236. Under Nevada law, it is a misdemeanor to obstruct any public officer in the discharge of official powers or duties. NRS 197.190. Furthermore, it is a gross misdemeanor to willfully intrude into a public office to which a person has not been duly elected or appointed, or willfully exercise the functions or perform any of the duties of such office. NRS 197.120.

237. Mr. Pupo is not a member of the Tax Commission, and, in unilaterally rejecting Plaintiffs' appeal, Mr. Pupo usurped the Commission's authority and obstructed its ability to perform its official duties.

1 **K. The Commission Meetings**

2 238. On January 14, 2019, the Commission held a properly noticed meeting in Carson
3 City, Nevada and Henderson, Nevada.⁸

4 239. At the meeting, Nicola Spirtos, M.D. and Nicholas Thanos, M.D. offered public
5 comments on behalf of DH Flamingo, and Pejman Bady, M.D. offered public comments on behalf
6 of NuVeda. Each raised concerns regarding the deficiencies in the licensing process.

7 240. Commissioner George Kelesis responded by sharing his own concerns about the
8 licensing process, which included, but are not limited to, the following:

- 9 a. The Department's response to questions from various applicants who were
10 denied information;
- 11 b. "Regulations that were applied beyond the scope of the regulation," and "things
12 that were changed . . . [without being] rule[d] on as a Commission;"
- 13 c. The adequacy of disclosure by certain applicants to the Department;
- 14 d. The qualifications of the individuals who scored the applications; and
- 15 e. The scoring process.

16 241. Commissioner Kelesis also expressed his dismay that the Commission was being
17 deprived of the opportunity to review the licensing decision. He added that "[s]omebody is under
18 the distinct impression that we, as a Commission, do not have jurisdiction over this. I suggest they
19 read [NRS Chapter] 360 real close. We are the head of the Department, and we are the head of the
20 Division, and it comes to us."

21 242. Commissioner Kelesis concluded by calling for a special meeting of the Commission
22 to address the problems.

23 243. Before closing the meeting, Commission Chairman James C. DeVolld assured the
24 public that the issue would be included on a future agenda.

25 244. On March 3, 2019, the Commission held a properly noticed meeting in Carson City,
26 Nevada and Henderson, Nevada. At the March 3, 2019 meeting, Commissioner Kelesis inquired

27 ⁸ An excerpted transcript of this meeting is attached as Exhibit 2.
28

1 about the status of the administrative appeals filed by applicants whose applications for retail
2 marijuana stores were denied in December 2018. He noted that “[t]hey’re not in the system” and
3 asked “when can we expect to hear those and why haven’t we heard them yet?”

4 245. Melanie Young, Executive Director of the Department, responded to Commissioner
5 Kelesis: “I would have to get back to you on that. I’m not sure what the status of those are.”

6 246. To date, the Commission has never scheduled a special meeting to address the
7 numerous problems with the Dispensary licensing or included it on the agenda of any regularly
8 scheduled meeting. Moreover, the Commission never took any action to remedy Mr. Pupo’s
9 wrongful denial of the Plaintiffs’ notices of appeal.

10 **L. The Preliminary Injunction Hearing**

11 247. The Preliminary Injunction Hearing lasted 20 days and concluded on August 16,
12 2019.

13 248. During the Hearing, the Court took testimony from numerous witnesses, including
14 several key employees of the Division.

15 249. Based on the testimony and other evidence, the Court published a 24-page order⁹
16 that included the following findings:

- 17 a. The Department hired temporary employees to grade the application, but “failed
18 to properly train the Temporary Employees”;
- 19 b. “The [Department] failed to establish any quality assurance or quality control of
20 the grading done by Temporary Employees”;
- 21 c. “When the [Department] received applications, it undertook no effort to
22 determine if the applications were in fact ‘complete and in compliance’” and
23 “made no effort to verify owners, officers or board members (except for
24 checking whether a transfer request was made and remained pending before the
25 [Department])”;
- 26

27 ⁹ Findings of Fact & Conclusions of Law Granting Prelim. Ing., *Serenity Wellness Center LLC. Nev. Dept. of*
28 *Taxation*, No. A-19-786962-B (Nev. Dist. Ct. Aug. 23. 2019), attached as Exhibit 3.

- 1 d. The [Department's] late decision to delete the physical address requirement on
2 some application forms while not modifying those portions of the application
3 that were dependent on a physical location (i.e. floor plan, community impact,
4 security plan, and the sink locations) after the repeated communications by an
5 applicant's agent; not effectively communicating the revision; and, leaving the
6 original version of the application on the website, is evidence of conduct that is a
7 serious issue.
- 8 a. "The [Department's] inclusion of the diversity category was implemented in a
9 way that created a process which was partial and subject to manipulation by
10 applicants";
- 11 b. During the application process, the Department "utilized a question and answer
12 process through a generic email account at marijuana@tax.state.nv.us to allow
13 applicants to ask questions and receive answers directly from the Department,
14 which were not consistent with NRS 453D, and that information was not further
15 disseminated by the [Department] to other applicants";
- 16 c. "The process was impacted by personal relationships in decisions related to the
17 requirements of the application and the ownership structures of competing
18 applicants";
- 19 d. "The [Department] disseminated various versions of the 2018 Retail Marijuana
20 Application" and "selectively discussed with applicants or their agents the
21 modification of the application related to physical address information";
- 22 e. "[C]ertain of the Regulations created by the [Department] are unreasonable,
23 inconsistent with [Ballot Question 2] and outside of any discretion permitted to
24 the [Department]";
- 25 f. "The [Department] acted beyond its scope of authority when it arbitrarily and
26 capriciously replaced the mandatory requirement of . . . [a] background check of
27 each prospective owner, officer and board member with the 5% or greater
28

1 standard in NAC 453.255(1) . . . in violation of Article 19, Section 2(3) of the
2 Nevada Constitution”;

3 g. “[T]he [Department] clearly violated NRS Chapter 453D.”

4 250. Based upon its findings of fact and conclusions of law, the Court “enjoined [the
5 Department] from conducting a final inspection of any of the conditional licenses issued in or about
6 December 2018[, for applicants] who did not provide the identification of each prospective owner,
7 officer and board member as required by NRS 453D.200(6) pending a trial on the merits.”

8 251. Based upon the Court’s findings, Plaintiffs are informed and believe that the
9 injunction will prevent the Department from conducting a final inspection of the conditional
10 licenses issued to Defendant/Respondents Nevada Organic Remedies LLC; Greenmart of Nevada
11 NLV, LLC; Helping Hands Wellness Center, Inc.; and Lone Mountain Partners, LLC, who were
12 granted the following licenses:

- 13 a. 1 license in Carson City;
 - 14 b. 2 licenses in Henderson;
 - 15 c. 4 licenses in Las Vegas;
 - 16 d. 3 licenses in North Las Vegas;
 - 17 e. 4 licenses in Unincorporated Clark County;
 - 18 f. 1 license in Douglas County;
 - 19 g. 1 license in Esmeralda County;
 - 20 h. 1 license in Eureka County;
 - 21 i. 1 license in Lander County;
 - 22 j. 1 license in Lincoln County;
 - 23 k. 1 license in Mineral County;
 - 24 l. 1 license in Nye County;
 - 25 m. 1 license in White Pines County; and
 - 26 n. 3 licenses in Washoe County-Reno.
- 27
28

1 **M. Plaintiffs Are Without Any Other Means to Obtain Review.**

2 252. Neither NRS Chapter 453D nor the Department's Approved Regulations expressly
3 provide for an appeal or reconsideration of the Department's licensing determination and the
4 Department has denied Plaintiffs' appeal filed under NRS Chapter 360.

5 253. Because the Department has failed to provide the Plaintiffs/Petitioners with written
6 notice of the specific reasons for the denial of their license applications, refused to let them review
7 the scoring for their license applications until after the time to appeal the licensing determination
8 had run (pursuant to NRS 233B.130), refused to provide them any explanation as to how their
9 scores for each criterion was determined, and refused to provide them copies of the scoring for their
10 own applications or the applications for any of the Successful Applicants or other Denied
11 Applicants, the Department has deprived the Plaintiffs/Petitioners of any means to: (1) determine
12 whether the Department accurately scored their applications; (2) appeal the Department's licensing
13 determinations; or (3) obtain proper judicial review of the Department's administrative decisions.

14 254. Upon information and belief, the Department did not properly score the
15 Plaintiffs/Petitioners' license applications submitted between 8:00 a.m. on September 7, 2018 and
16 5:00 p.m. on September 20, 2018.

17 255. Upon information and belief, the Department's ranking and scoring process was
18 corrupted and the applications of the Successful Applicants were not fairly and accurately scored in
19 comparison to the Plaintiffs/Petitioners' applications.

20 256. Upon information and belief, the Department improperly allocated licenses and
21 improperly favored certain applicants to the detriment of the Plaintiffs/Petitioners.

22 257. Upon information and belief, the Department and/or the Commission and/or their
23 individual members or employees are now engaging in a cover-up of the rampant illegality and
24 corruption that infected the license application process for the recreational Dispensaries.

25 258. Plaintiffs/Petitioners are each parties to a proceeding by the Department which
26 determined their rights, duties, and privileges; namely, the Department's scoring and ranking of
27 Plaintiffs/Petitioners' applications for a recreational Dispensary license and the Department's
28 refusal to issue a conditional license to Plaintiffs/Petitioners.

1 259. The Department's scoring and ranking process was marred by significant errors,
2 procedural flaws, violations of Nevada law, and/or illegality and corruption.

3 260. After publishing the Notice of Intent to Accept Applications on June 6, 2018, the
4 Department revised the application form in violation of the Approved Regulations and NRS
5 Chapter 453D.

6 261. As such, the Department's scoring and ranking process and subsequent issuance of
7 conditional recreational Dispensary licenses was unlawful, arbitrary, capricious, in excess of the
8 Department's jurisdiction, and clearly erroneous.

9 262. The Department's scoring and ranking of the applications was unlawful and in
10 excess of its jurisdiction because the Department eliminated certain categories of application
11 information clearly required by the Approved Regulations and NRS 453D.210 (i.e., the physical
12 address and property ownership requirements) without following the proper procedures to amend its
13 Regulations and/or NRS 453D.210 to officially eliminate these requirements from the license
14 application process.

15 263. The Department's scoring and ranking was also unlawful and in excess of its
16 jurisdiction because the Department added a new category of information to its scoring criterion
17 (i.e., information relating to key personnel of the proposed recreational Dispensary) after issuing its
18 Notice and without clearly informing applicants of the revision.

19 264. Further, the Department's scoring and ranking of applications was arbitrary and
20 capricious because it was conducted by Temporary Employees whose training and qualifications
21 were concealed from the public.

22 265. The Department's scoring and ranking of applications was also arbitrary and
23 capricious because the Department has not provided any information to the public regarding how
24 scores are assessed for each criterion in the Application or any information as to how the
25 Department ensures uniformity in the assessment of scores by the unknown persons conducting the
26 scoring process.

27 266. Moreover, the Department's scoring and ranking was unlawful and in excess of its
28 jurisdiction because the process of scoring and ranking the license applications submitted between

1 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018 was corrupted and certain
2 applicants and applications were favored over others.

3 267. Finally, the denial of the Plaintiffs/Petitioners' applications for recreational retail
4 marijuana establishment licenses was clearly erroneous, unlawful, arbitrary, capricious, and in
5 excess of the Department's jurisdiction, because the Department has failed to provide the specific
6 reasons for the denial of the applications and has not provided any record demonstrating the basis
7 for the denial of the applications.

8 268. Upon information and belief, a complete review of the record will show that the
9 Department's final scoring and ranking of the Plaintiffs/Petitioners', Denied Applicants', and
10 Successful Applicants' applications was arbitrary, capricious, and clearly erroneous.

11 269. Plaintiffs/Petitioners request that the entire record of the Department's scoring and
12 ranking (not only for the Plaintiffs/Petitioners' applications, but also the applications submitted by
13 each of the Denied Applicants and Successful Applicants) – including the process by which the
14 scorers were hired, the qualifications of the scorers, and the guidelines and procedures followed by
15 the scorers to ensure uniformity in assessing the scores and ranks – be immediately provided for
16 review.

17 IV. CLAIMS FOR RELIEF

18 First Claim for Relief: Petition for Judicial Review

19 270. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
20 in all previous paragraphs, inclusive.

21 271. Plaintiff/Petitioners are parties to a proceeding at the Department—specifically, the
22 review, scoring, and ranking of applications for and issuance of recreational dispensary licenses—
23 and have been aggrieved by what the Department claims is its final decision.

24 272. As set forth above,

- 25 a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of
26 the Approved Regulations;
27 b. The Department's scoring and ranking of the applications submitted for
28 recreational dispensary licenses between 8:00 a.m. on September 7, 2018 and

1 5:00 p.m. on September 20, 2018 was arbitrary, capricious, unlawful, clearly
2 erroneous, and in excess of the Department's jurisdiction;

- 3 c. The Department's denial and award of Conditional Licenses for recreational
4 dispensaries was unlawful, clearly erroneous, arbitrary, capricious, and in excess
5 of the Department's jurisdiction; and
6 d. The Department's misconduct and failure to properly administer the application
7 process denied Plaintiffs of due process and equal protection as guaranteed by
8 the Nevada Constitution.

9 273. Under NRS 233B.010, *et seq.*, Plaintiffs/Petitioners are entitled to Judicial Review
10 of the Department's decision by which they were denied the rights and privileges afforded to them
11 by Nevada law.

- 12 a. Pursuant to NRS 360.245(1)(b), "Any natural person, partnership, corporation,
13 association or other business or legal entity who is aggrieved by [] a decision [of
14 the Executive Director or other officer of the Department] may appeal the
15 decision by filing a notice of appeal with the Department within 30 days after
16 service of the decision upon that person or business or legal entity."
17 b. Furthermore, "[t]he Nevada Tax Commission, as head of the Department, may
18 review all decisions made by the Executive Director that are not otherwise
19 appealed to the Commission pursuant to this section."

20 274. Plaintiffs/Petitioners timely appealed to the Commission for review of the
21 Department's December 5, 2018 decision to deny them Dispensary licenses.

22 275. The Department abused its discretion when, without justification, it asserted that
23 Plaintiffs/Petitioners are not entitled to the Commission's review of the Department's decision to
24 deny them Dispensary licenses.

25 276. Accordingly, Plaintiffs/Petitioners petition this Court for Judicial Review of the
26 proceeding at the Department whereby the applications for recreational Dispensary licenses were
27 reviewed, scored, and ranked, and demand that the entire record of the proceeding (for each and
28 every application submitted by Plaintiffs/Petitioners, the Denied Applicants, and the Successful

Applicants) be transmitted in accordance with NRS 233B.131.¹⁰ This includes, but is not limited to:

- a. All applications and scoring information for every application for a recreational Dispensary license that was submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
- b. Information regarding the identities, qualifications, and training of the Temporary Employees who scored the applications for recreational Dispensary licenses;
- c. The policies, procedures, guidelines, and/or regulations which governed how the scorers assessed points to each criterion in the license application and how uniformity was ensured in the scoring assessment process for the recreational Dispensary licenses;
- d. All communications between the Temporary Employees who scored the applications and Department employees from the date of hire to the present, including but not limited to, cell phone records, text messages, emails or voicemails;
- e. All communications among Department employees regarding implementation of the Ballot Initiative, the drafting and adoption of the Approved Regulations, and the drafting and adoption of Chapter 453D of the Nevada Administrative Code, including but not limited to cell phone records, text messages, emails or voicemails;
- f. All communications related to the creating, adoption, and revision of the application or the scoring process, including, but not limited to, cell phone records, text messages, emails or voicemails (whether by or among Department employees, with any applicant, or other third party)

¹⁰ “Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: . . . The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review.” NRS 233.131(1)(b).

- g. All communications or other evidence of invitations by any licensee to any Department Employee relating to social engagements, business meetings occurring outside the Department's offices, offers of employment, or any gift, gratuity, or other item or service of value, including, but not limited to cell phone records, text messages, emails or voicemails (whether by or among Department employees, with any applicant, or other third party)
- h. Communications between Department employees and applicants or other third parties regarding revisions to an applicant's or licensee's compliance records with the Department, including but not limited to cell phone records, text messages, emails or voicemails; and
- i. Non-privileged communications or policies relating to record retention or the Preservation Order;

277. Specifically, following review and further proceedings in this Court, Plaintiffs seek an order remanding this matter back to the Department for administrative appeal before the Commission in accordance with NRS 360.245(1), with such instructions as the Court deems necessary and appropriate.

Second Claim for Relief: Petition for Writ of Certiorari

278. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in all previous paragraphs, inclusive.

279. The Department has exceeded its jurisdiction to review, score, and rank applications for recreational Dispensary licenses and to issue recreational Dispensary licenses by, among other things:

- a. Employing unqualified and improperly trained employees to conduct the review, scoring, and ranking of applications;
- b. Failing to ensure uniformity in the assessment of the applications and the assignment of scores to various categories of information in the applications;
- c. Allowing the license application process to be corrupted by unfairly favoring certain applicants over others and by eliminating categories of information from

the license application despite such categories being required under the
Approved Regulations and/or NRS Chapter 453D;

- d. Adding a new category of information to the license application after issuing the
Notice for license application submissions without providing adequate notice to
the license applicants;
- e. Improperly omitting or destroying incident reports and/or other evidence of
statutory or regulatory infractions by licensees;
- f. Failing to inform the Plaintiffs/Petitioners of the specific reasons for the denial of
their applications;
- g. Improperly communicating with certain licensees (or their counsel) regarding the
application process; and
- h. Failing to comply with the Preservation Order.

280. The Department has informed Plaintiffs that Plaintiffs have no right to appeal the
Department's licensing decision. Therefore, Plaintiffs do not have any plain, speedy, and adequate
remedy for the Department's improper actions.

281. Plaintiffs/Petitioners petition this Court for a writ of certiorari regarding the
Department's reviewing, scoring, and ranking of Plaintiffs/Petitioners' applications for recreational
Dispensary licenses, and that this Court undertake such review of the Department's conduct as it
deems necessary and appropriate

282. Plaintiffs/Petitioners also request that the Court order the Department to provide the
complete record of the Department's proceeding with respect to the Plaintiffs/Petitioners'
applications for recreational Dispensary licenses (along with the complete record of the
Department's proceeding related to the licensing process and each of the applications for the
Denied Applicants and the Successful Applicants).

Third Claim for Relief: Petition for Writ of Mandamus

283. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
in all previous paragraphs, inclusive.

1 284. The Department has failed to perform an act which the law compels it to perform;
2 specifically,

- 3 a. Use of an using an impartial and numerically scored competitive bidding process
4 to evaluate license applications and issue licenses in compliance with Nevada
5 laws and regulations; and
6 b. Preservation of public records and other evidence not subject to the Preservation
7 Order.

8 285. The Plaintiffs have already been denied a right to appeal the Department's licensing
9 decision. Therefore, there is no plain, speedy, and adequate remedy in the ordinary course of law to
10 correct the Division's failure to perform the acts required by law.

11 286. The Plaintiffs/Petitioners therefore petition this Court to issue a writ of mandamus to
12 the Department compelling it to issue a new Notice for recreational Dispensary license applications
13 and to conduct the scoring and ranking of such applications in accordance with Nevada law and the
14 Approved Regulations.

15 **Fourth Claim for Relief: Petition for Writ of Prohibition**

16 287. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
17 in all previous paragraphs, inclusive.

18 288. The Department has issued conditional recreational Dispensary licenses in excess of
19 its jurisdiction by, among other things: (1) eliminating key categories of information from the
20 application (despite the Approved Regulations and NRS Chapter 453D requiring that the
21 Department consider such information); (2) by adding a new category of information to the
22 application after it issued its Notice for license applications and failing to adequately inform license
23 applicants of this new category of information; and (3) failing to comply with NRS Chapter 453D
24 and the Approved Regulations related to dispensary licensing;

25 289. The Department has denied Plaintiffs/Petitioners the right to appeal the
26 Department's licensing decision. Therefore, there is no plain, speedy, and adequate remedy in the
27 ordinary course of law to correct the Department's improper review, scoring, and ranking of the
28 license applications or the issuance of the conditional recreational Dispensary licenses.

1 290. Plaintiffs/Petitioners therefore petition the Court to issue a writ of prohibition which
2 prohibits the Department from issuing and/or recognizing any new recreational Dispensary licenses
3 (conditional or final) for applicants who submitted a license application between 8:00 a.m. on
4 September 7, 2018 and 5:00 p.m. on September 20, 2018.

5 WHEREFORE, Plaintiffs/Petitioners pray for the following relief:

- 6 1. Judicial Review of the Department's decision denying Plaintiff's appeal;
- 7 2. A writ of certiorari ordering the review of the Department's review, scoring, and
8 ranking of applications for recreational Dispensary licenses submitted between 8:00 a.m. on
9 September 7, 2018 and 5:00 p.m. on September 20, 2018; and order that the Department provide the
10 complete record of the Department's proceeding (for each and every application submitted by
11 Plaintiffs/Petitioners, the Denied Applicants, and the Successful Applicants). This includes, but is
12 not limited to:
- 13 a. All applications and scoring information for every application for a recreational
14 Dispensary license that was submitted between 8:00 a.m. on September 7, 2018
15 and 5:00 p.m. on September 20, 2018;
- 16 b. Information regarding the identities, qualifications, and training of the
17 Temporary Employees who scored the applications for recreational Dispensary
18 licenses; and
- 19 c. The policies, procedures, guidelines, and/or regulations which governed how the
20 scorers assessed points to each criterion in the license application and how
21 uniformity was ensured in the scoring assessment process for the recreational
22 Dispensary licenses;
- 23 d. Communications related to the application or the scoring process, including, but
24 not limited to, cell phone records, text messages, emails or voicemails (whether
25 by or among Department employees, with any applicant, or other third party)
- 26 e. Communications or other evidence of (1) invitations by any licensee to any
27 Department Employee relating to social engagements or (3) any gift, gratuity, or
28 other item or service of value;

f. Non-privileged communications or policies relating to record retention or the Preservation Order.

3. A writ of mandamus compelling the Department to: issue a new Notice for recreational Dispensary license applications and to conduct the scoring and ranking of such applications in accordance with Nevada law and the Approved Regulations.

4. A writ of prohibition barring the Department from issuing and/or recognizing any new recreational Dispensary licenses (conditional or final) based on applications submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

DATED this 6th day of September, 2019.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

JOSHUA M. DICKEY

SARAH E. HARMON

KELLY B. STOUT

Attorneys for Plaintiffs/Petitioners

D.H. FLAMINGO, INC., d/b/a THE

APOTHECARY SHOPPE; CLARK

NATURAL MEDICINAL SOLUTIONS LLC,

d/b/a NuVEDA; NYE NATURAL

MEDICINAL SOLUTIONS LLC, d/b/a

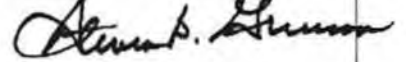
NuVEDA; CLARK NMSD LLC, d/b/a

NuVEDA; and INYO FINE CANNABIS

DISPENSARY L.L.C., d/b/a INYO FINE

CANNABIS DISPENSARY

EXHIBIT 2-B



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

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

21 Plaintiffs,

22 vs.

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

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

SECOND AMENDED COMPLAINT

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

Defendants.

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

24 **I.**

25 **PARTIES, JURISDICTION, AND VENUE**

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ...

28 ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 II.

8 GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18

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

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

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

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

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

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

28 6. When competing applications are submitted for a proposed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **III.**

20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **(Violation of Civil Rights)**

23 **(Due Process: Deprivation of Property)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ...

26 ...

27 ...

28 ...

SECOND CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Liberty)

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

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

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

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

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

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

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

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

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

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

12 **THIRD CLAIM FOR RELIEF**

13 **(Violation of Civil Rights)**

14 **(Equal Protection)**

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

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

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

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

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

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

FOURTH CLAIM FOR RELIEF

(Petition for Judicial Review)

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

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

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

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

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

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

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

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

2 **FIFTH CLAIM FOR RELIEF**

3 **(Petition for Writ of Mandamus)**

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

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

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

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

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

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

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

15 b. The Board denied Plaintiffs' Applications in order to approve the Applications
16 of other competing applicants without regard to the merit of Plaintiffs'
17 Applications and the lack of merit of the Applications of other competing
18 applicants.

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

22 104. As a result of the Department's unlawful and arbitrary and capricious actions,
23 Plaintiffs have been forced to retain legal counsel to prosecute this action and is therefore also
24 entitled to their damages, costs in this suit, and an award of attorneys' fees pursuant to NRS
25 34.270.

26 **FIFTH CLAIM FOR RELIEF**

27 **(Declaratory Relief)**

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for relief as follows:

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

DEMAND FOR JURY TRIAL

Trial by jury is hereby demanded on all claims and issues so triable.

DATED this 26th day of November, 2019.

CLARK HILL PLC

/s/ Dominic P. Gentile

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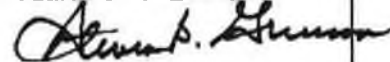
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CERTIFICATE OF SERVICE

The undersigned, an employee of Clark Hill PLLC, hereby certifies that on the 26th day of November, 2019, I caused a copy of the foregoing **SECOND AMENDED COMPLAINT** by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system.

/s/ Tanya Bain
An Employee of Clark Hill

EXHIBIT 2-C



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11 *Attorneys for Plaintiffs*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

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

Case No.: A-19-787004-B

Consolidated with: A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept No.: XI

THIRD AMENDED COMPLAINT

22 Plaintiffs ETW MANAGEMENT GROUP LLC ("ETW"), GLOBAL HARMONY LLC
23 ("Global Harmony"), GREEN LEAF FARMS HOLDINGS LLC ("GLFH"), GREEN
24 THERAPEUTICS LLC ("GT"), HERBAL CHOICE INC. ("Herbal Choice"), JUST QUALITY,
25 LLC ("Just Quality"), LIBRA WELLNESS CENTER, LLC ("Libra"), ROMBOUGH REAL
26 ESTATE INC. dba MOTHER HERB ("Mother Herb"), NEVCANN LLC ("NEVCANN"), RED
27 EARTH LLC ("Red Earth"), THC NEVADA LLC ("THCNV"), ZION GARDENS LLC
28 ("Zion"), and MMOF VEGAS RETAIL, INC. ("MMOF") (collectively, the "Plaintiffs"), by and

1 through their undersigned counsel of record Adam K. Bult, Esq., Maximilien D. Fetaz, Esq., and
2 Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Adam R.
3 Fulton, Esq., of the law firm of Jennings & Fulton, Ltd., hereby file their Third Amended
4 Complaint against the STATE OF NEVADA, DEPARTMENT OF TAXATION (the "DOT");
5 CHEYENNE MEDICAL, LLC; CIRCLE S FARMS, LLC; CLEAR RIVER, LLC; COMMERCE
6 PARK MEDICAL L.L.C.; DEEP ROOTS MEDICAL LLC; ESSENCE HENDERSON, LLC,
7 ESSENCE TROPICANA, LLC; EUREKA NEWGEN FARMS LLC; GREEN THERAPEUTICS
8 LLC; GREENMART OF NEVADA NLV, LLC; HELPING HANDS WELLNESS CENTER,
9 INC.; LONE MOUNTAIN PARTNERS, LLC; NEVADA ORGANIC REMEDIES LLC;
10 POLARIS WELLNESS CENTER L.L.C.; PURE TONIC CONCENTRATES LLC; TRNVP098;
11 WELLNESS CONNECTION OF NEVADA, LLC; DOES 1 through 20 inclusive, and ROE
12 CORPORATIONS 19 through 20, inclusive, alleging and complaining as follows:

13 **PARTIES**

14 1. At all times relevant hereto, ETW is and was a limited liability company organized
15 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
16 Nevada.

17 2. At all times relevant hereto, Global Harmony is and was a limited liability
18 company organized and existing under the laws of the State of Nevada and authorized to do
19 business in Clark County, Nevada.

20 3. At all times relevant hereto, GLFH is and was a limited liability company
21 organized and existing under the laws of the State of Nevada and authorized to do business in
22 Clark County, Nevada.

23 4. At all times relevant hereto, GT is and was a limited liability company organized
24 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
25 Nevada.

26 5. At all times relevant hereto, Herbal Choice is and was a Nevada corporation
27 authorized to do business in Clark County, Nevada.

28 6. At all times relevant hereto, Just Quality is and was a limited liability company

1 organized and existing under the laws of the State of Nevada and authorized to do business in
2 Clark County, Nevada.

3 7. At all times relevant hereto, Libra is and was a limited liability company organized
4 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
5 Nevada.

6 8. At all times relevant hereto, Mother Herb is and was a Nevada corporation and
7 authorized to do business in Clark County, Nevada.

8 9. At all times relevant hereto, NEVCANN is and was a limited liability company
9 organized and existing under the laws of the State of Nevada and authorized to do business in
10 Clark County, Nevada.

11 10. At all times relevant hereto, Red Earth is and was a limited liability company
12 organized and existing under the laws of the State of Nevada and authorized to do business in
13 Clark County, Nevada.

14 11. At all times relevant hereto, THCNV is and was a limited liability company
15 organized and existing under the laws of the State of Nevada and authorized to do business in
16 Clark County, Nevada.

17 12. At all times relevant hereto, Zion is and was a limited liability company organized
18 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
19 Nevada.

20 13. At all times relevant hereto, MMOF is and was a Nevada corporation authorized to
21 do business in Clark County, Nevada.

22 14. At all times relevant hereto, the DOT is and was an agency and political
23 subdivision of the State of Nevada.

24 15. The true name and capacity of ROE CORPORATION 1 is Cheyenne Medical,
25 LLC. At all times relevant hereto, Cheyenne Medical, LLC is and was a limited liability
26 company organized and existing under the laws of the State of Nevada and authorized to do
27 business in Clark County, Nevada.

28 16. The true name and capacity of ROE CORPORATION 2 is Circle S Farms, LLC.

1 At all times relevant hereto, Circle S Farms, LLC is and was a limited liability company
2 organized and existing under the laws of the State of Nevada and authorized to do business in
3 Clark County, Nevada.

4 17. The true name and capacity of ROE CORPORATION 3 is Clear River, LLC. At
5 all times relevant hereto, Clear River, LLC is and was a limited liability company organized and
6 existing under the laws of the State of Nevada and authorized to do business in Clark County,
7 Nevada.

8 18. The true name and capacity of ROE CORPORATION 4 is Commerce Park
9 Medical L.L.C. At all times relevant hereto, Commerce Park Medical L.L.C. is and was a limited
10 liability company organized and existing under the laws of the State of Nevada and authorized to
11 do business in Clark County, Nevada.

12 19. The true name and capacity of ROE CORPORATION 5 is Deep Roots Medical
13 LLC. At all times relevant hereto, Deep Roots Medical LLC is and was a limited liability
14 company organized and existing under the laws of the State of Nevada and authorized to do
15 business in Clark County, Nevada.

16 20. The true name and capacity of ROE CORPORATION 6 is Essence Henderson,
17 LLC. At all times relevant hereto, Essence Henderson, LLC is and was a limited liability
18 company organized and existing under the laws of the State of Nevada and authorized to do
19 business in Clark County, Nevada.

20 21. The true name and capacity of ROE CORPORATION 7 is Essence Tropicana,
21 LLC. At all times relevant hereto, Essence Tropicana, LLC is and was a limited liability
22 company organized and existing under the laws of the State of Nevada and authorized to do
23 business in Clark County, Nevada.

24 22. The true name and capacity of ROE CORPORATION 8 is Eureka NewGen Farms
25 LLC. At all times relevant hereto, Eureka NewGen Farms LLC is and was a limited liability
26 company organized and existing under the laws of the State of Nevada and authorized to do
27 business in Clark County, Nevada.

28 23. The true name and capacity of ROE CORPORATION 9 is Green Therapeutics

1 LLC. At all times relevant hereto, Green Therapeutics LLC is and was a limited liability
2 company organized and existing under the laws of the State of Nevada and authorized to do
3 business in Clark County, Nevada.

4 24. The true name and capacity of ROE CORPORATION 10 is Greenmart of Nevada
5 NLV. At all times relevant hereto, Greenmart of Nevada NLV is and was a limited liability
6 company organized and existing under the laws of the State of Nevada and authorized to do
7 business in Clark County, Nevada.

8 25. The true name and capacity of ROE CORPORATION 11 is Helping Hands
9 Wellness Center, Inc. At all times relevant hereto, Helping Hands Wellness Center, Inc. is and
10 was a limited liability company organized and existing under the laws of the State of Nevada and
11 authorized to do business in Clark County, Nevada.

12 26. The true name and capacity of ROE CORPORATION 12 is Lone Mountain
13 Partners, LLC. At all times relevant hereto, Lone Mountain Partners, LLC is and was a limited
14 liability company organized and existing under the laws of the State of Nevada and authorized to
15 do business in Clark County, Nevada.

16 27. The true name and capacity of ROE CORPORATION 13 is Nevada Organic
17 Remedies LLC. At all times relevant hereto, Nevada Organic Remedies LLC is and was a limited
18 liability company organized and existing under the laws of the State of Nevada and authorized to
19 do business in Clark County, Nevada.

20 28. The true name and capacity of ROE CORPORATION 14 is Polaris Wellness
21 Center L.L.C. At all times relevant hereto, Polaris Wellness Center L.L.C. is and was a limited
22 liability company organized and existing under the laws of the State of Nevada and authorized to
23 do business in Clark County, Nevada.

24 29. The true name and capacity of ROE CORPORATION 15 is Pure Tonic
25 Concentrates LLC. At all times relevant hereto, Pure Tonic Concentrates LLC is and was a
26 limited liability company organized and existing under the laws of the State of Nevada and
27 authorized to do business in Clark County, Nevada.

28 30. The true name and capacity of ROE CORPORATION 16 is TRNVP098. At all

1 times relevant hereto, TRNVP098 is and was a limited liability company organized and existing
2 under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

3 31. The true name and capacity of ROE CORPORATION 17 is Wellness Connection
4 of Nevada, LLC. At all times relevant hereto, Wellness Connection of Nevada, LLC is and was a
5 limited liability company organized and existing under the laws of the State of Nevada and
6 authorized to do business in Clark County, Nevada.

7 32. Upon information and belief, Defendants identified in Paragraphs 15-31 were
8 granted conditional recreational dispensary licenses by the DOT on or after December 5, 2018
9 (the "Successful Applicants").

10 33. The true names and capacities, whether individual, corporate, associate or
11 otherwise, of Defendants Does 1-20, inclusive, and Roe Corporations 18-20, inclusive, are
12 unknown to Plaintiffs, which therefore sue said Defendants by such fictitious names. Plaintiffs
13 will amend this Third Amended Complaint to state the true names and capacities of said fictitious
14 Defendants when they have been ascertained.

15 34. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously
16 named Defendants are responsible in some manner for the occurrences herein alleged, and that
17 Plaintiffs' damages as herein alleged were proximately caused by Defendants' acts. Each
18 reference in this Complaint to "Defendant" or "Defendants," or a specifically named Defendant
19 refers also to all Defendants sued under fictitious names.

20 **JURISDICTION AND VENUE**

21 35. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,
22 § 6, NRS 4.370(2), NRS 30, and because the acts and omissions complained of herein occurred
23 and caused harm within Clark County, Nevada. Further, the amount in controversy exceeds
24 \$15,000.00.

25 36. Venue is proper in this Court pursuant to NRS 13.020(2)-(3).

26 **GENERAL ALLEGATIONS**

27 37. Plaintiffs incorporate and reallege Paragraphs 1 through 18 as though fully set
28 forth herein.

The Statutory Scheme Governing Retail Marijuana Licenses

38. In or around November 2016, the citizens of the State of Nevada approved a statutory ballot initiative that, *inter alia*, legalized the recreational use of marijuana and allowed for the licensing of recreational marijuana dispensaries.

39. The statutory scheme approved by the voters was codified in NRS Chapter 453D and vested authority for the issuance of licenses for retail marijuana dispensaries in the DOT.

40. NRS 453D.200(1) required the DOT to “adopt all regulations necessary or convenient to carry out the provisions of” that Chapter, including procedures for the issuance of retail marijuana licenses, no later than January 1, 2018.

41. NRS 453D.200(6) provides that the “[DOT] shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.”

42. NRS 453D.210(5)(b) required that for an application to be complete, the applicant must include the “physical address where the proposed marijuana establishment will operate” and the proposed marijuana establishment “is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property.”

43. NRS 453D.210(4)-(5) permits the DOT to issue a retail marijuana license only to those entities or persons that have submitted a complete license application to the DOT in compliance with regulations adopted by the DOT. The circumstances under which an application was to be considered complete were to be promulgated into regulations by the DOT, pursuant to NRS 453D.200(1)(a).

44. NRS 453D.210(5)(d) limits the number of retail marijuana licenses that may be issued by the DOT in the various counties across the State of Nevada.

45. However, NRS 453D.210(d)(5) provides that a county government may request that the DOT issue retail marijuana licenses above the limits set forth in NRS 453D.210(5)(d).

46. As mandated by NRS 453D.210(6), “[w]hen competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall use an

1 impartial and numerically scored competitive bidding process to determine which application
2 or applications among those competing will be approved.” (emphasis added).

3 *The DOT’s Adoption of Flawed Regulations that Do Not Comply with Chapter 453D*

4 47. On or around May 8, 2017, the DOT adopted temporary regulations pertaining to,
5 *inter alia*, the application for and the issuance of retail marijuana licenses.

6 48. The DOT continued preparing draft permanent regulations as required by NRS
7 453D.200(1) and held public workshops with respect to the same on July 24 and July 25, 2017.

8 49. On or around December 16, 2017, the DOT issued a Notice of Intent to Adopt
9 permanent regulations pursuant to the mandates of NRS 453D.200(1).

10 50. On or around January 16, 2018, the DOT held a public hearing on the proposed
11 permanent regulations (LCB File No. R092-17), which was attended by numerous members of
12 the public and marijuana business industry.

13 51. At the hearing, the DOT was informed that the licensure factors contained in the
14 proposed permanent regulations would have the effect of favoring vertically-integrated
15 cultivators/dispensaries and would result in arbitrary weight being placed upon certain
16 applications that were submitted by well-known, well-connected, and longtime Nevada families.

17 52. Despite the issues raised at the hearing, on or around January 16, 2018, the DOT
18 adopted the proposed permanent regulations in LCB File No. R092-17, which have since been
19 codified in NAC 453D (the “Regulations”).

20 53. As required by NRS 453D.200(1)(a), the DOT issued NAC 453D.268, which sets
21 forth a host of elements that are required to be submitted to form a complete application. NAC
22 453D.272 relates to the DOT’s method of evaluating competing retail marijuana license
23 applications.

24 54. NAC 453D.272(1) provides that where the DOT receives competing applications,
25 it will “rank the applications...in order from first to last based on compliance with the provisions
26 of this chapter and chapter 453D of NRS and on the content of the applications relating to”
27 several enumerated factors.

28 55. The factors set forth in NAC 453D.272(1) that are used to rank competing

1 applications (collectively, the “Factors”) are:

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

26 56. Aside from the Factors, there is no other competitive bidding process used by the
27 DOT to evaluate competing applications.

28 57. NAC 453D.272(5) provides that the DOT will not issue more than one retail

1 marijuana license to the same person, group of persons, or entity.

2 58. NRS 453D.210(4)(b) and NAC 453D.312(4) requires the DOT to provide the
3 specific reasons that any license application is rejected.

4 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

5 59. NRS 453D.210 required the DOT to accept applications and issue licenses only to
6 medical marijuana establishments for 18 months following the date upon which the DOT began
7 to receive applications for recreational dispensaries (the "Early Start Program").

8 60. Upon information and belief, the DOT began to accept applications for
9 recreational dispensary licenses on or around May 15, 2017.

10 61. Beginning upon the expiration of the Early Start Program (or on or around
11 November 15, 2018), the DOT was to receive and consider applications for a recreational
12 dispensary license from any qualified applicant.

13 62. The DOT released the application package for non-Early Start Program applicants
14 on July 6, 2018 and required those applications to be returned in complete form between
15 September 7 and September 20, 2018. A true and correct copy of the application package is
16 attached hereto as **Exhibit 1**.

17 63. Following that release, the DOT revised the application package. However, the
18 DOT only notified certain applicants about the revised application package. A true and correct
19 copy of the revised application package is attached hereto as **Exhibit 2**.

20 64. Each of the Plaintiffs submitted a complete Application for issuance of a retail
21 marijuana license after the expiration of the Early Start Program during the period specified by
22 the DOT and some Plaintiffs submitted multiple Applications for different localities that
23 contained the same substantive information.

24 65. Each and every Application submitted by Plaintiffs was full, complete, and
25 contained substantive information and data for each and every factor outlined in the application
26 form.

27 66. Some of the information requested by the form application was "identified," such
28 that the reviewer would know the identity of the applicant when scoring the same, while some

1 was unidentified, such that the reviewer would not know the identity of the applicant.

2 67. Each of the Successful Applicants also submitted an application to the DOT for
3 retail marijuana licenses.

4 68. However, some or all of the Successful Applicants' applications were not
5 complete when submitted to the DOT as required by NAC 453D.268.

6 69. For example, some or all of the Successful Applicants' applications failed to
7 include the following information:

- 8 a. The physical address where the proposed establishment was to be located,
9 which precluded a determination of the applicant's community impact;
- 10 b. The physical address of co-owned or affiliated marijuana establishments;
- 11 c. Disclosure of all owners, officers, and board members of the applicant
12 entity, allowing for inaccurate and manipulated diversity scoring;
- 13 d. Whether those persons were had served or was currently serving as an
14 owner, officer, or board member of another marijuana establishment;
- 15 e. Whether those persons were health care providers currently providing
16 written documentation for medical marijuana cards;
- 17 f. Whether those persons had an ownership or financial interest in any other
18 marijuana establishment; and
- 19 g. Documentation concerning the size of the proposed marijuana
20 establishment, including the building and floor plan.

21 70. In addition, some or all of the Successful Applicants' applications did not include
22 information required by NRS 453D.210(5), including, but not limited to:

- 23 a. The physical address where the establishment will operate;
- 24 b. The location of the proposed establishment in relation to schools; and
- 25 c. The identities of all owners, officers, and board members of the applicant
26 entity, such that a background check could be performed on each as
27 required by NRS 453D.200(6).

28 71. Further, the revised application submitted by certain applicants omitted the

1 statutorily required affirmation that the applicant either own the proposed location or have the
2 consent of the owner to operate a marijuana establishment. *See* NRS 453D.210(5)(b).

3 72. On or around December 5, 2018, despite submission of incomplete applications,
4 each of the Successful Applicants were awarded conditional recreational dispensary licenses by
5 the DOT.

6 73. On or around December 5, 2018, each of the Plaintiffs' Applications was denied
7 by identical written notices issued by the DOT.

8 74. Each of the written notices from the DOT does not contain any specific reasons
9 why the Applications were denied and instead states merely that "NRS 453D.210 limits the total
10 number of licenses that can be issued in each local jurisdiction. This applicant was not issued a
11 conditional license because it did not achieve a score high enough to receive an available
12 license..."

13 75. The DOT utilized the Factors in evaluating each of the Applications, assigning a
14 numerical score to each Factor, but the Factors are partial and arbitrary on their face.

15 76. In addition, the DOT's review and scoring of each of the Plaintiffs' Applications
16 was done errantly, arbitrarily, irrationally, and partially because, *inter alia*:

- 17 a. The Applications were complete but received zero scores for some Factors
18 and the only way to receive a zero score is to fail to submit information
19 with respect to that Factor;
- 20 b. The scoring method used by the DOT combined certain Factors into one
21 grouping, effectively omitting certain Factors from consideration;
- 22 c. Plaintiffs that submitted multiple Applications containing the same
23 substantive information and data for different localities received widely
24 different scores for certain Factors; and
- 25 d. The Plaintiffs received much higher scores for the unidentified data and
26 information when compared with the identified data and information
27 submitted.

28 77. Moreover, the highest scored Factor was the organizational structure of the

1 application and the DOT required that Plaintiffs disclose information about the identities of “key
2 personnel” with respect to that Factor, resulting in arbitrary and partial weight being placed upon
3 applications from well-known and well-connected applicants.

4 78. The DOT improperly engaged Manpower US Inc. (“Manpower”) to provide
5 temporary personnel for the review and scoring of submitted license Applications without
6 providing them with any uniform method of review to ensure consistency and impartiality, which
7 further contributed to the arbitrary and partial scoring of Plaintiff’s Applications.

8 79. The DOT issued multiple licenses to the same entity or group of persons to the
9 exclusion of other applicants, including Plaintiffs, in violation of the DOT’s own Regulations.

10 **FIRST CLAIM FOR RELIEF**

11 **Violation of Substantive Due Process – The DOT**

12 80. Plaintiffs incorporate and reallege Paragraphs 1 through 69 as though fully set
13 forth herein.

14 81. The Fourteenth Amendment to the United States Constitution provides that “no
15 state [may] deprive any person of life, liberty, or property, without due process of law.”

16 82. Similarly, Article 1, Section 8 of the Nevada Constitution provides that “[n]o
17 person shall be deprived of life, liberty, or property, without due process of law.”

18 83. Plaintiffs are persons within the meaning of the United States and Nevada
19 Constitutions’ guarantees of due process.

20 84. NRS 453D.210 mandates the DOT to issue a retail marijuana license to an
21 applicant where a lesser number of complete applications are submitted than the statutory cap on
22 the number of licenses for a given county.

23 85. Similarly, where a greater number of complete applications are submitted than the
24 statutory cap on the number of licenses for a given county, NRS 453D.210 mandates the award of
25 licenses to those applicants who score the best in an impartial and numerically scored competitive
26 bidding process and does not permit the DOT to deny or reject all applications in such a process.

27 86. Impartial and numerically scored competitive bidding processes create a legitimate
28 claim of entitlement to award of a contract in the lowest bid or bidders, where that process

1 requires the award to the lowest bid or bidders and does not grant the awarding body unfettered
2 discretion to reject all bids.

3 87. Thus, the right to a retail marijuana license under a statutory scheme with limited
4 discretion and under an impartial and numerically scored competitive bidding process constitute
5 protectable property interests under the Nevada and United States Constitutions.

6 88. Here, either a lesser number of complete applications than the statutory cap were
7 submitted to the DOT due to the Successful Applicants' omission of information as described
8 herein or Plaintiffs were, or should have been, among the lowest bidders (i.e., the highest scoring
9 applicants) in the impartial and numerically scored bidding process.

10 89. As a result, Plaintiffs had a protected property interest in the approval of their
11 Applications and the issuance of a license to them.

12 90. The denials of Plaintiffs' complete Applications were arbitrary and irrational
13 because a lesser number of complete applications was received than the statutory cap, requiring a
14 license to be issued to the Plaintiffs.

15 91. Alternatively, the denials of Plaintiffs' Applications were based upon the Factors.

16 92. The Factors are arbitrary, irrational, and lack impartiality on their face.

17 93. As a result of the DOT's use of the Factors in denying Plaintiffs' Applications,
18 Plaintiffs have been deprived of their fundamental property rights in violation of the substantive
19 due process guarantees of the Nevada and United States Constitutions.

20 94. In addition, the Factors violate due process as applied to Plaintiffs' Applications
21 because, *inter alia*:

- 22 a. The Applications were complete but received zero scores for some Factors
23 and the only way to receive a zero score is to fail to submit information
24 with respect to that Factor;
- 25 b. The scoring method used by the DOT combined certain Factors into one
26 grouping, effectively omitting certain Factors from consideration;
- 27 c. Plaintiffs that submitted multiple Applications containing the same
28 substantive information and data for different localities received widely

different scores for certain Factors;

- d. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;
- e. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and
- f. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

95. As a result of the DOT's arbitrary, irrational, and partial application of the Factors to Plaintiffs' applications, Plaintiffs have been deprived of their fundamental property rights in violation of the substantive due process guarantees of the Nevada and United States Constitutions, as applied.

96. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

97. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

SECOND CLAIM FOR RELIEF

Violation of Procedural Due Process – The DOT

98. Plaintiffs incorporate and reallege Paragraphs 1 through 81 as though fully set forth herein.

99. The Fourteenth Amendment to the United States Constitution provides that "no state [may] deprive any person of life, liberty, or property, without due process of law."

100. Similarly, Article 1, Section 8 of the Nevada Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

101. Plaintiffs are persons within the meaning of the United States and Nevada Constitutions' guarantees of due process.

1 102. NRS 453D.210 mandates the DOT to issue a retail marijuana license to an
2 applicant where a lesser number of complete applications are submitted than the statutory cap on
3 the number of licenses for a given county.

4 103. Similarly, where a greater number of complete applications are submitted than the
5 statutory cap on the number of licenses for a given county, NRS 453D.210 mandates the award of
6 licenses to those applicants who score the best in an impartial and numerically scored competitive
7 bidding process and does not permit the DOT to deny or reject all applications in such a process.

8 104. Impartial and numerically scored competitive bidding processes create a legitimate
9 claim of entitlement to award of a contract in the lowest bid or bidders, where that process
10 requires the award to the lowest bid or bidders and does not grant the awarding body unfettered
11 discretion to reject all bids.

12 105. Thus, the right to a retail marijuana license under a statutory scheme with limited
13 discretion and under an impartial and numerically scored competitive bidding process constitute
14 protectable property interests under the Nevada and United States Constitutions.

15 106. Here, either a lesser number of complete applications than the statutory cap were
16 submitted to the DOT due to the Successful Applicants' omission of information as described
17 herein or Plaintiffs were, or should have been, among the lowest bidders (i.e., the highest scoring
18 applicants) in the impartial and numerically scored bidding process.

19 107. As a result, Plaintiffs had a protected property interest in the approval of their
20 Applications and the issuance of a license to them.

21 108.

22 109. NRS 453D, in conjunction with the Regulations, govern the application for and the
23 issuance of retail marijuana licenses within the State of Nevada.

24 110. Under those provisions, the DOT denied Plaintiffs' Applications for a retail
25 marijuana license without notice or a hearing.

26 111. The denial notices sent by the DOT did not comply with NRS 453D.210(4)(b) or
27 procedural due process because they do not specify the substantive reasons that Plaintiffs'
28 Applications were denied.

112. Neither NRS 453D nor the Regulations provide for a mechanism through which Plaintiffs may have their Applications fully and finally determined, either before or after denial of the same.

113. As a result of the denial of Plaintiffs' Applications without notice or a hearing, Plaintiffs have been denied their right to procedural due process guaranteed by the Nevada and United States Constitutions.

114. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

115. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

THIRD CLAIM FOR RELIEF

Violation of Equal Protection – The DOT

116. Plaintiffs incorporate and reallege Paragraphs 1 through 93 as though fully set forth herein.

117. The Fourteenth Amendment to the United States Constitution provides that no "state [may]...deny to any person within its jurisdiction the equal protection of the laws."

118. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be "general and of uniform operation throughout the State."

119. Plaintiffs are persons within the meaning of the Nevada and United States Constitutions' guarantees of equal protection.

120. Plaintiffs have a fundamental right to engage in a profession or business, including that of retail marijuana establishments.

121. The DOT utilized the Factors when evaluating Plaintiffs' Applications.

122. The Factors violate equal protection on their face because they contain arbitrary, partial, and unreasonable classifications that bear no rational relationship to a legitimate governmental interest.

123. Specifically, these Factors favor those entities that already have retail marijuana licenses, to the detriment of those entities that have only a cultivation licenses, production license,

1 or no license at all.

2 124. Additionally, the Factors favor those entities that are vertically-integrated and
3 allow for the winners to easily vertically integrate and crowd out the market, thereby creating a
4 regulatory scheme that encourages a monopolistic market.

5 125. These Factors were promulgated by the DOT for the sake of economic
6 protectionism, and therefore the Factors are *de facto* irrational.

7 126. The Factors further violate equal protection on their face because they contain
8 arbitrary, partial, and unreasonable classifications that are not narrowly tailored to the
9 advancement of any compelling interest.

10 127. In addition, the application of the Factors to Plaintiffs' Applications violates equal
11 protection because it was arbitrary, partial and unreasonable, bearing no rational relationship to a
12 legitimate governmental interest and/or failing to be narrowly tailored to any compelling
13 government interest, to wit:

- 14 a. The Applications were complete but received zero scores for some Factors
15 and the only way to receive a zero score is to fail to submit information
16 with respect to that Factor;
- 17 b. The scoring method used by the DOT combined certain Factors into one
18 grouping, effectively omitting certain Factors from consideration;
- 19 c. Plaintiffs that submitted multiple Applications containing the same
20 substantive information and data for different localities received widely
21 different scores for certain Factors;
- 22 d. The Plaintiffs received much higher scores for the unidentified data and
23 information when compared with the identified data and information
24 submitted;
- 25 e. The DOT placed improper weight upon other applications simply because
26 they were submitted by well-known and well-connected persons; and
- 27 f. The DOT improperly utilized Manpower temporary workers who had little
28 to no experience in retail marijuana licensure to review the Applications

and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

128. As a result of the DOT's actions as set forth herein, Plaintiffs' rights to equal protection of the law were violated.

129. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

130. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment – All Defendants

131. Plaintiffs incorporate and reallege Paragraphs 1 through 105 as though fully set forth herein.

132. Under NRS 30.010, *et seq.*, the Uniform Declaratory Judgment Act, any person whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

133. Plaintiffs and the Successful Applicants submitted Applications for issuance of a retail marijuana license between September 7 and September 20, 2018.

134. Some Plaintiffs and the Successful Applicants submitted multiple Applications for different localities that contained the same substantive information.

135. NRS 453D.210(4)-(5)(a) permits the DOT to approve an application only if it is complete, as defined in NRS 453D.210(4)-(5)(a) and NAC 453D.268.

136. NRS 453D.210(5) sets forth additional objective factors that must be met in order for the DOT to approve a given application.

137. Further, the DOT enacted the Regulations, including the Factors and NAC 453D.272(5), pursuant to NRS 453D.200 and NRS 453D.210(6).

138. NRS 453D.210(6) requires that the Factors be "an impartial and numerically

scored competitive bidding process.”

139. Plaintiffs contend that:

- a. Each and every Application submitted by Plaintiffs was full and complete as defined by NRS 453D.210 and NAC 453D.268, and contained substantive information and data for each and every factor outlined in the application form;
- b. Some or all of the Applications submitted by the Successful Applicants were not full and complete as defined by NRS 453D.210 and NAC 453D.268, and failed to contain substantive information and data for each and every factor outlined in the application form;
- c. Some or all of the Applications submitted by the Successful Applicants also omitted statutorily required information outlined in NRS 453D.200 and NRS 453D.210;
- d. The denials of Plaintiffs’ Applications were based upon the Factors, which were are arbitrary, irrational, and lack impartiality on their face;
- e. As a result of the DOT’s use of the Factors in denying Plaintiffs’ Applications, Plaintiffs were arbitrarily denied retail marijuana licenses;
- f. The Factors were not applied equally and fairly to all applicants;
- g. The DOT violated NRS 453D.210(6) because the Factors are not impartial and are instead partial, arbitrary, and discretionary, in contravention of NRS 453D.210(6);
- h. The DOT applied the Factors to their Applications in an arbitrary and partial manner, including because:
 - i. The Applications were complete but received zero scores for some Factors and the only way to receive a zero score is to fail to submit information with respect to that Factor;
 - ii. The scoring method used by the DOT combined certain Factors into one grouping, effectively omitting certain Factors from

- 1 consideration;
- 2 iii. Plaintiffs that submitted multiple Applications containing the same
- 3 substantive information and data for different localities received
- 4 widely different scores for certain Factors;
- 5 iv. The Plaintiffs received much higher scores for the unidentified data
- 6 and information when compared with the identified data and
- 7 information submitted;
- 8 v. The DOT placed improper weight upon other applications simply
- 9 because they were submitted by well-known and well-connected
- 10 persons; and
- 11 vi. The DOT improperly utilized Manpower temporary workers who
- 12 had little to no experience in retail marijuana licensure to review the
- 13 Applications and failed to provide those persons with a uniform
- 14 system of review to ensure consistency and impartiality in the
- 15 scoring process;
- 16 i. The DOT violated NRS 453D.210(6) because the Factor evaluation
- 17 procedure is not a competitive bidding process, as required by NRS
- 18 453D.210(6);
- 19 j. The DOT violated NAC 453D.272(5) because multiple retail marijuana
- 20 licenses were issued to the same entity or group of persons, including
- 21 certain of the Successful Applicants; and
- 22 k. The denial notices sent by the DOT failed to comply with NRS
- 23 453D.210(4)(b) because they do not give the specific substantive reasons
- 24 for the denial of Plaintiffs' Applications.
- 25 140. The DOT contends that:
- 26 a. The Factors are compliant with NRS 453D.210(6);
- 27 b. All applications it approved were complete and were done so in a valid
- 28 manner; and

c. The denial notices complied with NRS 453D.210(4)(b).

141. The Successful Applicants contend that:

a. Each and every Application submitted by Successful Applicants was full, complete, and contained substantive information and data for each and every factor outlined in the application form and as required by NRS 453D.210; and

b. The Factors were applied equally and fairly to all applicants.

142. The foregoing issues are ripe for judicial determination because there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

143. Accordingly, Plaintiffs request a declaratory judgment from this Court that: (1) the Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive bidding process; (2) the DOT applied the Factors to Plaintiffs' Applications in a wholly arbitrary and irrational manner; (3) the Factors were not applied equally and fairly to all applicants; (4) several of the Successful Applicants had incomplete or deficient applications, making the grant of a conditional license to them void; (5) the DOT violated NAC 453D.272(5) by issuing multiple retail marijuana licenses to the same entity or group of persons; and (6) the denial notices did not comply with NRS 453D.210(4)(b).

FIFTH CLAIM FOR RELIEF

Petition for Judicial Review – All Defendants

144. Plaintiffs incorporate and reallege Paragraphs 1 through 116 as though fully set forth herein.

145. The DOT exceeded its jurisdiction when it misinterpreted and incorrectly applied the provisions of NRS 453D, NAC 453D and the related Nevada laws or regulations and improperly issued licenses to the applicants that do not merit licenses under the provisions of NRS 453D, NAC 453D, and the related Nevada laws or regulations.

146. Plaintiffs are aggrieved by the decision of the DOT to deny Plaintiffs' Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC

1 453D, and the related Nevada laws or regulations.

2 147. There is no provision in NRS 453D, NAC 453D, and the related Nevada laws or
3 regulations allowing for an administrative appeal of the DOT's decision, and apart from
4 injunctive relief, no plain, speedy, and adequate remedy for the DOT's improper actions.

5 148. Accordingly, Plaintiff petitions this Court for judicial review of the record on
6 which the DOT's denials were based, and an order providing *inter alia*:

- 7 a. A determination that the DOT's decision lacked substantial evidence;
- 8 b. A determination that the DOT's denials are void *ab initio* for non-
9 compliance with NRS 453D, NAC 453D, and the related Nevada laws or
10 regulations; and
- 11 c. Such other relief as is consistent with those determinations.

12 149. Plaintiffs have been forced to retain counsel to prosecute this action and are thus
13 entitled to an award of attorneys' fees and costs as provided by applicable law.

14 **SIXTH CLAIM FOR RELIEF**

15 **Petition for Writ of Mandamus – The DOT**

16 150. Plaintiffs incorporate and reallege Paragraphs 1 through 122 as though fully set
17 forth herein.

18 151. When a governmental body fails to perform an act "that the law requires" or acts
19 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action.

20 152. The DOT failed to perform various acts that the law requires including but not
21 limited to:

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

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

- 27 a. The DOT lacked substantial evidence to deny Plaintiffs' Applications; and
- 28 b. The DOT denied Plaintiffs' Applications in order to approve the

Applications of other competing applicants without regard to the merit or completeness of Plaintiffs' Applications and the lack of merit or completeness of the Applications of other competing applicants.

154. These violations of the DOT's legal duties were arbitrary and capricious actions that compel this Court to issue a writ of mandamus directing the DOT to review Plaintiffs' Applications on their completeness and merits and/or approve them.

155. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law, including but not limited to NRS 34.270.

WHEREFORE, Plaintiffs pray for relief from this Court as follows:

1. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' substantive due process rights, as set forth herein;
2. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' procedural due process rights, as set forth herein;
3. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' rights to equal protection of the law, as set forth herein;
4. For relief in the form of a judgment from this Court that: (1) the Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive bidding process; (2) the DOT applied the Factors to Plaintiffs' Applications in a wholly arbitrary and irrational manner; (3) the Factors were not applied equally and fairly to all applicants; (4) several of the Successful Applicants had incomplete applications or deficient, making the grant of a conditional license to them void; (5) the DOT violated NAC 453D.272(5) by issuing multiple retail marijuana licenses to the same entity or group of persons; and (6) the denial notices did not comply with

1 NRS 453D.210(4)(b);

2 5. For judicial review of the record and history on which the denial of those
3 Applications was based;

4 6. For the issuance of a writ of mandamus;

5 7. For preliminary and permanent injunctive relief to cease, abate, and/or
6 remedy the unconstitutional, unlawful, and/or wrongful conduct as
7 described herein;

8 8. For an award of attorneys' fees and costs in bringing the instant action as
9 provided by applicable law; and

10 9. For any additional relief this Court deems just and proper.

11 DATED this 29th day of January, 2020.

12 BROWNSTEIN HYATT FARBER SCHRECK, LLP

13 /s/ Adam K. Bult

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

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **THIRD AMENDED COMPLAINT** to be submitted electronically for filing and/or service with the Eighth Judicial District Court's Electronic Filing System on the 29th day of January, 2020, to the following:

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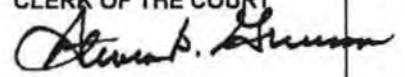
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DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation

Case No. A-19-787004-B

Consolidated with:

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

Dept. No. XI

MM DEVELOPMENT COMPANY, INC. & LIVFREE WELLNESS, LLC'S
SECOND AMENDED COMPLAINT AND
PETITION FOR JUDICIAL REVIEW OR WRIT OF MANDAMUS

COMES NOW Plaintiffs, MM DEVELOPMENT COMPANY, INC., and LIVFREE WELLNESS LLC, dba The Dispensary, by and through their counsel of record, Kemp, Jones & Coulthard, LLP, and hereby complains against Defendants STATE OF NEVADA, DEPARTMENT OF TAXATION; CHEYENNE MEDICAL, LLC; CIRCLE S FARMS, LLC; CLEAR RIVER, LLC; COMMERCE PARK MEDICAL, LLC; DEEP ROOTS MEDICAL, LLC; ESSENCE HENDERSON, LLC; ESSENCE TROPICANA, LLC; EUREKA NEWGEN FARMS, LLC; GREEN THERAPEUTICS, LLC; GREENMART OF NEVADA NLV, LLC; HELPING HANDS WELLNESS CENTER, INC.; LONE MOUNTAIN PARTNERS, LLC; NEVADA ORGANIC REMEDIES, LLC;

1 POLARIS WELLNESS CENTER, LLC; PURE TONIC CONCENTRATES, LLC; TRNVP098, LLC;
2 WELLNESS CONNECTION OF NEVADA, LLC and Does I through X, and petitions this Court for
3 Writ of Mandamus as follows:

4
5 **L**
PARTIES & JURISDICTION

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

8 2. Plaintiff, LIVFREE WELLNESS, LLC, dba The Dispensary, is a Nevada limited
9 liability company duly licensed under the laws of the State of Nevada.

10 3. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
11 “Department”) is an agency of the State of Nevada. The Department is responsible for licensing and
12 regulating retail marijuana businesses in Nevada through its Marijuana Enforcement Division.

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

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

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

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

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

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

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

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

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

11 13. Upon information and belief, Defendant GREENMART OF NEVADA NLV, LLC is a
12 Nevada limited liability company doing business under the fictitious name Health for Life.

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

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

19 16. Upon information and belief, Defendant NEVADA ORGANIC REMEDIES, LLC is a
20 Nevada limited liability company doing business under the fictitious names The Source and/or The
21 Source Dispensary.

22 17. Upon information and belief, Defendant POLARIS WELLNESS CENTER, LLC is a
23 Nevada limited liability company doing business under the fictitious name Polaris MMJ.

1 18. Upon information and belief, Defendant PURE TONIC CONCENTRATES, LLC is a
2 Nevada limited liability company doing business under the fictitious names Green Heart and/or Pure
3 Tonic.

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

6 20. Upon information and belief, Defendant WELLNESS CONNECTION OF NEVADA,
7 LLC is a Nevada limited liability company doing business under the fictitious name Cultivate
8 Dispensary
9

10 21. The true names and capacities, whether individual, corporate, association or otherwise
11 of the Defendants DOES 1 through 10 and/or ROE CORPORATIONS 1 through 10, inclusive, are
12 unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are
13 informed and believe, and thereupon allege, that each of the Defendants designated herein as DOES
14 and/or ROE CORPORATIONS is responsible in some manner for the events and happenings herein
15 referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein. Plaintiffs
16 will ask leave of the court to amend this Complaint to insert the true names and capacities of said
17 Defendants DOES 1 through 10 and/or ROE CORPORATIONS 1 through 10, inclusive when the same
18 have been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join such
19 Defendants in this action.
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21

22 **II.**
GENERAL ALLEGATIONS

23 22. In or around November 2016, the citizens of the State of Nevada approved a statutory
24 ballot initiative – Ballot Question 2 – that, *inter alia*, legalized the recreational use of marijuana and
25 allowed for the licensing of recreational marijuana dispensaries.
26

27 23. The statutory scheme approved by the voters was codified in NRS Chapter 453D and
28 outlined the authority for the issuance of licenses for retail marijuana dispensaries.

1 24. The Nevada State Legislature passed several bills during the 2017 legislative session
2 that affected the licensing, regulation, and operation of recreational marijuana establishments in the
3 state of Nevada. One of those bills, Assembly Bill 422, transferred responsibility for the registration,
4 licensing, and regulation of marijuana establishments from the State of Nevada's Division of Public
5 and Behavioral Health to the Department of Taxation.

6
7 25. On or around May 8, 2017, the Department adopted temporary regulations pertaining
8 to, *inter alia*, the application for and the issuance of retail marijuana licenses.

9 26. On or around January 16, 2018, the Department held a public hearing on the proposed
10 permanent regulations (LCB File No. R092-17), which was attended by numerous members of the
11 public and marijuana business industry.

12 27. Then, on or around January 16, 2018, the Department adopted the proposed permanent
13 regulations in LCB File No. R092-17 (the "Regulations").

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

19
20 29. The Department issued a notice for an application period wherein the Department sought
21 applications from qualified applicants to award sixty-four (64) recreational marijuana retail store
22 licenses throughout various jurisdictions in Nevada.

23
24 30. The application period for those licenses, including thirty-one (31) licenses in Clark
25 County, seven (7) licenses in Washoe County, one (1) license in Elko County, and one (1) license in
26 Nye County, opened on September 7, 2018 and closed on September 20, 2018.

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

- 8 a. Operating experience of another kind of business by the owners, officers or
9 board members that has given them experience which is applicable to the
10 operation of a marijuana establishment.
- 11 b. Diversity of the owners, officers or board members.
- 12 c. Evidence of the amount of taxes paid and other beneficial financial
13 contributions.
- 14 d. Educational achievements of the owners, officers or board members.
- 15 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
16 sale.
- 17 f. The financial plan and resources of the applicant, both liquid and illiquid.
- 18 g. The experience of key personnel that the applicant intends to employ.
- 19 h. Direct experience of the owners, officers or board members of a medical
20 marijuana establishment or marijuana establishment in this State.

21
22
23 32. No numerical scoring values were assigned to any of the foregoing criteria enumerated
24 for the applications.

25 33. Section 6.3 of the Application further provided that "[a]pplications that have not
26 demonstrated a sufficient response related to the criteria set forth above will not have **additional**
27
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1 **[unspecified, unpublished] criteria** considered in determining whether to issue a license **and will not**
2 **move forward in the application process.**" (Bold added).

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

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

10 36. Prior to the application process with the Department, Plaintiffs were previously scored
11 and ranked in the 2015 licensing procedure, pursuant to NRS 453A, in conjunction with a medical
12 marijuana establishment permit application.

13 37. At that time, Plaintiff MM Development Company, Inc. received a score of 203.58 and
14 was ranked as the fourth-highest applicant for a medical marijuana dispensary in unincorporated Clark
15 County, Nevada. Plaintiff LivFree Wellness, LLC dba The Dispensary was ranked as the highest
16 applicant for Henderson, Nevada with a score of 208.3; the highest applicant for Reno, Nevada with a
17 score of 207; and the fifth-highest applicant in unincorporated Clark County, Nevada with a score of
18 201.64.

19 38. The factors used for the 2015 rankings were substantially similar to the factors to be
20 used by the Department for the 2018 rankings for the allocated licenses.

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

1 40. Plaintiffs, both of which were already operating licensed recreational retail marijuana
2 stores and possessed a share of the retail recreational marijuana market in their jurisdictions at the time,
3 submitted applications for licenses to own and operate additional recreational marijuana retail stores
4 and thereby to retain their market share in a highly competitive industry, in compliance with the
5 specified, published requirements of Department regulations together with the required application fee
6 in accordance with NRS 453D.210.

7
8 41. Plaintiff MM Development Company, Inc. submitted applications (i.e., RD 284, RD
9 285, RD 286, RD 287, RD 288, and RD 289) for recreational marijuana retail store licenses to own and
10 operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark County,
11 Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; and Nye
12 County, Nevada.

13 42. Plaintiff LivFree Wellness, LLC dba The Dispensary submitted applications (i.e., RD
14 292, RD 293, RD 294, RD 295, RD 296, and RD 297) for recreational marijuana retail store licenses
15 to own and operate recreational marijuana retail stores in the following jurisdictions: unincorporated
16 Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Reno, Nevada; Elko County,
17 Nevada; and Nye County, Nevada.

18
19 43. On or about December 5, 2018, despite their prior exceptional ranking, Plaintiffs were
20 informed by the Department that all their applications to operate recreational marijuana retail stores
21 were denied.

22
23 44. Plaintiffs are informed and believe that the Department improperly granted
24 “conditional” licenses to applicants/Defendants that were ranked substantially lower than Plaintiffs on
25 the 2015 rankings.

1 45. Plaintiffs are informed and believe that the Department improperly denied conditional
2 licenses to Plaintiffs because there were significant errors in the numerical scoring values and
3 corresponding rankings given to each of Plaintiffs' applications.

4 46. Plaintiffs are informed and believe that the Department improperly granted more than
5 one recreational marijuana store license per jurisdiction to certain Defendants/applicants, owners,
6 and/or ownership groups.

7 47. On information and belief, Plaintiffs allege that the Department arbitrarily, capriciously,
8 and improperly granted licenses to the other Defendants, without actual implementation of the impartial
9 and numerically scored competitive bidding process mandated by NRS 453D.210.

10 48. Plaintiffs allege that the Department unlawfully deprived Plaintiffs of legal protections
11 to which they are entitled, including:
12

13 a. granting more than one conditional recreational marijuana store license per
14 jurisdiction to certain applicants, owners, or ownership groups in violation of the administration
15 of an impartial and numerically scored competitive bidding process;

16 b. granting conditional licenses to applicants who benefitted from information that
17 was not made available to all applicants, but rather conveyed to these favored applicants (or
18 their attorneys or agents) by Department personnel in a manner that gave these favored
19 applicants an advantage in the scoring process over other applicants, and thereby destroying the
20 mandated impartiality of the competitive bidding process;

21 c. granting conditional licenses to applicants who benefitted from the Department's
22 failure or refusal to include State regulatory compliance history as part of the graded and/or
23 scored criteria in contravention of the governing regulations and in violation of the
24 Department's mission to conduct an impartial numerically scored competitive bidding process;
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1 d. granting conditional licenses to applicants who, after receiving information not
2 available to all applicants, failed to disclose the true addresses of the locations at which they
3 proposed to open a retail recreational marijuana store, the Department thereby totally abdicating
4 the requirement that the application be impartially numerically scored with regard to the impact
5 that it was likely to have on the community in which it would operate;

6
7 e. granting conditional licenses to applicants who impermissibly amended
8 applications after they were purportedly “complete and in compliance” when submitted;

9 f. granting conditional licenses to applicants without investigating discrepancies
10 between the owners, officers and directors listed on the application where they were different
11 from those officially listed with the Nevada Secretary of State;

12 g. granting conditional licenses to applicants who benefitted from the Department
13 implementing – in a manner that was partial and subject to manipulation – the awarding of
14 points for diversity, resulting in the abdicating its mission to conduct an impartial numerically
15 scored competitive bidding process;

16
17 h. failing to train the temporary employees hired to performing the impartial
18 numerically scored competitive bid process and/or put in place, adequately supervise and/or
19 maintain quality assurance and/or quality control over the process which, in turn, rendered the
20 grading process inconsistent and unfair to Plaintiffs;

21 i. granting conditional licenses to applicants in direct contravention of the
22 legislative and regulatory mandate to operate the impartial numerically scored competitive
23 bidding process in a manner that will prevent monopolistic practices in a county with a
24 population of 100,000 or more;

25
26 j. granting conditional licenses to applicants in other unlawful manners to be
27 further developed at trial.
28

III. **CLAIMS FOR RELIEF**

FIRST CLAIM FOR RELIEF
(Declaratory Relief)

54. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

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

1 56. Plaintiffs and the Defendants have adverse and/or competing interests as the
2 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' applications but
3 conditionally granted Defendants' in a manner that violates Plaintiffs' Constitutional Rights, Nevada
4 law, and State policy.

5 57. The Department's refusal to issue Plaintiffs any "conditional" licenses affects Plaintiffs'
6 rights afforded them by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.
7

8 58. Further, the Department's improper ranking of the other applicants for a recreational
9 marijuana establishment license and the Department's subsequent, improper issuance to each of
10 Defendants a "conditional" license also affects the rights of Plaintiffs afforded them by NRS 453D,
11 NAC 453D, R092-17, and other Nevada laws and regulations.

12 59. The Department's actions and/or inactions also have created an actual justiciable
13 controversy ripe for judicial determination between Plaintiffs and the Defendants with respect to the
14 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17. Plaintiffs
15 have been harmed, and will continue to be harmed, by the Defendants' actions.
16

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

19 61. Accordingly, Plaintiffs seek a declaration from this Court that, *inter alia*:

20 a. That the Department improperly denied each Plaintiff six (6) "conditional"
21 licenses for the operation of a recreational marijuana establishment in the
22 following jurisdictions: unincorporated Clark County, Nevada; Las Vegas,
23 Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; Elko
24 County, Nevada; and Nye County, Nevada.
25

26 b. The denial of a "conditional" license to Plaintiffs is void *ab initio*;
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- c. The procedures employed in the denial violated Plaintiffs' procedural due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- d. The denial violates Plaintiffs' substantive due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- e. The denial is void for vagueness and therefore unenforceable;
- f. The Department acted arbitrarily and capriciously or in contravention of a legal duty and Plaintiffs are therefore entitled to a writ of mandamus;
- g. Plaintiffs are entitled to judicial review; and
- h. The Department's denial lacked substantial evidence.

62. Plaintiffs also seek a declaration from this Court that the Department must issue each Plaintiff six (6) "conditional" licenses for the operation of a recreational marijuana establishment in unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; Elko County, Nevada; and Nye County, Nevada since Plaintiffs' scores issued by the Department would have ranked high enough to entitle them to a "conditional" license had the Department properly applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

63. Plaintiffs assert and contend that a declaratory judgment is both necessary and proper at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of the Plaintiffs afforded them by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and regulations.

64. Plaintiffs have found it necessary to retain the legal services of Kemp, Jones & Coulthard, LLP, to bring this action, and Plaintiffs are entitled to recover their reasonable attorneys' fees and costs therefor.

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

4 75. Such a statutorily recognized "property interest" is within the meaning and subject to
5 the due process protections of the Fourteenth Amendment to the Constitution of the United States and
6 Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and may not be denied arbitrarily,
7 capriciously, or based upon administrative partiality or favoritism, as when present as in the instances
8 complained of herein, none of those trigger any exemptions set out in NRS 598A.

9 76. While acting under color of state law, the Department has effectively nullified and
10 rendered illusory the legislative statutory entitlement which all Plaintiffs – and all applicants – have to
11 an impartial numerically scored competitive bidding system for licensure of applicants who comply
12 with and prevail competitively in accordance with the objective and impartial standards and procedures
13 prescribed by the provisions of NRS 453D.

14 77. Pursuant to the implementation of the foregoing licensing process, the denial of
15 Plaintiffs' applications, when coupled with the issuing of conditional licenses to Defendants pursuant
16 to a constitutionally invalid process has and will continue cause a diminution of Plaintiffs' sales and
17 market share values as a direct result of the conduct of the Department issuing the conditional licenses
18 to Defendants and the business operations conducted thereafter by the Defendants of that
19 unconstitutional licensing process.

20 78. The procedures employed by the Department in denying Plaintiffs' applications have
21 deprived Plaintiffs of due process of law as guaranteed by the Nevada Constitution and the United
22 States Constitution.

23 79. The process in which denial was considered, noticed to the public, and passed failed to
24 provide Plaintiffs any meaningful opportunity to be heard at a consequential time and was
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1 fundamentally unfair and violated the due process requirements of the Nevada and United States
2 Constitutions.

3 80. The Constitutional infirmity of this entire process renders the denial void and
4 unenforceable, and Plaintiffs are entitled to a declaration as to the denials' ineffectiveness and an order
5 enjoining its enforcement.

6
7 81. Plaintiffs are also entitled to damages for these due process violations.

8 82. As the action of the Department necessitated that Plaintiffs retain the legal services of
9 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiffs are also entitled
10 to attorneys' fees and costs of suit.

11 83. Plaintiffs have found it necessary to bring this action, and Plaintiffs are entitled to
12 recover their reasonable attorneys' fees and costs therefor.

13
14 **FOURTH CLAIM FOR RELIEF**
15 **(Violation of Substantive Due Process)**

16 84. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

17 85. The denial violates Plaintiffs' substantive due process rights guaranteed by the Nevada
18 Constitution and the United States Constitution.

19 86. The Constitutional infirmity of this entire process and the Department's denial renders
20 the denials void and unenforceable, and Plaintiffs are entitled to a declaration as to the denials'
21 ineffectiveness and an order enjoining its enforcement.

22 87. Plaintiffs are also entitled to damages for these due process violations.

23 88. As the action of the Department necessitated that Plaintiffs retain the legal services of
24 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiffs are also entitled
25 to attorneys' fees and costs of suit.

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27 ///

28 ///

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

89. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

90. By improperly denying Plaintiffs' applications for licensure under the provisions of NRS 453D.200 and NRS 453D.210, while improperly granting the applications of Defendants, under color of state law, the Department has, without justification, disparately treated Plaintiffs' applications absent rational basis, and has thereby violated Plaintiffs' rights to equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

91. The denial of Plaintiffs' applications violates Plaintiffs' right to equal protection under the Nevada and United States Constitutions.

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

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

94. The constitutional infirmity of the denials renders them void and unenforceable, and Plaintiffs are entitled to a declaration as to the denials' ineffectiveness and an order enjoining any enforcement.

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

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

96. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

97. The Department, in misinterpreting and incorrectly applying NRS 453D, NAC 453D and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing "conditional"

1 licenses to Defendants that do not merit “conditional” licenses under NRS 453D, NAC 453D, and
2 R092-17.

3 98. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs’
4 applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC 453D,
5 R092-17, and other Nevada state laws or regulations.

6
7 99. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an
8 administrative appeal of the Department’s decision, and apart from injunctive relief, no plain, speedy,
9 and adequate remedy for the Department’s improper actions.

10 100. Accordingly, Plaintiffs petition this Court for judicial review of the record on which the
11 Department’s denial was based, including but not limited to:

- 12 a. A determination that the decision lacked substantial evidence;
13
14 b. A determination that the denial is void *ab initio* for non-compliance with NRS
15 453D, NAC 453D, R092-17, and other Nevada state laws or regulations; and
16
17 c. Other relief consistent with those determinations.

18 101. Plaintiffs have found it necessary to retain the legal services of Kemp, Jones &
19 Coulthard, LLP, to bring this action, and Plaintiffs are entitled to recover their reasonable attorneys’
20 fees and costs therefor.

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

23 102. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

24 103. When a governmental body fails to perform an act “that the law requires” or acts in an
25 arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev. Rev. Stat. §
26 34.160.

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

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

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

- a. There were significant errors in the numerical scoring values and corresponding rankings assigned to each of Plaintiffs' applications;
- b. The Department lacked substantial evidence to deny the applications; and
- c. The Department denied the application solely to approve the applications of competing Defendants without regard to the merit of Plaintiffs' application.

106. These violations of the Plaintiffs' legal duties were arbitrary and capricious actions that compel this Court to issue a Writ of Mandamus directing the Department to review the applications on their merits and/or approve it.

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

IV. **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For declaratory relief as set forth above;
2. For a preliminary and permanent injunction enjoining the enforcement of the denial;
3. For judicial review of the record and history on which the denial was based;
4. For the issuance of a writ of mandamus;
5. For compensatory and special damages as set forth herein;
6. For attorneys' fees and costs of suit; and

1 7. For all other and further relief as the Court deems just and proper.

2 DATED this January 21, 2020.

3
4 **KEMP, JONES & COULTHARD LLP**

5
6 /s/ Nathanael Rulis

7 Will Kemp, Esq. (NV Bar No. 1205)

8 Nathanael R. Rulis (NV Bar No. 11259)

9 3800 Howard Hughes Parkway, 17th Floor

10 Las Vegas, Nevada 89169

11 Attorneys for Plaintiffs MM Development Company, Inc. &
12 LivFree Wellness, LLC

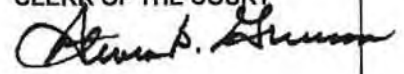
CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2020, I served a true and correct copy of the foregoing **Plaintiffs' Second Amended Complaint and Petition for Judicial Review or Writ of Mandamus** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list; documents hand delivered to Litigation Services Depository.

/s/ Ali Augustine

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT 2-E



1 **COMPL**
2 **JEFFERY A. BENDAVID, ESQ.**
3 Nevada Bar No. 6220
4 **STEPHANIE J. SMITH, ESQ.**
5 Nevada Bar No. 11280
6 **BENDAVID LAW**
7 7301 Peak Dr., Suite 150
8 Las Vegas, NV 89128
9 (702)385-6114
10 jbendavid@bendavidfirm.com
11 ssmith@bendavidfirm.com
12 *Attorneys for Defendant, Natural Medicine L.L.C.*

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

11 In Re: D.O.T. Litigation

12 Consolidated Case No.: A-19-787004-B

13 **CONSOLIDATED WITH:**

14 A-18-785818-W
15 A-18-786357-W
16 A-19-786962-B
17 A-19-787035-C
18 A-19-787540-W
19 A-19-787726-C
20 A-19-801416-B

21 Dept. No. XI

22 **DEFENDANT/RESPONDENT**
23 **NATURAL MEDICINE LLC'S**
24 **COMPLAINT IN INTERVENTION,**
25 **PETITION FOR JUDICIAL**
REVIEW AND/OR WRITS OF
CERTIORARI, MANDAMUS, AND
PROHIBITION

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COMES NOW Defendant/Respondent NATURAL MEDICINE LLC, a Nevada Limited Liability Company, by and through its counsel of record, JEFFERY A. BENDAVID, ESQ., and STEPHANIE J. SMITH, ESQ. of BENDAVID LAW, and hereby complains and alleges against Defendant STATE OF NEVADA DEPARTMENT OF TAXATION; DOES I through X; and ROE BUSINESS ENTITIES I through X, in their official and personal capacities, as follows:

I. PARTIES

1. Plaintiff, NATURAL MEDICINE, LLC (“Plaintiff” and/or “Natural Medicine”), was and is a Nevada Limited Liability Company that is duly authorized to conduct business, including business related to medical marijuana, within the State of Nevada. Plaintiff Natural Medicine LLC, has members who are comprised of some minority individuals and are members of a protected class.

2. Defendant STATE OF NEVADA DEPARTMENT OF TAXATION (“DOT”) was and is an agency of the State of Nevada. DOT was, at all relevant times, and is responsible for the licensing, and regulation of medical and retail marijuana businesses in Nevada, which is effectuated through its Marijuana Enforcement Division.

3. Defendant/Respondent Nevada Tax Commission (the “Commission”) is the head of the DOT.

4. This is a Complaint and Petition for Judicial Review. As required by NRS 233B.130(2)(a) and *Washoe Cnty. v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012), all parties to the proceeding being challenged in this petition are named as defendants/respondents. As such, upon information and belief, each of the following Defendants within this Paragraph applied for recreational marijuana licenses, and each is being named in accordance with Nevada

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1 Administrative Procedure Act: D.H. FLAMINGO, INC., d/b/a THE APOTHECARY SHOPPE,
2 a Nevada corporation; CLARK NATURAL MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA,
3 a Nevada limited liability company; NYE NATURAL MEDICINAL SOLUTIONS LLC, d/b/a.
4 NUVEDA, a Nevada limited liability company; 5SEAT INVESTMENTS LLC, a Nevada limited
5 liability company; ACRES DISPENSARY LLC, a Nevada limited liability company; ACRES
6 MEDICAL LLC, a Nevada limited liability company; AGUA STREET LLC, a Nevada limited
7 liability company; ALTERNATIVE MEDICINE ASSOCIATION LC, a Nevada limited liability
8 company; BIONEVA INNOVATIONS OF CARSON CITY LLC, a Nevada limited liability
9 company; BLOSSUM GROUP LLC, a Nevada limited liability company; BLUE COYOTE
10 RANCH LLC, a Nevada limited liability company; CARSON CITY AGENCY SOLUTIONS
11 L.L.C., a Nevada limited liability company; INYO FINE CANNABIS DISPENSARY L.L.C.,
12 d/b/a INYO FINE CANNABIS DISPENSARY, a Nevada limited liability company; and.
13 SURTERRA HOLDINGS. INC., a Delaware corporation; CHEYENNE MEDICAL, LLC, a
14 Nevada limited liability company; CIRCLE S FARMS LLC, a Nevada limited liability company;
15 CLEAR RIVER, LLC, a Nevada limited liability company; CN LICENSECO I, Inc., a Nevada
16 corporation; COMMERCE PARK MEDICAL L.L.C., a Nevada limited liability company;
17 COMPASSIONATE TEAM OF LAS VEGAS LLC , a Nevada limited liability company;
18 CWNEVADA, LLC, a Nevada limited liability company; D LUX LLC, a Nevada limited liability
19 company; DEEP ROOTS MEDICAL LLC, a Nevada limited liability company; DIVERSIFIED
20 MODALITIES MARKETING LTD., a Nevada limited liability company; .DP HOLDINGS,
21 INC., a Nevada corporation; ECONEVADA LLC, a Nevada limited liability company;
22 ESSENCE HENDERSON, LLC, a Nevada limited liability company; ESSENCE TROPICANA,

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1 LLC, a Nevada limited liability company; ETW MANAGEMENT GROUP LLC, a Nevada
2 limited liability company; EUPHORIA WELLNESS LLC, a Nevada limited liability company;
3 EUREKA NEWGEN FARMS LLC, a Nevada limited liability company; FIDELIS HOLDINGS,
4 LLC., a Nevada limited liability company; FOREVER GREEN, LLC, a Nevada limited liability
5 company; FRANKLIN BIOSCIENCE NV LLC, a Nevada limited liability company; FSWFL,
6 LLC, a Nevada limited liability company; GB SCIENCES NEVADA LLC, a Nevada limited
7 liability company; GBS NEVADA PARTNERS, LLC, a Nevada limited liability company;
8 GFIVE CULTIVATION LLC, a Nevada limited liability company; GLOBAL HARMONY LLC,
9 a Nevada limited liability company; GOOD CHEMISTRY NEVADA, LLC, a Nevada limited
10 liability company; GRAVITAS HENDERSON L.L.C., a Nevada limited liability company;
11 GRAVITAS NEVADA LTD., a Nevada limited liability company; GREEN LEAF FARMS
12 HOLDINGS LLC, a Nevada limited liability company; GREEN LIFE PRODUCTIONS LLC, a
13 Nevada limited liability company; GREEN THERAPEUTICS LLC, a Nevada limited liability
14 company; GREENLEAF WELLNESS, INC., a Nevada corporation; GREENMART OF
15 NEVADA NLV, LLC, a Nevada limited liability company; GREENPOINT NEVADA INC., a
16 Nevada corporation; GREENSCAPE PRODUCTIONS LLC, a Nevada limited liability company;
17 GREENWAY HEALTH COMMUNITY L.L.C., a Nevada limited liability company;
18 GREENWAY MEDICAL LLC, a Nevada limited liability company; GTI NEVADA, LLC, a
19 Nevada limited liability company; H & K GROWERS CORP., a Nevada corporation; HARVEST
20 OF NEVADA LLC; a Nevada limited liability company; HEALTHCARE OPTIONS FOR
21 PATIENTS ENTERPRISES, LLC, a Nevada limited liability company; HELIOS NV LLC, a
22 Nevada limited liability company; HELPING HANDS WELLNESS CENTER, INC., a Nevada
23
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25

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1 corporation; HERBAL CHOICE INC., a Nevada corporation; HIGH SIERRA CULTIVATION
2 LLC, a Nevada limited liability company; HIGH SIERRA HOLISTICS LLC, a Nevada limited
3 liability company; INTERNATIONAL SERVICE AND REBUILDING, INC., a domestic
4 corporation; JUST QUALITY, LLC, a Nevada limited liability company; KINDIBLES LLC, a
5 Nevada limited liability company; LAS VEGAS WELLNESS AND COMPASSION LLC; a
6 Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a Nevada limited
7 liability company; LIVFREE WELLNESS LLC, a Nevada limited liability company; LNP, LLC,
8 a Nevada limited liability company; LONE MOUNTAIN PARTNERS, LLC, a Nevada limited
9 liability company; LUFF ENTERPRISES NV, INC., a Nevada corporation; LVMC C&P LLC, a
10 Nevada limited liability company; MALANA LV L.L.C., a Nevada limited liability company;
11 MATRIX NV, LLC, a Nevada limited liability company; MEDIFARM IV, LLC, a Nevada
12 limited liability company; MILLER FARMS, LLC, a Nevada limited liability company; MM
13 DEVELOPMENT COMPANY, INC., a Nevada corporation; MM R & D, LLC, a Nevada limited
14 liability company; MMNV2 HOLDINGS I, LLC, a Nevada limited liability company; MMOF
15 VEGAS RETAIL, INC. a Nevada corporation; NCMM, LLC, a Nevada limited liability
16 company; NEVADA BOTANICAL SCIENCE, INC., a Nevada corporation; NEVADA GROUP
17 WELLNESS LLC, a Nevada limited liability company; NEVADA HOLISTIC MEDICINE LLC,
18 a Nevada limited liability company; NEVADA MEDICAL GROUP LLC, a Nevada limited
19 liability company; NEVADA ORGANIC REMEDIES LLC, a Nevada limited liability company;
20 NEVADA WELLNESS CENTER LLC, a Nevada limited liability company; NEVADAPURE,
21 LLC, a Nevada limited liability company; NEVCANN LLC, a Nevada limited liability company;
22 NLV WELLNESS LLC, a Nevada limited liability company; NLVG, LLC, a Nevada limited

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1 liability company; NULEAF INCLINE DISPENSARY LLC, a Nevada limited liability company;
2 NV 3480 PARTNERS LLC, a Nevada limited liability company; NV GREEN INC., a Nevada
3 corporation; NYE FARM TECH LTD., a Nevada limited liability company; PARADISE
4 WELLNESS CENTER LLC, a Nevada limited liability company; PHENOFARM NV LLC, a
5 Nevada limited liability company; PHYSIS ONE LLC, a Nevada limited liability company;
6 POLARIS WELLNESS CENTER L.L.C., a Nevada limited liability company; PURE TONIC
7 CONCENTRATES LLC, a Nevada limited liability company; QUALCAN L.L.C., a Nevada
8 limited liability company; RED EARTH, LLC, a Nevada limited liability company; RELEAF
9 CULTIVATION, LLC, a Nevada limited liability company, RG HIGHLAND ENTERPRISES
10 INC., a Nevada corporation; ROMBOUGH REAL ESTATE INC., a Nevada corporation;
11 RURAL REMEDIES LLC, a Nevada limited liability company; SERENITY WELLNESS
12 CENTER LLC, a Nevada limited liability company; SILVER SAGE WELLNESS LLC, a
13 Nevada limited liability company; SOLACE ENTERPRISES, LLLP, a Nevada limited-liability
14 limited partnership; SOUTHERN NEVADA GROWERS, LLC, a Nevada limited liability
15 company; STRIVE WELLNESS OF NEVADA, LLC, a Nevada limited liability company;
16 SWEET GOLDY LLC, a Nevada limited liability company; TGIG, LLC, a Nevada limited
17 liability company; THC NEVADA LLC, a Nevada limited liability company; THE HARVEST
18 FOUNDATION LLC, a Nevada limited liability company; THOMPSON FARM ONE L.L.C., a
19 Nevada limited liability company; TRNVP098 LLC, a Nevada limited liability company; TRYKE
20 COMPANIES RENO, LLC, a Nevada limited liability company; TRYKE COMPANIES SO NV,
21 LLC, a Nevada limited liability company; TWELVE TWELVE LLC, a Nevada limited liability
22 company; VEGAS VALLEY GROWERS LLC, a Nevada limited liability company;

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1 WAVESEER OF NEVADA, LLC, a Nevada limited liability company; WELLNESS &
2 CAREGIVERS OF NEVADA NLV, LLC, a Nevada limited liability company; WELLNESS
3 CONNECTION OF NEVADA, LLC, a Nevada limited liability company; WENDOVERA LLC,
4 a Nevada limited liability company; WEST COAST DEVELOPMENT NEVADA, LLC, a
5 Nevada limited liability company; WSCC, INC., a Nevada corporation; YMY VENTURES LLC,
6 a Nevada limited liability company; ZION GARDENS LLC, a Nevada limited liability company;

7
8 5. The true names of DOES I and X and ROE BUSINESS ENTITIES I through X, their
9 citizenship and capacities, where individual, corporate, associate, partnership or otherwise,
10 are unknown to Plaintiff, who therefore alleges that each of the unknown DOE and ROE
11 Defendants are legally responsible for the events referred in this action.
12

13 6. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,
14 Section 6, NEA 4.370(2), NRS 30, and because the events complained of herein occurred and
15 caused harm throughout the State of Nevada, and within Clark County, Nevada. Further, the
16 amount in controversy exceeds \$15,000.00.
17

18 7. Venue is proper pursuant to NRS 13.020.

19 **II. FACTUAL ALLEGATIONS**

20 8. In or around 2016, Nevada voters approved an initiative petition which has been
21 codified as Chapter 453D of the Nevada Revised Statutes ("Initiative"). The DOT which
22 administers and oversees both Nevada's medical and adult-use marijuana ("recreational")
23 programs, is upon information and belief, charged with numerous duties, including but not
24 necessarily limited strictly to the following:
25

a. Overseeing the licensing of marijuana establishments and agents (establishing

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1 licensing qualifications; granting, transferring, suspending, revoking, and
2 reinstating licenses);

3 b. Establishing all standards and procedures for the cultivation, production, testing,
4 distribution, and sale of marijuana in Nevada; and

5 c. Ensuring full and ongoing compliance of marijuana establishments with state laws and
6 regulations.

7
8 9. The DOT has a specific Marijuana Enforcement Division (“Division”) that reported it
9 had 44 budgeted positions, based on review of publicly available information.

10 10. Despite its responsibility to oversee approximately 659 final medical and adult-use
11 certificates/licenses, and their holders; 245 provisional certificates/conditional licenses; and upon
12 information and belief, approximately 11,932 holders of marijuana agent cards, the Division does
13 not have a specific licensing department or any employees specifically responsible for licensing,
14 and only has approximately thirty-one (31) employees to actually monitor compliance and
15 perform enforcement duties.

16
17 11. Between July 1, 2017 – June 30, 2018, the Division initiated only 234 investigations.
18 As such, based on these figures, the resources of the DOT are not adequate to competently and
19 effectively regulate the number of marijuana licensees (medical or adult-use).

20 12. NRS Chapter 453D and NAC 453D provide the statutory guidelines for legalized
21 recreational marijuana in the State of Nevada.

22 13. NRS 453D.020 (findings and declarations) provides in relevant part:

23
24 In the interest of public health and public safety, and in order to better focus state and local
25 law enforcement resources on crimes involving violence and personal property, the People
of the State of Nevada find and declare that the use of marijuana should be legal for persons

1 21 years of age or older, and its cultivation and sale should be regulated similar to other
2 legal businesses.

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

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

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

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

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

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

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

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

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

(c) Requirements for the security of marijuana establishments;

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

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

1 (f) Requirements for the testing and labeling of marijuana and marijuana products sold
2 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;

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

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

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

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

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

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

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

15 The Department shall approve or deny applications for licenses pursuant to NRS
16 453D.210.

17 14. NRS 453D.200(6) mandates also that the DOT "conduct a background check of
18 each prospective owner, officer, and board member of a marijuana establishment license
19 applicant."

20 15. The provisions of the 2016 ballot initiative and NRS 453D which are presently in
21 effect, with the exception of NRS 453D.205 are identical.

22 16. NRS 453D.205 provides as follows:

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

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

7 17. NRS 453D.210 (4)-(6) (Acceptance of applications for licensing; priority in
8 licensing; conditions for approval of application; limitations on issuance of licenses to retail
9 marijuana stores; competing applications), provides in pertinent part:

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

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

15 5. The Department shall approve a license application if:

- 16 (a) The prospective marijuana establishment has submitted an application in compliance
17 with regulations adopted by the Department and the application fee required pursuant
18 to NRS 453D.230;
19 (b) The physical address where the proposed marijuana establishment will operate is
20 owned by the applicant or the applicant has the written permission of the property
21 owner to operate the proposed marijuana establishment on that property;
22 (c) The property is not located within:

23 (1) One thousand feet of a public or private school that provides formal education
24 traditionally associated with preschool or kindergarten through grade 12 and that
25 existed on the date on which the application for the proposed marijuana
establishment was submitted to the Department;

 (2) Three hundred feet of a community facility that existed on the date on which
the application for the proposed marijuana establishment was submitted to the
Department; or

 (3) If the proposed marijuana establishment will be located in a county whose
population is 100,000 or more, 1,500 feet of an establishment that holds a
nonrestricted gaming license described in subsection 1 or 2 of NRS 463.0177 and

- 1 that existed on the date on which the application for the proposed marijuana
2 establishment was submitted to the Department;
- 3 (d) The proposed marijuana establishment is a proposed retail marijuana store and there
4 are not more than:
- 5 (1) Eighty licenses already issued in a county with a population greater than
6 700,000;
7 (2) Twenty licenses already issued in a county with a population that is less than
8 700,000 but more than 100,000;
9 (3) Four licenses already issued in a county with a population that is less than
10 100,000 but more than 55,000;
11 (4) Two licenses already issued in a county with a population that is less than
12 55,000;
13 (5) Upon request of a county government, the Department may issue retail
14 marijuana store licenses in that county in addition to the number otherwise
15 allowed pursuant to this paragraph;
- 16 (e) The locality in which the proposed marijuana establishment will be located does not
17 affirm to the Department that the proposed marijuana establishment will be in
18 violation of zoning or land use rules adopted by the locality; and
- 19 (f) The persons who are proposed to be owners, officers, or board members of the
20 proposed marijuana establishment:
- 21 (1) Have not been convicted of an excluded felony offense; and
22 (2) Have not served as an owner, officer, or board member for a medical marijuana
23 establishment or a marijuana establishment that has had its registration certificate or license
24 revoked.
- 25 6. When competing applications are submitted for a proposed retail marijuana store within a
26 single county, the Department shall use an impartial and numerically scored competitive
27 bidding process to determine which application or applications among those competing will
28 be approved. (emphasis added).
18. On November 8, 2016, by Executive Order 2017-02, Governor Brian Sandoval

1 established a Task Force comprised of 19 people in order to offer suggestions and proposals for
2 legislative, regulatory, and executive actions to be taken in implementing the approved ballot
3 initiative, which included the recommendation that "the qualifications for licensure of a marijuana
4 establishment and the impartial numerically scored bidding process for retail marijuana stores be
5 maintained as in the medical marijuana program except for a change in how local jurisdictions
6 participate in selection of locations."

8 19. During the 2017 legislative session, Assembly Bill 422 transferred all responsibility for
9 regulating marijuana establishments to the DOT, and on or about February 27, 2018, the DOT
10 adopted its own regulations governing the issuance, suspension, or revocation of retail
11 recreational marijuana licenses, which were codified in NAC 453D (the "Regulations").

13 20. The Regulations for licensing were to be "directly and demonstrably related to the
14 operation of a marijuana establishment." NRS 453D.200(1)(b)(emphasis added), and such
15 directive was taken from the ballot initiative language.

16 REGULATIONS AND THE LICENSING APPLICATION PROCESS

18 21. According to an August 16, 2018 letter from the DOT, pursuant to Section 80(3) of
19 Adopted Regulation of the Department of Taxation, LCB File No. R092-17 ("R092-17"), the
20 DOT was thereby responsible for allocating the licenses of recreational marijuana stores "to
21 jurisdictions within each county and to the unincorporated area of the county proportionally
22 based on the population of each jurisdiction and of the unincorporated area of the county."

24 22. The DOT issued notice for an application period wherein the DOT sought

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1 applications from qualified applicants to award sixty-four (64) recreational marijuana retail store
2 licenses throughout various jurisdictions in Nevada. Plaintiff holds a certificate as a medical
3 marijuana cultivation facility.

4 23. The DOT posted the original license application on its website and released the
5 application for recreational marijuana establishment licenses on or about July 6, 2018, which
6 required, amongst other information, disclosure of an actual physical address for each
7 establishment.
8

9 24. The DOT published a revised license application on or about July 30, 2018 making
10 substantive revisions, including but not necessarily limited to the requirement that applicants
11 prove ownership or written permission of owner for the proposed marijuana establishment
12 property, eliminating the physical address of the prospective establishment requirement, which
13 was not publicly available and was only disseminated to some but not all of the applicants via a
14 DOT listserv.
15

16 25. Upon information and belief, these changes occurred within the DOT and were not made
17 available for public comment or review prior to publishing. These revisions were also not
18 correlated to any amendments in the Approved Regulations or NRS Chapter 453D.
19

20 26. The application period for the submission of retail recreational marijuana licenses ran
21 from September 7, 2018 through September 20, 2018 and the DOT received a total of 462
22 applications during this time.

23 27. When competing applications for licenses were submitted, as was the scenario based on
24
25

1 the number of applications received during the application period, the DOT was legally required
2 to use "an impartial and numerically scored competitive bidding process" to determine successful
3 license applicants. NRS 453D.210(6).

4 28. Under NAC 453D.272(1), when the DOT received more than one "complete"
5 application in compliance with the Regulations and NRS 453D, the DOT was required to "rank
6 the applications... in order from first to last based on the compliance with the provisions of [NAC
7 453D] and [NRS 453D] and on the content of the applications relating to..." several enumerated
8 factors, which was the case based on the application period.
9

10 29. The factors set forth in NAC 453D.272(1) used to rank competing applications
11 and also to prevent "monopolistic practices" (collectively, the "Factors") are:
12

- 13 a. Whether the owners, officers or board members have experience operating
14 another kind of business that has given them experience which is applicable to
the operation of a marijuana establishment;
- 15 b. The diversity of the owners, officers or board members of the proposed
16 marijuana establishment;
- 17 c. The educational achievements of the owners, officers or board members of the
18 proposed marijuana establishment;
- 19 d. The financial plan and resources of the applicant, both liquid and illiquid;
- 20 e. Whether the applicant has an adequate integrated plan for the care, quality and
21 safekeeping of marijuana from seed to sale;
- 22 f. The amount of taxes paid and other beneficial financial contributions,
23 including, without limitation, civic or philanthropic involvement with this State
24 or its political subdivisions, by the applicant or the owners, officers or board
members of the proposed marijuana establishment;
- 25 g. Whether the owners, officers or board members of the proposed marijuana
establishment have direct experience with the operation of a medical marijuana
establishment or marijuana establishment in this State and have demonstrated a

1 record of operating such an establishment in compliance with the laws and
2 regulations of this State for an adequate period of time to demonstrate success;

3 h. The experience of key personnel that the applicant intends to employ in
4 operating the type of marijuana establishment for which the applicant seeks a
license; and

5 i. Any other criteria that the Department determines to be relevant.

6 30. NAC 453D.255 enacted by Defendant DOT in contravention of NRS Chapter 453D and
7 implemented by various employees, agents, and/or contractors of the DOT, provides as follows:
8

9 Except as otherwise required in subsection 2, the requirements of this chapter
10 concerning owners of marijuana establishments only apply to a person with an
aggregate ownership interest of 5 percent or more in a marijuana establishment.

11 31. If, in the judgment of the Department, the public interest will be served by requiring any
12 owner with an ownership interest of less than 5 percent in a marijuana establishment to comply
13 with any provisions of this chapter concerning owners of marijuana establishments, the
14 Department will notify that owner and he or she must comply with those provisions.
15

16 32. Defendant DOT also enacted NAC 453D.258, NAC 453D.260, NAC 453D.265, NAC
17 453D.268 and NAC 453D.272. These administrated codes enforced by the employees and
18 agents, and department personnel established the procedures for recreational application process,
19 to be charged for applying, fees to be charged for applying if the applicant holds a medical
20 marijuana establishment registration certificate, and the ranking of applications if the DOT.
21 received more than one application for a retail marijuana license.
22

23 33. The original application published by the DOT described how applications were to be
24 scored, dividing scoring criteria into identified criteria and non-identified criteria. The Approved
25 Regulations included a point values system that had a possible 250 total points.

34. The application provided that "[applications that have not demonstrated a sufficient

1 response related to the criteria set forth above will not have additional [unspecified, unpublished]
2 criteria considered in determining whether to issue a license and will not move forward win the
3 application process." (emphasis added).

4 35. NAC 453D.272(1) required the DOT to determine that an application is "complete and
5 in compliance" with the provisions of NAC 453D in order to properly apply the licensing criteria
6 set forth therein and the provisions of voter approved initiative and NRS 453D.

7 36. The DOT was responsible for issuing conditional licenses to applicants whose score and
8 rank were high enough in each jurisdiction to be awarded one of the allocated licenses in
9 accordance with the impartial allocation process mandated by NRS 453D.210 by December 5,
10 2018.

11 37. The DOT identified, hired, and internally trained eight temporary employees to review
12 and grade the applications allegedly in accordance with the applicable code and statutes, including
13 NRS 453D, to purportedly establish a fair and impartial analysis and system for grading all
14 complete applications.

15 **PLAINTIFF'S APPLICATION AND SUBSEQUENT PROCEEDINGS**

16 38. Plaintiff submitted applications to the DOT for conditional licenses for Recreational
17 Marijuana Establishments in order to own and operate recreational marijuana retail stores in
18 compliance with the specified, published requirements of DOT regulations together with the
19 required application fee in accordance with NRS 453D.210 for Las Vegas, North Las Vegas, and
20 Unincorporated Clark County.

21 39. Plaintiff's applications identified its prospective owners, members, and/or board
22 members for background check pursuant to the requirements of NRS 453D.200(6).
23
24
25

1 40. Plaintiff identified in its application, addresses for each proposed recreational
2 marijuana establishment it intended to operate, also pursuant NRS 453D.210(5).

3 41. Plaintiff was subsequently informed by a general letter from the DOT that its applications
4 to operate any recreational marijuana retail store was denied "because it did not achieve a score
5 high enough to receive an available license..." within the applicable jurisdiction for which it
6 proposed a location.
7

8 42. Plaintiff's denial letter contained no additional information regarding its scoring, scores
9 received in various categories, or any additional information in order to assess its position.
10

11 43. On or about May 24, 2019, upon information and belief the Honorable Elizabeth
12 Gonzalez commenced an extensive evidentiary hearing concerning a motion for preliminary
13 injunction brought by an unrelated group of applicants who were also denied a conditional
14 licenses for retail marijuana facilities in Nevada, against the DOT. Successful applicants also
15 participated in the evidentiary hearing, as intervenor defendants. The hearing concluded on
16 August 16, 2019.
17

18 44. On August 23, 2019, Judge Gonzalez entered findings of Fact and Conclusions of Law
19 regarding the substantial evidentiary hearing. See Findings of Fact and Conclusions of Law
20 Granting Preliminary Injunction, filed August 23, 2019, Clark County District Court Case No. A-
21 19-786962-B.
22

23 45. Judge Gonzalez found that based on the evidence presented, that the DOT undertook no
24 effort to determine if the applications were in fact "complete and in compliance." Id., ¶37.

25 46. Additionally, Judge Gonzalez also found that the DOT did not make any "effort to verify
owners, officers or board members..." Id. at ¶38.

1 47. Judge Gonzalez also found that the DOT created its own Regulation that modified the
2 mandatory language of NRS 453D.200(6) requiring “a background check of each prospective
3 owner, officer, and board member of a marijuana establishment license applicant” and made no
4 attempt in the application process to verify that the applicant’s complied with the mandatory
5 language of the BQ2 or even the impermissibly modified language.” Id., ¶¶40-41.
6

7 48. Judge Gonzalez also found that the evidence established that the DOT failed to properly
8 train the temporary employees hired to review and grade the applications/applicants, and that it
9 similarly failed to establish any quality assurance or quality control of the grading performed. Id.
10 at ¶¶ 78-79.
11

12 49. Further upon information and belief, due to evidence presented, the DOT improperly
13 issued conditional licenses to applicants who did not properly disclose a physical address for the
14 actual location of all proposed retail recreational marijuana establishments.
15

16 50. Further upon information and belief the DOT failed to implement regulations, procedures
17 and protocols that would have ensured a fair and impartial grading, consideration, and award of
18 recreational marijuana licenses within the State of Nevada.
19

20 51. Additionally, at the evidentiary hearing, testimony and/or evidence was presented that
21 also suggests persons within the DOT potentially committed violations of NRS 281A, which sets
22 for a code of ethical standards for government employees. As such, upon information and belief,
23 the violations of NRS 281A committed by employees within the DOT, including but not
24 necessarily limited to Jorge Pupo, led to the improper scoring and/or the impermissible
25 implementation of procedures and/or policies that directly led to the denial of Plaintiff’s
application.

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1 52. Upon information and belief, the DOT's flawed scoring system, inconsistent processes,
2 and additional improper conduct, the DOT's denial of Plaintiff's applications was not based upon
3 actual implementation of an impartial and objective scoring and bidding process as mandated by
4 NRS 453D.210, but was instead based upon the arbitrary and capricious exercise of administrative
5 power, that failed to actually implement training, review, policies, and procedures that were
6 otherwise legally mandated by statutory authority.
7

8 53. Upon information and belief, by revising the application on July 30, 2018, eliminating
9 the requirement to disclose an actual physical address for each proposed retail recreational
10 marijuana establishment, and selectively choosing to communicate this information, the DOT
11 limited the ability of the temporary employees to adequately assess graded criteria such as (i)
12 prohibited proximity to schools and certain other public facilities, (ii) impact on the community,
13 (iii) security, (iv) building plans and (v) other material considerations prescribed by the
14 regulations, which led to flawed scoring and/or incomplete applications.
15

16 53. Upon information and belief, if an applicant's disclosure in its application of its owners,
17 officers, and board members did not match the DOT's records, the DOT permitted the grading,
18 and in some cases, awarded a conditional license.
19

20 54. Upon information and belief, the DOT's determination that only owners of a 5% or
21 greater interest in the business were required to submit information on the application was an
22 impermissible regulatory modification of BQ2 and violated Article 19, Section 3 of the Nevada
23 Constitution, and improperly impacted the scoring/grading of applicants, and/or the award of
24 conditional licenses to successful applicants.
25

55. Upon information and belief, the DOT's adoption of NAC 453D.255(1) as it applied to

1 the marijuana establishment license application process regarding was an unconstitutional
2 modification of BQ2, which was presented to the voters of Nevada.

3 56. Upon information and belief, the numerous failures of the DOT to implement the
4 mandatory provisions of NRS 453D.200(6), impermissible modification and of statutory
5 language, collective improprieties regarding the applications including its modification in July
6 2018, the lack of training and other personal relationship fatally impacted the overall scoring and
7 bid process to award recreational marijuana licenses, and resulted in the denial of Plaintiff's
8 application.
9

10 57. The DOT did not comply with NRS 453D by requiring applicants to provide
11 information for each prospective owner, officer and board member or verify ownership of
12 applicants who applying for retail recreational marijuana licenses.
13

14 58. Upon information and belief, the DOT's inclusion of the diversity category in the
15 factors was implemented in a way that created a process which was subject to manipulation
16 and/or inconsistent consideration by applicants, and/or the DOT, which was further
17 compounded by the DOT's insufficient training of temporary employees hired to grade the
18 applications.
19

20 59. Upon information and belief the DOT's scoring process was impacted by personal
21 relationships, improper conduct, and/or inconsistent application of the requirements of the law in
22 decisions related to the requirements of the application and the ownership structures of competing
23 applicants.
24

25 60. Upon information and belief, due to the DOT's conduct including impermissible

1 modifications and violations of NRS 453 et seq. Plaintiff was unconstitutionally denied
2 recreational marijuana licenses.

3 61. The DOT's constitutional violations and refusal to issue conditional licenses to Plaintiff
4 has resulted in, and continues to create, irreparable harm to Plaintiff.
5

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Relief)**

8 62. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though
9 fully set forth herein.

10 63. A justiciable controversy exists between Plaintiff and Defendant DOT that warrants
11 a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010
12 to 30.160, inclusive.
13

14 64. Plaintiff and Defendant have adverse and/or competing interests as the DOT, through
15 its Marijuana Enforcement Division, has denied the application that violates Plaintiff's
16 Constitutional Rights, Nevada law, and State policy, and involve a derogation of Defendant's
17 duties pursuant to applicable law and regulation
18

19 65. The DOT's refusal to issue Plaintiff a conditional license affects Plaintiff's rights afforded
20 by NRS 453D, and other Nevada laws and regulations.

21 66. The DOT's improper conduct and inconsistent and ranking of other applicants for a
22 recreational marijuana establishment license and the DOT's subsequent, improper issuance of
23 conditional licenses also affects the rights of Plaintiff afforded to it by NRS 453D, and other
24 Nevada laws and regulations.
25

67. The DOT's actions and/or inactions also have created an actual justiciable controversy

1 ripe for judicial determination between Plaintiff and the DOT with respect to the construction,
2 interpretation, and implementation of NRS 453D, as to Plaintiff. Plaintiff has been harmed, and
3 will continue to be harmed, by Defendants' actions.

4
5 68. The DOT's actions and/or inactions failed to appropriately address the necessary
6 considerations and intent of both the Initiative and NRS 453D.210, designed to restrict
7 monopolies.

8 69. On August 23, 2019, Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case
9 No. A-19-786962-B, issued an Order Granting Preliminary Injunction enjoining the DOT "from
10 conducting a final inspection of any of the conditional licenses issued in or about December 2018
11 who did not provide the identification of each prospective owner, officer and board member as
12 required by NRS 453D.200(6) pending a trial on the merits."

13
14 70. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

- 15 a. The Department improperly denied Plaintiff conditional licenses for the
16 operation for a recreational marijuana establishments;
- 17 b. The denial of conditional licenses to Plaintiff is void *ab initio*;
- 18 c. The procedures employed in the denial violated Plaintiff's procedural,
19 substantive due process rights and equal protection rights under the Nevada
20 and United States Constitutions and therefore, the denial is void and
unenforceable;
- 21 d. The denial violates Plaintiff's substantive due process rights and equal
22 protection rights under the Nevada and United States Constitutions and,
therefore, the denial is void and unenforceable;
- 23 e. Defendant acted in contravention of a legal duty and Plaintiff is therefore
24 entitled to a writ of mandamus;
- 25 f. Plaintiff is entitled to judicial review; and
- g. The DOT's denial lacked substantial evidence.

1
2 71. Plaintiff also seeks a declaration from this Court that the DOT must revoke the
3 conditional licenses of those applicants whose applications are not in compliance with
4 Nevada law.

5
6 72. Plaintiff also seeks a declaration from this Court that the DOT must issue Plaintiff
7 conditional licenses for the operation of a recreational marijuana establishments applied
8 for.

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

13
14 74. Plaintiff is entitled to reasonable attorney's fees and costs.

15 **SECOND CLAIM FOR RELIEF**

16 **(Petition for Judicial Review)**

17
18 75. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though
19 fully set forth herein.

20 76. Plaintiff is a party to a proceeding with the DOT—specifically, the submission, review,
21 scoring, and ranking of applications for and issuance of recreational marijuana dispensary
22 licenses—and have been damaged and irreparably aggrieved by the DOT's conduct and decisions.

23
24 77. As set forth herein,

25 a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of
the Approved Regulations;

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1 b. The Department's scoring and ranking of the applications submitted for
2 recreational dispensary licenses between 8:00 a.m. on September 7, 2018 and
3 5:00 p.m. on September 20, 2018 was arbitrary, capricious, unlawful, clearly
4 erroneous, and in excess of the Department's jurisdiction;

5 c. The Department's denial and award of Conditional Licenses for recreational
6 dispensaries was unlawful, clearly erroneous, arbitrary, capricious, and in excess
7 of the Department's jurisdiction; and
8 d. The Department's misconduct and failure to properly administer the application

9 process denied Plaintiffs of due process and equal protection as guaranteed by
10 the Nevada Constitution.
11

12
13 78. Under NRS 233B.010, *et seq.*, Plaintiffs/Petitioners are entitled to Judicial Review
14 of the Department's decision by which they were denied the rights and privileges afforded to them
15 by Nevada law.

16 79. Neither NRS 453D or NAC 453D provides for any right or procedure to appeal or
17 review the decision denying an application for a recreational marijuana license, as such, judicial
18 review is the appropriate means of seeking relief.
19

20 80. Accordingly, Plaintiff petitions this Court for Judicial Review of the all of the
21 proceedings at the Department whereby the applications for recreational Dispensary licenses were
22 reviewed, scored, and ranked, and demand that the entire record of the proceeding (for each and
23 every application submitted by Plaintiff, the Denied Applicants, and the Successful Applicants)
24 be transmitted in accordance with NRS 233B.131.
25

81. Further after Judicial Review, Plaintiff seeks an order remanding this matter back to the

1 DOT for review, reissuance, and/or any other relief deemed appropriate by this Court to rectify
2 Plaintiff's aggrieved position.

3 **THIRD CLAIM FOR RELIEF**

4 **(Petition for Writ of Certiorari)**

5
6 82. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though
7 fully set forth herein.

8
9 83. The Department has exceeded its jurisdiction to review, score, and rank applications
10 for recreational marijuana dispensary licenses and to issue conditional recreational dispensary
11 licenses by, amongst other things:

- 12
13 a. Employing and failing to properly train temporary employees to conduct the review,
14 scoring, and ranking of applications;
15
16 b. Failing to ensure uniformity in the assessment of the applications and the
17 assignment of scores to various categories of information in the applications;
18
19 c. Allowing the license application process to be corrupted by unfairly favoring
20 certain applicants over others and by eliminating categories of information from
21 the license application despite such categories being required under the
22 Approved Regulations and/or NRS Chapter 453D;
23
24 d. Adding a new category of information to the license application after issuing the
25 Notice for license application submissions without providing adequate notice to
the license applicants;
e. Improperly omitting or destroying incident reports and/or other evidence of

1 statutory or regulatory infractions by licensees;

2 f. Failing to inform the Plaintiffs/Petitioners of the specific reasons for the denial of
3 their applications;

4 g. Improperly communicating with certain licensees (or their counsel) regarding the
5 application process;

6 h. Impermissibly creating a Regulation that modified the mandatory Initiative provision
7 regarding background checks;

8 g. Failing to carry out mandatory provisions of NRS 453D.200(6); and

9 h. acting in an arbitrary and capricious manner in evaluating, reviewing, scoring and
10 ranking applicants, and issuing conditional recreational marijuana dispensary licenses.
11

12
13 84. Upon information and belief, the DOT has denied any appeal rights of aggrieved parties
14 regarding the issuance of licenses, and therefore Plaintiff has no plain, speedy or adequate
15 remedy for addressing the DOT's improper conduct.

16
17 85. Plaintiff petitions this Court for a writ of certiorari regarding the DOT's reviewing,
18 scoring, and ranking of Plaintiff's applications for recreational marijuana dispensary licenses, and
19 that this Court undertake such review of the DOT's conduct as it deems necessary and appropriate

20 86. Plaintiff also requests that the Court order the DOT to provide the complete record of the
21 Department's proceeding with respect to the Plaintiff's applications for recreational marijuana
22 dispensary licenses.

23
24 **FOURTH CLAIM FOR RELIEF**

25 **(Petition for Writ of Mandamus)**

87. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though

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1 fully set forth herein.

2 88. The DOT failed to perform an act which the law mandates it to perform;
3 specifically,

- 4 a. Use of an using an impartial and numerically scored competitive bidding process
5 to evaluate license applications and issue licenses in compliance with Nevada
6 laws and regulations; and
7
8 b. Preservation of public records and other evidence not subject to the Preservation
9 Order.

10 89. Upon information and belief, the DOT has denied a right to appeal the licensing
11 decision. Therefore, there is no plain, speedy, and adequate remedy in the ordinary course of law
12 to correct the failure to perform the acts required by law.
13

14 90. The Plaintiffs/Petitioners therefore petition this Court to issue a writ of mandamus to
15 the DOT compelling it to issue a new Notice for recreational Dispensary license applications
16 and to conduct the scoring and ranking of such applications in accordance with Nevada law and
17 the Approved Regulations.
18

19 **FIFTH CLAIM FOR RELIEF**

20 **Petition for Writ of Prohibition**

21 91. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though
22 fully set forth herein.

23 92. The DOT has issued conditional recreational marijuana dispensary licenses in excess of
24 its jurisdiction by, among other things: (1) eliminating key categories of information from the
25 application (despite the Approved Regulations and NRS Chapter 453D requiring that the

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1 Department consider such information); (2) by adding a new category of information to the
2 application after it issued its Notice for license applications and failing to adequately inform
3 license applicants of this new category of information; and (3) failing to comply with NRS
4 Chapter 453D and the Approved Regulations related to dispensary licensing;
5

6 93. Upon information and belief, the DOT has denied a right to appeal the licensing
7 decision. Therefore, there is no plain, speedy, and adequate remedy in the ordinary course of law
8 to correct the failure of the DOT to lawfully and impartially, review core, and rank license
9 applications as detailed herein.
10

11 94. Plaintiff therefore petitions the Court to issue a writ of prohibition which prohibits the
12 Department from issuing and/or recognizing any new recreational Dispensary licenses
13 (conditional or final) for applicants who submitted a license application between 8:00 a.m. on
14 September 7, 2018 and 5:00 p.m. on September 20, 2018.
15

16 WHEREFORE, Plaintiff prays for judgment as follows:

- 17 1. For declaratory relief set forth above;
- 18 2. For a continuation of the preliminary injunction enjoining the enforcement of the denial;
- 19 3. For judicial review of the record and history on which the denial was based;
- 20 4. Writ of certiorari ordering review of the DOT's entire process regarding applications
21 submitted between September 7, 2018 and September 20, 2018;
- 22 5. For issuance of a writ of mandamus;
- 23 6. For the issuance of a writ of prohibition;
- 24
- 25

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7. Any other relief that the court deems necessary and proper.

DATED this 7th day of February, 2020

BENDAVID LAW

/s/ Jeffery A. Bendavid, Esq.

JEFFERY A. BENDAVID, ESQ.

Nevada Bar No. 6220

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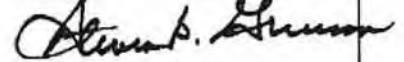
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EXHIBIT 2-F



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DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE: D.O.T.

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

Consolidated with:

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

SECOND AMENDED COMPLAINT

QUALCAN, LLC, Plaintiff in Case No. A-19-801416-B, a Nevada limited liability company, by and through its attorneys of record, PETER CHRISTIANSEN, ESQ. and WHITNEY J. BARRETT, ESQ. of CHRISTIANSEN LAW OFFICES hereby complain and allege against DEFENDANTS, in their official and personal capacities, as follows:

I.

PARTIES

1. Plaintiff QUALCAN, LLC, was and is a Nevada limited liability company and does business in the State of Nevada, County of Clark.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 20. The true names of DOES I through X and ROE BUSINESS ENTITIES I through
25 X, their citizenship and capacities, whether individual, corporate, associate, partnership or
26 otherwise, are unknown to Plaintiff, who therefore alleges that each of the Defendants,
27 designated as DOES I through X and ROE BUSINESS ENTITIES I through X, are, or may be,
28 legally responsible for the events referred to in this action, and caused damages to Plaintiff, as

1 herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true
2 names and capacities of such Defendant, when the same have been ascertained, and to join them
3 in this action, together with the proper charges and allegations.

4 21. DOES I through X and ROE BUSINESS ENTITIES I through X, are or may be,
5 qualified holders of Medical Marijuana Establishment (“MME”) Certificates, who submitted an
6 application to operate a recreational retail marijuana establishment to the DOT between
7 September 7, 2018 and September 20, 2018, and are attempting to circumvent the Order Granting
8 Preliminary Injunction of August 23, 2019 by Eighth Judicial District Court Judge Elizabeth
9 Gonzalez, in Case No. A-19-786962-B, as well as abrogate the prior ranking by the DOT with
10 regard to its issuance of conditional licenses.

11 **II.**

12 **JURISDICTION AND VENUE**

13 22. Jurisdiction is proper in this Court pursuant to NRS 4.370(1)(a), NRS 30, and
14 because the acts and omissions complained of herein occurred and caused harm within Clark
15 County, Nevada. Further, the amount in controversy exceeds \$15,000.00.

16 23. Venue is proper in this Court pursuant to NRS 13.020(2)-(3).

17 **III.**

18 **GENERAL ALLEGATIONS**

19 **A. The Marijuana Legislation and Regulations**

20 24. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to amend
21 Nevada’s Constitution or enact legislation through the initiative process and precludes
22 amendment or modification of a voter-initiated law for three years.

23 25. In 2016, the initiative for the legalization of recreational marijuana was presented
24 to Nevada voters by way of Ballot Question 2 (“BQ2”), known as the “Regulation and Taxation
25 of Marijuana Act”, which proposed an amendment of the Nevada Revised Statutes as follows:

26 Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old
27 or older, to purchase, cultivate, possess, or consume a certain amount of
28 marijuana or concentrated marijuana, as well as manufacture, possess, use,
transport, purchase, distribute, or sell marijuana paraphernalia; impose a 15

percent excise tax on wholesale sales of marijuana; require the regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and retailers; and provide for certain criminal penalties?

26. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.

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

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

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

3. 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.

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

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

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

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

1 ***
2 2. The Department ***shall*** approve or deny applications for licenses
3 ***pursuant to NRS 453D.210.*** (emphasis added).

4 29. NRS 453D.200(6) mandates the DOT to “conduct a background check of each
5 prospective owner, officer, and board member of a marijuana establishment license applicant.”

6 30. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;
7 conditions for approval of application; limitations on issuance of licenses to retail marijuana
8 stores; competing applications), provides in pertinent part:

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

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

12 ***
13 5. The Department ***shall approve a license application if:***

14 (a) The prospective marijuana establishment has submitted an
15 application in compliance with regulations adopted by the Department and
16 the application fee required pursuant to NRS 453D.230;

17 ***
18 6. When competing applications are submitted for a proposed retail
19 marijuana store within a single county, the Department ***shall use an***
20 ***impartial and numerically scored competitive bidding process*** to determine
21 which application or applications among those competing will be approved.
22 (emphasis added).

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

26 32. The Task Force recommended that “the qualifications for licensure of a marijuana
27 establishment and the impartial numerically scored bidding process for retail marijuana stores be
28 maintained as in the medical marijuana program except for a change in how local jurisdictions
29 participate in selection of locations.”

30 33. During the 2017 legislative session, Assembly Bill 422 transferred responsibility
31 for the registration, licensing and regulation of marijuana establishments to the DOT.

32 34. On February 27, 2018, the DOT adopted regulations governing the issuance,
33 suspension, or revocation of retail recreational marijuana licenses, which were codified in NAC
34 453D (the “Regulations”).

1 35. The Regulations for licensing were to be “directly and demonstrably related to the
2 operation of a marijuana establishment.” NRS 453D.200(1)(b).

3 36. NRS 453D.200(1) provides, in part, “[t]he regulations must not prohibit the
4 operation of marijuana establishments, either expressly or through regulations that make their
5 operation unreasonably impracticable.”

6 37. The limitation of “unreasonably impracticable” in NRS 453D.200(1) applies to the
7 Regulations adopted by the DOT, not the mandatory language of BQ2.

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

13 **B. The Licensing Applications**

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

17 40. The DOT posted the license application on its website and released the application
18 for recreational marijuana establishment licenses on July 6, 2018, which required disclosure of
19 an actual physical address for each establishment.

20 41. The DOT published a revised license application on July 30, 2018 eliminating the
21 physical address requirement, which was not publicly available and was only disseminated to
22 some but not all of the applicants via a DOT listserv.

23 42. The application period for retail recreational marijuana licenses ran from
24 September 7, 2018 through September 20, 2018.

25 43. As of September 20, 2018, the DOT received a total of 462 applications.

26 44. Where competing applications for licenses were submitted, the DOT was required
27 to use “an impartial and numerically scored competitive bidding process” to determine successful
28 license applicants. NRS 453D.210(6).

1 45. Under NAC 453D.272(1), when the DOT received more than one “complete”
2 application in compliance with the Regulations and NRS 453D, the DOT was required to “rank
3 the applications... in order from first to last based on the compliance with the provisions of [NAC
4 453D] and [NRS 453D] and on the content of the applications relating to...” several enumerated
5 factors.

6 46. The factors set forth in NAC 453D.272(1) used to rank competing applications
7 (collectively, the “Factors”) are:

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

i. Any other criteria that the Department determines to be relevant.

47. The application published by the DOT described how applications were to be scored, dividing scoring criteria into identified criteria and non-identified criteria.

48. The application provided that “[a]pplications that have not demonstrated a sufficient response related to the criteria set forth above will not have *additional [unspecified, unpublished] criteria* considered in determining whether to issue a license *and will not move forward win the application process.*” (emphasis added).

49. NAC 453D.272(1) required the DOT to determine that an application is “complete and in compliance” with the provisions of NAC 453D in order to properly apply the licensing criteria set forth therein and the provisions of BQ2 and NRS 453D.

50. No later than December 5, 2018, the DOT was responsible for issuing conditional licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one of the allocated licenses in accordance with the impartial bidding process mandated by NRS 453D.210.

51. The DOT identified, hired, and trained eight individuals as temporary employees to grade the applications in accordance with the provisions of BQ2 and NRS 453D.

52. The DOT allocated licenses throughout the State of Nevada, as follows: ten (10) for unincorporated Clark County, ten (10) for Clark County-Las Vegas, six (6) for Clark County-Henderson, five (5) for Clark County-North Las Vegas, six (6) for Washoe County-Reno, one (1) for Washoe County-Sparks, one (1) for Nye County, two (2) for Carson City, two (2) for Douglas County, one (1) for Elko County, two (2) for Esmeralda County, two (2) for Eureka County, two (2) for Humboldt County, two (2) for Lander County, one (1) for Lincoln County, one (1) for Lyon County, two (2) for Mineral County, one (1) for Pershing County, two (2) for Storey County, and two (2) for White Pine County.

53. The foregoing licenses were awarded to Defendants CHEYENNE MEDICAL, LLC, CIRCLE S. FARMS, LLC, CLEAR RIVER, LLC, COMMERCE PARK MEDICAL L.L.C., DEEP ROOTS MEDICAL LLC, ESSENCE HENDERSON LLC, ESSENCE TROPICANA, LLC, EUREKA NEWGEN FARMS LLC, GREEN THERAPEUTICS, LLC,

1 GREENMART OF NEVADA, LLC, HELPING HANDS WELLNESS CENTER, INC., LONE
2 MOUNTAIN PARTNERS LLC, NEVADA ORGANIC REMEDIES, LLC, POLARIS
3 WELLNESS CENTER, L.L.C., PURE TONIC CONCENTRATES LLC, TRNVP098, and
4 WELLNESS CONNECTION OF NEVADA, LLC (hereinafter “Defendant Applicants”).

5 54. Upon information and belief, Defendant Applicants failed to submit applications
6 which were complete and compliant with the provisions of NRS 453D and NAC 453D; failed to
7 disclose actual physical address for proposed retail recreational marijuana establishment; failed
8 to disclose all officers, owners, and board members for the requisite background check; submitted
9 more than one identical application in the same jurisdiction with the intent of receiving more than
10 one conditional license in that jurisdiction; and/or took measures to artificially inflate their score
11 in the grading process utilized by the DOT in ranking applicants.

12 **C. Plaintiff’s Applications**

13 55. Plaintiff submitted applications to the DOT for a conditional license to own and
14 operate recreational marijuana retail stores in Nevada.

15 56. Plaintiff’s applications were in compliance with the specified, published
16 requirements of DOT regulations, and were submitted together with the required application fee
17 in accordance with NRS 453D.210.

18 57. Plaintiff’s applications identified each prospective owner, officer, and board
19 member for background check pursuant to NRS 453D.200(6).

20 58. Plaintiff secured and identified in its applications a physical addresses for each and
21 every proposed recreational marijuana establishment it intended to operate.

22 59. Plaintiff was informed by letter from the DOT that its applications to operate
23 recreational marijuana retail stores were denied “because it did not achieve a score high enough
24 to receive an available license.”

25 60. Pursuant to the DOT’s 2018 Retail Marijuana Store Application Scores and
26 Rankings, as revised at 4pm on May 14, 2019, Plaintiff was ranked seventh (7) for Clark County
27 – Henderson, eleventh (11) for Clark County – Las Vegas, ninth (9) for Clark County – North
28

1 Las Vegas, thirteenth (13) for Clark County – Unincorporated, third (3) for Elko County, and
2 eighth (8) for Washoe County - Reno. *See* Exhibit 1, attached hereto.

3 61. The DOT improperly issued conditional licenses to Defendant Applicants who,
4 upon information and belief, did not identify each prospective owner, officer and board member,
5 including: Helping Hands Wellness Center, Inc., Lone Mountain Partners, LLC, Nevada Organic
6 Remedies, LLC, and Greenmart of Nevada NLV, LLC.

7 62. Upon information and belief, the DOT issued conditional licenses to Defendant
8 Applicants who did not disclose in their application an actual physical address for proposed retail
9 recreational marijuana establishment.

10 63. Upon information and belief, the DOT improperly issued more than one
11 conditional license in the same jurisdiction to certain Defendant Applicants.

12 64. Upon information and belief, the DOT's denial of Plaintiff's license applications
13 was not properly based upon actual implementation of the impartial and objective competitive
14 bidding process mandated by NRS 453D.210, but based upon the arbitrary and capricious exercise
15 of administrative partiality and favoritism.

16 65. Upon information and belief, the temporary employees hired by the DOT were
17 inadequately and improperly trained regarding the scoring process, leading to an unfair scoring
18 process.

19 66. Upon information and belief, the DOT issued conditional licenses to applicants
20 who were known by the DOT to have violated the criminal laws of the State of Nevada by having
21 sold marijuana to minors and nonetheless, at the behest of these applicants, their attorneys and/or
22 agents made the supervisory Department of Taxation personnel in charge of the licensing process,
23 and at said supervisory personnel's direction, had that information deliberately suppressed from
24 law enforcement, removed from the administrative files and eliminated from the collection of
25 information made available to and forming the base of knowledge of those scoring the
26 Applications, an express component of which was to evaluate the prior compliance record of
27 applicants who were already operating licensed retail recreational marijuana establishments.
28

1 67. Upon information and belief, the DOT undertook no effort to determine whether
2 applications were in fact “complete and in compliance” prior to issuing conditional licenses.

3 68. By revising the application on July 30, 2018 and selectively eliminating the
4 requirement to disclose an actual physical address for each proposed retail recreational marijuana
5 establishment, the DOT limited the ability of the temporary employees to adequately assess
6 graded criteria such as (i) prohibited proximity to schools and certain other public facilities, (ii)
7 impact on the community, (iii) security, (iv) building plans and (v) other material considerations
8 prescribed by the regulations.

9 69. The DOT’s scoring process was impacted by its selective elimination of the
10 requirement to disclose an actual physical address for each proposed retail recreational marijuana
11 establishment, resulting in improper applicants being awarded conditional licenses.

12 70. Upon information and belief, the DOT selectively discussed with applicants or
13 their agents the modification of the application related to physical address information,

14 71. Upon information and belief, the DOT undertook no effort to verify owners,
15 officers or board members in evaluating whether an application was “complete and in
16 compliance.”

17 72. Upon information and belief, if an applicant’s disclosure in its application of its
18 owners, officers, and board members did not match the DOT’s records, the DOT permitted the
19 grading, and in some cases, awarded a conditional license.

20 73. Upon information and belief, the DOT departed from the mandatory requirements
21 of NRS 453D.200(6), which provides that “[t]he DOT shall conduct a background check of each
22 prospective owner, officer, and board member of a marijuana establishment license application,”
23 by adopting NAC 453D.255(1), which only required information on the application from persons
24 “with an aggregate ownership interest of 5 percent or more in a marijuana establishment.”

25 74. The DOT’s determination that only owners of a 5% or greater interest in the
26 business were required to submit information on the application was an impermissible regulatory
27 modification of BQ2 and violated Article 19, Section 3 of the Nevada Constitution.
28

1 75. The adoption of NAC 453D.255(1) as it applied to the marijuana establishment
2 license application process was an unconstitutional modification of BQ2.

3 76. The failure of the DOT to carry out the mandatory provisions of NRS
4 453D.200(6), which required the DOT to conduct a background check of each prospective owner,
5 officer, and board member of a marijuana establishment license applicant, is fatal to the
6 application process and impedes an important public safety goal in BQ2.

7 77. By adopting regulations in violation of BQ2's mandatory application
8 requirements, the DOT violated Article 19, Section 2(3) of the Nevada Constitution.

9 78. The DOT disregarded the voters' mandate in BQ2 when it decided the requirement
10 that each prospective owner be subject to a background check was too difficult for implementation
11 by industry. This decision was a violation of the Nevada Constitution, an abuse of discretion, and
12 arbitrary and capricious.

13 79. The DOT did not comply with BQ2 by requiring applicants to provide information
14 for each prospective owner, officer and board member or verify ownership of applicants who
15 applying for retail recreational marijuana licenses.

16 80. The DOT's inclusion of the diversity category in the factors was implemented in
17 a way that created a process which was partial and subject to manipulation by applicants.

18 81. The DOT's scoring process was impacted by personal relationships in decisions
19 related to the requirements of the application and the ownership structures of competing
20 applicants.

21 82. Due to the DOT's violations of BQ2, Plaintiff was improperly denied recreational
22 marijuana licenses.

23 83. Plaintiff is entitled to six (6) conditional licenses in the following jurisdictions:
24 Clark County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark
25 County – Unincorporated, Washoe County – Reno, and Elko County.

26 ///

27 ///

28 ///

IV.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

84. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

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

86. Plaintiff and Defendants have adverse and/or competing interests as the DOT, through its Marijuana Enforcement Division, has denied Plaintiff's applications in violation of Nevada law and State policy.

87. The DOT's refusal to issue Plaintiff conditional licenses affects Plaintiff's rights afforded by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

88. The DOT's improper ranking of other applicants for a recreational marijuana establishment license and the DOT's subsequent, improper issuance of conditional licenses to Defendant Applicants also affects the rights of Plaintiff afforded to it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

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

90. The DOT's actions and/or inactions failed to appropriately address the necessary considerations and intent of BQ2 and NRS 453D.210, designed to restrict monopolies.

91. On August 23, 2019, Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case No. A-19-786962-B, issued an Order Granting Preliminary Injunction enjoining the DOT "from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits."

1 92. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 2 a. The DOT improperly denied Plaintiff six (6) conditional licenses for the operation
3 for a recreational marijuana establishment in the following jurisdictions: Clark
4 County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas,
5 Clark County – Unincorporated, Washoe County – Reno, and Elko County;
6 b. The denial of conditional licenses to Plaintiff is void *ab initio*;
7 c. The DOT improperly issued conditional licenses to Defendant Applicants;
8 d. The issuance of conditional licenses to Defendant Applicants is void *ab initio*;
9 e. The DOT acted arbitrarily and capriciously or in contravention of a legal duty and
10 Plaintiff is therefore entitled to a writ of mandamus;
11 f. Plaintiff is entitled to judicial review; and
12 g. The DOT's denial of Plaintiff's applications lacked substantial evidence.

13 93. Plaintiff also seeks a declaration from this Court that the DOT must revoke the
14 conditional licenses of Defendant Applicants who failed to comply with the provisions of NRS
15 453D, NAC 453D and R092-17.

16 94. Plaintiff also seeks a declaration from this Court that the DOT must issue Plaintiff
17 six (6) conditional licenses for the operation of a recreational marijuana establishment in Clark
18 County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County
19 – Unincorporated, Washoe County – Reno, and Elko County, since Plaintiff's score would have
20 ranked high enough to entitle it to a conditional license had the DOT properly applied the
21 provisions of NRS 453D, NAC 453D and R092-17.

22 95. Plaintiff asserts and contends that a declaratory judgment is both necessary and
23 proper at this time for the Court to determine the respective rights, duties, responsibilities and
24 liabilities of the Plaintiff afforded to it by NRS 453D, NAC 453D, R092-17, and other Nevada
25 laws and regulations.

26 96. Plaintiff has found it necessary to retain the legal services of Christiansen Law
27 Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and
28 costs therefor.

SECOND CLAIM FOR RELIEF
(Request for Injunctive Relief)

97. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

98. The DOT's flawed interpretation of the provisions of NRS 453D, NAC 453D, and R092-17 and issuance of conditional licenses to Defendant Applicants constitutes and causes continuing and irreparable harm to Plaintiff with no adequate remedy at law.

99. The DOT's refusal to issue conditional licenses to Plaintiff in accordance with the law constitutes and causes continuing and irreparable harm to Plaintiff with no adequate remedy at law.

100. The purpose of the DOT's refusal to issue conditional licenses to Plaintiff was and is to unreasonably interfere with Plaintiff's business and causing Plaintiff to suffer irreparable harm.

101. The DOT will suffer no harm by following the law with respect to issuing conditional licenses to Plaintiff in the following jurisdictions: Clark County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe County – Reno, and Elko County.

102. Plaintiff is entitled to an injunction precluding the DOT from conducting a final inspection of licenses held by Defendant Applicants.

103. Plaintiff is entitled to an injunction precluding the DOT from approving any negotiated settlements between 2018 applicants, including Defendant Applicants, that does not account for Plaintiff's rightful entitlement to six conditional licenses.

104. Plaintiff is likely to succeed on the merits of this litigation.

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

106. Therefore, Plaintiff is entitled to preliminary injunctive relief, and after a trial on the merits, permanent injunctive relief, ordering the DOT to issue conditional licenses to Plaintiff in accordance with NRS 453D, NAC453D and R092-17.

1 107. Plaintiff has found it necessary to retain the legal services of Christiansen Law
2 Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and
3 costs therefor.

4 **THIRD CLAIM FOR RELIEF**

5 **(Intentional Interference With Prospective Economic Advantage)**

6 108. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

7 109. Plaintiff had, and has, prospective contractual relationships with third parties
8 related to Plaintiff's operation of retail marijuana establishments in Nevada.

9 110. The DOT has knowledge of Plaintiff's prospective contractual relationships with
10 third parties related to Plaintiff's operation of retail marijuana establishments in Nevada.

11 111. The DOT has, and intends to, cause harm to Plaintiff by preventing the contracts
12 from going forward in its refusal to issue Plaintiff conditional licenses for its operation of retail
13 marijuana establishments in the following jurisdictions: Clark County – Henderson, Clark County
14 – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe County
15 – Reno, and Elko County.

16 112. The DOT had, and has, no legal justification for refusing to issue conditional
17 licenses to Plaintiff.

18 113. The DOT had, and has, improperly interfered with Plaintiff's prospective
19 contractual relationships with third parties.

20 114. The DOT has no legal justification for preventing Plaintiff's contractual
21 relationships from going forward.

22 115. As an actual and proximate result of the DOT's conduct, Plaintiff has been
23 damaged in excess of \$15,000.00.

24 116. As an actual and proximate result of the DOT's conduct, Plaintiff has found it
25 necessary to retain the legal services of Christiansen Law Offices to bring this action, and Plaintiff
26 is entitled to recover its reasonable attorneys' fees and costs therefor.

27 117. The DOT should be enjoined from further interference with Plaintiff's prospective
28 contractual relationships.

FOURTH CLAIM FOR RELIEF

(Intentional Interference With Contractual Relations)

118. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

119. There exist valid contracts between Plaintiff and third parties related to Plaintiff's operation of retail marijuana establishments in Nevada.

120. The DOT knew of Plaintiff's contracts with third parties related to the Plaintiff's operation of retail marijuana establishments in Nevada.

121. The DOT and Applicant Defendants have committed intentional acts intended to disrupt Plaintiff's contracts with third parties related to Plaintiff's operation of retail marijuana establishments in Nevada

122. The DOT's actions in its refusal to issue Plaintiff conditional licenses for its operation of retail marijuana establishments in the following jurisdictions: Clark County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe County – Reno, and Elko County caused an actual disruption of Plaintiff's contracts with third parties.

123. The Applicant Defendants' conduct complained of herein caused an actual disruption of Plaintiff's contracts with third parties, as Applicant Defendants were improperly awarded conditional licenses by the DOT.

124. As an actual and proximate result of the Defendants' conduct, Plaintiff has been damaged in excess of \$15,000.00.

125. As an actual and proximate result of the Defendants' conduct, Plaintiff has found it necessary to retain the legal services of Christiansen Law Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

126. The DOT should be enjoined from further interference with Plaintiff's contractual relationships and compelled to issue six conditional licenses to Plaintiff.

FIFTH CLAIM FOR RELIEF

(Petition for Judicial Review)

127. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

1 128. The DOT, in misinterpreting and incorrectly applying NRS 453D, NAC 453D and
2 the related Nevada laws and regulations, has exceeded its jurisdiction by issuing conditional
3 licenses to applicants that do not merit conditional licenses under NRS 453D, NAC 453D, and
4 R092-17.

5 129. Plaintiff is aggrieved by the decision of the DOT to deny Plaintiff's application
6 without proper notice, substantial evidence, or compliance with NRS 453D, NAC 453D, R092-
7 17, and other Nevada state laws or regulations.

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

11 131. Accordingly, Plaintiff petitions this Court for judicial review of the record on
12 which the DOT's denial was based, including but not limited to

- 13 a. A determination that the decision lacked substantial evidence;
14 b. A determination that the denial is void ab initio for non-compliance with NRS
15 453D, NAC 453D, R092-17 and other Nevada state laws or regulations; and
16 c. Other relief consistent with those determinations.

17 132. Plaintiff has found it necessary to retain the legal services of Christiansen Law
18 Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and
19 costs therefor.

20 **SIXTH CLAIM FOR RELIEF**
21 **(Petition for Writ of Mandamus)**

22 133. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

23 134. When a governmental body fails to perform an act "that the law requires" or acts
24 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. NRS
25 34.160.

26 135. The DOT failed to perform various acts that the law requires including but not
27 limited to:

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

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

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

a. The Board lacked substantial evidence to deny Plaintiff's applications; and

b. The Board denied Plaintiff's applications solely to approve other competing applicants without regard to the merit of Plaintiff's applications.

137. These violations of the DOT's legal duties were arbitrary and capricious actions that compel this Court to issue a Writ of Mandamus directing the DOT to approve Plaintiff's license applications and issue Plaintiff conditional licenses in Clark County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe County – Reno, and Elko County.

138. As a result of the DOT's unlawful and arbitrary and capricious actions, Plaintiff has been forced to retain the legal services of Christiansen Law Offices to bring this action, and is therefore entitled to damages, costs in this suit, and an award of attorneys' fees pursuant to NRS 34.270.

SEVENTH CLAIM FOR RELIEF
(Violation of Procedural Due Process)

139. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

140. NRS 598A offers certain prohibitions and corresponding protections meant to preserve and protect the free, open and competitive nature of our market system, and penalize anticompetitive practices to the full extent allowed by law.

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

142. Such a statutorily recognized "property interest" is within the meaning and subject to the due process protections of the Fourteenth Amendment to the Constitution of the United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and may not be denied arbitrarily, capriciously, or based upon administrative partiality or favoritism, as when

1 present as in the instances complained of herein, none of those trigger any exemptions set out in
2 NRS 598A.

3 143. While acting under color of state law, the DOT has effectively nullified and
4 rendered illusory the legislative statutory entitlement which all Plaintiffs – and all applicants –
5 have to an impartial numerically scored competitive bidding system for licensure of applicants
6 who comply with and prevail competitively in accordance with the objective and impartial
7 standards and procedures prescribed by the provisions of NRS 453D.

8 144. Pursuant to the implementation of the foregoing licensing process, the denial of
9 Plaintiff's applications, when coupled with the issuing of conditional licenses to Defendants
10 pursuant to a constitutionally invalid process has and will continue cause a diminution of
11 Plaintiff's sales and market share values as a direct result of the conduct of the DOT issuing the
12 conditional licenses to Defendants and the business operations conducted thereafter by the
13 Defendants of that unconstitutional licensing process.

14 145. The procedures employed by the DOT in denying Plaintiff's applications have
15 deprived Plaintiff of due process of law as guaranteed by the Nevada Constitution and the United
16 States Constitution.

17 146. The process in which denial was considered, noticed to the public, and passed
18 failed to provide Plaintiff any meaningful opportunity to be heard at a consequential time and was
19 fundamentally unfair and violated the due process requirements of the Nevada and United States
20 Constitutions.

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

24 148. Plaintiff is also entitled to damages attributable to the above-identified due process
25 violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

26 149. As the actions of the DOT have necessitated that Plaintiff retain the legal services
27 of Christiansen Law Offices, and incur fees and costs to bring this action, Plaintiff is also entitled
28 to an award of attorneys' fees and costs of suit.

EIGHTH CLAIM FOR RELIEF
(Violation of Substantive Due Process)

150. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

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

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

153. Plaintiff is also entitled to damages attributable to the above-identified due process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

154. As the actions of the DOT have necessitated that Plaintiff retain the legal services of Christiansen Law Offices, and incur fees and costs to bring this action, Plaintiff is also entitled to an award of attorneys' fees and costs of suit.

NINTH CLAIM FOR RELIEF
(Equal Protection Violation)

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

156. By improperly denying Plaintiff's applications for licensure under the provisions of NRS 453D.200 and NRS 453D.210, while improperly granting the applications of Defendants, under color of state law, the DOT has, without justification, disparately treated Plaintiff's applications absent rational basis, and has thereby violated Plaintiff's rights to equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

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

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

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

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

4 161. Plaintiff is also entitled to damages attributable to the above-identified due process
5 violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

6 162. As the actions of the DOT have necessitated that Plaintiff retain the legal services
7 of Christiansen Law Offices, and incur fees and costs to bring this action, Plaintiff is also entitled
8 to an award of attorneys' fees and costs of suit.

9 **V.**

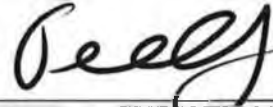
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 12 1. For declaratory relief as set forth above;
13 2. For a preliminary and permanent injunction enjoining the enforcement of the
14 denial;
15 3. For compensatory and special damages as set forth herein;
16 4. For punitive damages;
17 5. For attorneys' fees and costs of suit; and
18 6. For all other and further relief as the Court deems just and proper.

19 Dated this 11th day of February, 2020.

20 **CHRISTIENSEN LAW OFFICES**

21 

22 **PETER S. CHRISTIENSEN, ESQ.**

23 Nevada Bar No. 5254

24 **WHITNEY J. BARRETT, ESQ.**

25 Nevada Bar No. 13662

26 *Attorneys for Plaintiff Qualcan, LLC*
27
28

CHRISTIANSEN LAW OFFICES

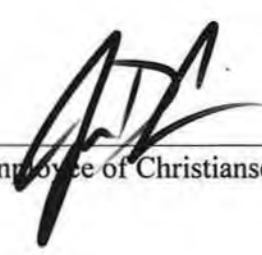
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Las Vegas, Nevada 89101

702-240-7979 • Fax 866-412-6992

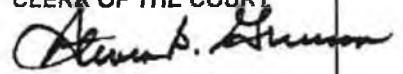
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 11th day of February, 2020 I caused the foregoing document entitled *Qualcan LLC's Second Amended Complaint* to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.



An employee of Christiansen Law Offices

EXHIBIT 2-G



1 **ACOM**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 MAHOGANY TURFLEY, ESQ.
5 Nevada Bar No. 13974
6 **PARKER, NELSON & ASSOCIATES, CHTD.**
7 2460 Professional Court, Suite 200
8 Las Vegas, Nevada 89128
9 Telephone: (702) 868-8000
10 Facsimile: (702) 868-8001
11 Email: tparker@pnalaw.net
12 Email: mturfley@pnalaw.net

13 *Attorneys for Plaintiff,*
14 *Nevada Wellness Center, LLC*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

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

18 **Case No.: A-19-787004-B**

19 **Consolidated with:**

20 A-18-785818-W
21 A-18-786357-W
22 A-19-786962-B
23 A-19-787035-C
24 A-19-787540-W
25 A-19-787726-C
26 A-19-801416-B

27 **Dept. No.: XI**

28 **Arbitration Exemption Claimed:**

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

1 **SECOND AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW**
2 **OR WRIT OF MANDAMUS**

3 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "Plaintiff"), by
4 and through its attorneys of record, THEODORE PARKER, III, ESQ. and MAHOGANY TURFLEY,
5 ESQ. of the law firm of PARKER, NELSON & ASSOCIATES, CHTD., and hereby complains against
6 Defendants, STATE OF NEVADA, DEPARTMENT OF TAXATION; JORGE PUPO; and DOES
7 I through X and ROE CORPORATIONS I through X, and petitions this Court for Writ of Mandamus
8 as follows:

9 ///

I.

PARTIES & JURISDICTION

1. Plaintiff, NEVADA WELLNESS CENTER, LLC, is a Nevada Limited Liability Company duly licensed under the laws of the State of Nevada.

2. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the "Department" or "DOT") is an agency of the State of Nevada. The Department is responsible for licensing and regulating retail marijuana businesses in Nevada through its Marijuana Enforcement Division.

3. Defendant JORGE PUPO, at all material times mentioned herein, was the Deputy Executive Director, Department of Taxation, Marijuana Enforcement Division and it was his responsibility to implement Nevada law in the award of recreational licenses as more fully described below.

4. The following Defendants all applied for recreational marijuana licenses and are being named in accordance with the Nevada Administration Procedure Act.

A. Defendants Who Received Conditional Recreational Retail Marijuana Establishment Licenses

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

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

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

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

///

1 9. Upon information and belief, Defendant Deep Roots Medical LLC is a Nevada limited
2 liability company doing business under the fictitious firm name Deep Roots Harvest.

3 10. Upon information and belief, Defendant Essence Henderson, LLC is a Nevada limited
4 liability company doing business under the fictitious firm name Essence Cannabis Dispensary. Upon
5 information and belief, Defendant Essence Tropicana, LLC is a Nevada limited liability company
6 doing business under the fictitious firm name Essence.

7 11. Upon information and belief, Defendant Eureka NewGen Farms LLC is a Nevada
8 limited liability company doing business under the fictitious firm name Eureka NewGen Farms.

9 12. Upon information and belief, Defendant Green Therapeutics LLC is a
10 Nevada limited liability company doing business under the fictitious firm name Provisions.

11 13. Upon information and belief, Defendant Greenmart of Nevada NLV, LLC is a Nevada
12 limited liability company doing business under the fictitious firm name Health for Life.

13 14. Upon information and belief, Defendant Helping Hands Wellness Center, Inc. is a
14 Nevada corporation doing business under the fictitious firm names Cannacare, Green Heaven Nursery,
15 and/or Helping Hands Wellness Center.

16 15. Upon information and belief, Defendant Lone Mountain Partners, LLC is a Nevada
17 limited liability company doing business under the fictitious firm names Zenleaf, Siena, Encore
18 Cannabis, Bentleys Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

19 16. Upon information and belief, Defendant Nevada Organic Remedies LLC is a Nevada
20 limited liability company doing business under the fictitious firm names The Source and/or The Source
21 Dispensary.

22 17. Upon information and belief, Defendant Polaris Wellness Center L.L.C. is a Nevada
23 limited liability company doing business under the fictitious firm names Polaris MMJ.

24 18. Upon information and belief, Defendant Pure Tonic Concentrates LLC is a Nevada
25 limited liability company doing business under the fictitious firm names Green Heart and/or Pure
26 Tonic.

27 19. Upon information and belief, Defendant TRNVP098 LLC is a Nevada limited liability
28 company doing business under the fictitious firm names Grassroots and/or Taproot Labs.

1 20. Upon information and belief, Defendant Wellness Connection of Nevada, LLC is a
2 Nevada limited liability company doing business under the fictitious firm name Cultivate Dispensary.

3 21. On information and belief, DOES 1-100 are each Nevada individuals and residents or
4 Nevada entities whose identities are unknown.

5 22. Upon information and belief, the Defendants/Respondents identified in Paragraphs 4-20
6 were granted conditional recreational dispensary licenses by the Department on or after December 5,
7 2018 (the "Successful Applicants").

8 **B. Defendants Who Were Denied Conditional Recreational Dispensary Licenses**

9 23. Upon information and belief, Defendant D.H. Flamingo, Inc., d/b/a The Apothecary
10 Shoppe is a Nevada corporation.

11 24. Upon information and belief, Defendant Clark Natural Medicinal Solutions LLC, d/b/a
12 NuVeda; Nye Natural Medicinal Solutions LLC d/b/a NuVeda; and Clark NMSD LLC, d/b/a NuVeda
13 are each a Nevada limited liability company.

14 25. Upon information and belief, Defendant Inyo Fine Cannabis Dispensary L.L.C., d/b/a
15 Inyo Fine Cannabis Dispensary ("Inyo") is a Nevada limited liability company.

16 26. Upon information and belief, Defendant 3AP Inc. is a Nevada corporation doing
17 business under the fictitious firm names Nature's Chemistry, Sierra Well, and/or Nevada Cannabis.

18 27. Upon information and belief, Defendant 5Seat Investments LLC is a Nevada limited
19 liability company doing business under the fictitious firm name Kanna.

20 28. Upon information and belief, Defendant Acres Dispensary LLC is a Nevada limited
21 liability company doing business under the fictitious firm name Acres Dispensary.

22 29. Upon information and belief, Defendant Acres Medical LLC is a Nevada limited
23 liability company doing business under the fictitious firm name Acres Cannabis.

24 30. Upon information and belief, Defendant Agua Street LLC is a Nevada limited liability
25 company doing business under the fictitious firm names Curaleaf and/or Agua Research & Wellness
26 Center.

27 ///

28 ///

1 31. Upon information and belief, Defendant Alternative Medicine Association, LC is a
2 Nevada limited liability company doing business under the fictitious firm name AMA MFG, AMA
3 Production, and/or AMA Cultivation.

4 32. Upon information and belief, Defendant Bioneva Innovations of Carson City LLC is
5 a Nevada limited liability company doing business under the fictitious firm name BioNeva.

6 33. Upon information and belief, Defendant/Respondent Blossum Group LLC is a Nevada
7 limited liability company doing business under the fictitious firm name Healing Herb.

8 34. Upon information and belief, Defendant/Respondent Blue Coyote Ranch LLC is a
9 Nevada limited liability company doing business under the fictitious firm name Blue Coyote Ranch.

10 35. Upon information and belief, Defendant/Respondent Carson City Agency Solutions
11 L.L.C. is a Nevada limited liability company doing business under the fictitious firm name CC Agency
12 Solutions.

13 36. Upon information and belief, Defendant CN Licenseco I, Inc. is a Nevada corporation
14 doing business under the fictitious firm names CanaNevada and/or Flower One.

15 37. Upon information and belief, Defendant Compassionate Team Of Las Vegas LLC is
16 a Nevada limited liability company;

17 38. Upon information and belief, Defendant CWNevada, LLC is a Nevada limited liability
18 company doing business under the fictitious firm name Canopi.

19 39. Upon information and belief, Defendant D Lux LLC is a Nevada limited liability
20 company doing business under the fictitious firm name D Lux.

21 40. Upon information and belief, Defendant Diversified Modalities Marketing Ltd. is a
22 Nevada limited liability company doing business under the fictitious firm names Galaxy Growers
23 and/or Diversified Modalities Marketing.

24 41. Upon information and belief, Defendant DP Holdings, Inc. is a Nevada corporation
25 doing business under the fictitious firm name Compassionate Team of Las Vegas.

26 42. Upon information and belief, Defendant EcoNevada, LLC is a Nevada limited liability
27 company doing business under the fictitious firm name Marapharm.

28 ///

1 43. Upon information and belief, Defendant ETW Management Group LLC is a Nevada
2 limited liability company doing business under the fictitious firm name Gassers.

3 44. Upon information and belief, Defendant Euphoria Wellness LLC is a Nevada limited
4 liability company doing business under the fictitious firm names Euphoria Wellness, Even Cannabis,
5 Euphoria Marijuana, and/or Summa Cannabis.

6 45. Upon information and belief, Defendant Fidelis Holdings, LLC. is a Nevada limited
7 liability company doing business under the fictitious firm name Pisos.

8 46. Upon information and belief, Defendant Forever Green, LLC is a Nevada limited
9 liability company doing business under the fictitious firm name Forever Green.

10 47. Upon information and belief, Defendant Franklin Bioscience NV LLC is a Nevada
11 limited liability company doing business under the fictitious firm names Lucky Edibles, Altus, and/or
12 Beyond Hello.

13 48. Upon information and belief, Defendant FSWFL, LLC is a Nevada limited liability
14 company doing business under the fictitious firm name Green Harvest.

15 49. Upon information and belief, Defendant GB Sciences Nevada LLC is a Nevada limited
16 liability company doing business under the fictitious firm name GB Science.

17 50. Upon information and belief, Defendant GBS Nevada Partners LLC is a Nevada limited
18 liability company doing business under the fictitious firm name ShowGrow.

19 51. Upon information and belief, Defendant GFive Cultivation LLC is a Nevada limited
20 liability company doing business under the fictitious firm names G5 and/or GFiveCultivation.

21 52. Upon information and belief, Defendant Global Harmony LLC is a Nevada limited
22 liability company doing business under the fictitious firm names as Top Notch Health Center, Top
23 Notch, The Health Center, Tetra Research, The Health Center, and/or Top Notch.

24 53. Upon information and belief, Defendant Good Chemistry Nevada, LLC is a Nevada
25 limited liability company doing business under the fictitious firm name Good Chemistry.

26 54. Upon information and belief, Defendant Gravitas Henderson L.L.C. is a Nevada limited
27 liability company doing business under the fictitious firm name Better Buds.

28 ///

1 55. Upon information and belief, Defendant Gravitas Nevada Ltd. is a Nevada limited
2 liability company doing business under the fictitious firm names The Apothecarium Las Vegas, The
3 Apothecarium Nevada, and/or the Apothecarium Henderson.

4 56. Upon information and belief, Defendant Green Leaf Farms Holdings LLC is a Nevada
5 limited liability company doing business under the fictitious firm name Players Network.

6 57. Upon information and belief, Defendant Green Life Productions LLC is a Nevada
7 limited liability company doing business under the fictitious firm name Green Life Productions.

8 58. Upon information and belief, Defendant Greenleaf Wellness, Inc. is a Nevada
9 corporation doing business under the fictitious firm name Greenleaf Wellness.

10 59. Upon information and belief, Defendant Greenpoint Nevada Inc. is a Nevada
11 corporation doing business under the fictitious firm name Chalice Farms.

12 60. Upon information and belief, Defendant Greenscape Productions LLC is a Nevada
13 limited liability company doing business under the fictitious firm name Herbal Wellness Center.

14 61. Upon information and belief, Defendant Greenway Health Community L.L.C. is a
15 Nevada limited liability company doing business under the fictitious firm name Greenway Health
16 Community LLC.

17 62. Upon information and belief, Defendant Greenway Medical LLC is a Nevada limited
18 liability company doing business under the fictitious firm names GWM and/or Greenway Las Vegas.

19 63. Upon information and belief, Defendant GTI Nevada, LLC is a Nevada limited liability
20 company doing business under the fictitious firm name Rise.

21 64. Upon information and belief, Defendant H&K Growers Corp. is a Nevada corporation
22 doing business under the fictitious firm name H&K Growers.

23 65. Upon information and belief, Defendant Harvest of Nevada LLC is a Nevada limited
24 liability company doing business under the fictitious firm name Harvest.

25 66. Upon information and belief, Defendant Healthcare Options for Patients Enterprises,
26 LLC is a Nevada limited liability company doing business under the fictitious firm names Shango
27 and/or Hope.

28 ///

1 67. Upon information and belief, Defendant Helios NV LLC is a Nevada limited liability
2 company doing business under the fictitious firm names Hydrovize, Helios NV and/or Helios Nevada.
3 68. Upon information and belief, Defendant Herbal Choice Inc. is a Nevada corporation
4 doing business under the fictitious firm name Herbal Choice.
5 69. Upon information and belief, Defendant is a High Sierra Cultivation LLC is a Nevada
6 limited liability company doing business under the fictitious firm name High Sierra.
7 70. Upon information and belief, Defendant High Sierra Holistics, LLC is a Nevada limited
8 liability company doing business under the fictitious firm names HSH, and/or High Sierra Holistics.
9 71. Upon information and belief, Defendant International Service and Rebuilding, Inc. is
10 a Nevada corporation doing business under the fictitious firm name VooDoo.
11 72. Upon information and belief, Defendant Just Quality, LLC is a Nevada limited liability
12 company doing business under the fictitious firm name Panacea Cannabis.
13 73. Upon information and belief, Defendant Kindibles LLC is a Nevada limited liability
14 company doing business under the fictitious firm name Area 51.
15 74. Upon information and belief, Defendant Las Vegas Wellness and Compassion LLC is
16 a Nevada limited liability company doing business under the fictitious firm name Pegasus Nevada.
17 75. Upon information and belief, Defendant Libra Wellness Center, LLC is a Nevada
18 limited liability company doing business under the fictitious firm name Libra Wellness.
19 76. Upon information and belief, Defendant Livfree Wellness LLC is a Nevada limited
20 liability company doing business under the fictitious firm name The Dispensary.
21 77. Upon information and belief, Defendant LNP, LLC is a Nevada limited liability
22 company doing business under the fictitious firm names LPN and/or Lynch Natural Products, LLC.
23 78. Upon information and belief, Defendant Luff Enterprises NV, Inc. is a Nevada
24 corporation doing business under the fictitious firm name Sweet Cannabis.
25 79. Upon information and belief, Defendant LVMC C&P, LLC is a Nevada limited liability
26 company doing business under the fictitious firm name CannaCopia.
27 80. Upon information and belief, Defendant Malana LV L.L.C. is a Nevada limited liability
28 company doing business under the fictitious firm name Malana LV.

1 81. Upon information and belief, Defendant Matrix NV, LLC is a Nevada limited liability
2 company doing business under the fictitious firm name Matrix NV.

3 82. Upon information and belief, Defendant Medifarm IV, LLC is a Nevada limited liability
4 company doing business under the fictitious firm name Blum Reno.

5 83. Upon information and belief, Defendant Miller Farms LLC is a Nevada limited liability
6 company doing business under the fictitious firm name Lucid.

7 84. Upon information and belief, Defendant MM Development Company, Inc. is a Nevada
8 corporation doing business under the fictitious firm names Planet 13 and/or Medizin.

9 85. Upon information and belief, Defendant MM R&D LLC is a Nevada limited liability
10 company doing business under the fictitious firm names Sunshine Cannabis and/or the Green Cross
11 Farmacy.

12 86. Upon information and belief, Defendant MMNV2 Holdings I, LLC is a Nevada limited
13 liability company doing business under the fictitious firm name Medmen.

14 87. Upon information and belief, Defendant MMOF Las Vegas Retail, Inc. is a Nevada
15 corporation doing business under the fictitious firm names Panacea, MedMen, MedMen Las Vegas,
16 Medmen the Airport, and/or MedMen Paradise.

17 88. Upon information and belief, Defendant Natural Medicine L.L.C. is a Nevada limited
18 liability company doing business under the fictitious firm name Natural Medicine No. 1.

19 89. Upon information and belief, Defendant NCMM, LLC is a Nevada limited liability
20 company doing business under the fictitious firm name NCMM.

21 90. Upon information and belief, Defendant Nevada Botanical Science, Inc. is a Nevada
22 corporation doing business under the fictitious firm name Vigor Dispensaries.

23 91. Upon information and belief, Defendant Nevada Group Wellness LLC is a Nevada
24 limited liability company doing business under the fictitious firm names Prime and/or NGW.

25 92. Upon information and belief, Defendant Nevada Holistic Medicine LLC is a Nevada
26 limited liability company doing business under the fictitious firm names MMJ America and/or Nevada
27 Holistic Medicine.

28 ///

1 93. Upon information and belief, Defendant Nevada Medical Group LLC is a Nevada
2 limited liability company doing business under the fictitious firm names The Clubhouse Dispensary,
3 Bam-Body, and/or Mind and King Cannabis.

4 94. Upon information and belief, Defendant NevadaPure, LLC is a Nevada limited liability
5 company doing business under the fictitious firm names Shango Las Vegas and/or Shango.

6 95. Defendant Nevcan, LLC is a Nevada limited liability company doing business under
7 the fictitious firm name Nev Cann.

8 96. Defendant NLV Wellness LLC is a Nevada limited liability company doing business
9 under the fictitious firm name ETHCX.

10 97. Defendant NLVG, LLC is a Nevada limited liability company doing business under the
11 fictitious firm name Desert Bloom Wellness Center.

12 98. Defendant Nuleaf Incline Dispensary LLC is a Nevada limited liability company doing
13 business under the fictitious firm name Nuleaf.

14 99. Defendant NV 3480 Partners LLC is a Nevada limited liability company doing business
15 under the fictitious firm name Evergreen Organix.

16 100. Defendant NV Green Inc. is a Nevada corporation doing business under the fictitious
17 firm name NV Green.

18 101. Defendant Nye Farm Tech Ltd. is a Nevada limited liability company doing business
19 under the fictitious firm name URBN Leaf.

20 102. Defendant Paradise Wellness Center LLC is a Nevada limited liability company doing
21 business under the fictitious firm name Las Vegas Releaf.

22 103. Defendant Phenofarm NV LLC is a Nevada limited liability company doing business
23 under the fictitious firm name Marapharm Las Vegas.

24 104. Defendant Physis One LLC is a Nevada limited liability company doing business under
25 the fictitious firm names Physis One and/or LV Fortress.

26 105. Defendant Qualcan, L.L.C. is a Nevada limited liability company doing business under
27 the fictitious firm name Qualcan.

28 ///

1 106. Defendant Red Earth, LLC is a Nevada limited liability company doing business under
2 the fictitious firm name Red Earth

3 107. Defendant Releaf Cultivation, LLC is a Nevada limited liability company doing
4 business under the fictitious firm name Releaf Cultivation.

5 108. Defendant RG Highland Enterprises Inc. is a Nevada corporation doing business under
6 the fictitious firm name Tweedleaf.

7 109. Defendant Rombough Real Estate Inc. is a Nevada corporation doing business under
8 the fictitious firm name Mother Herb.

9 110. Defendant Rural Remedies LLC is a Nevada limited liability company doing business
10 under the fictitious firm name Doc's Apothecary.

11 111. Defendant Serenity Wellness Center LLC is a Nevada limited liability company doing
12 business under the fictitious firm names Oasis Cannabis and/or Oasis Cannabis Dispensary.

13 112. Defendant Silver Sage Wellness LLC is a Nevada limited liability company.

14 113. Defendant Solace Enterprises, LLP is a Nevada limited liability limited partnership
15 doing business under the fictitious firm names Thallo, Aether Gardens, @Hith LP and/or Aether
16 Extracts.

17 114. Defendant Southern Nevada Growers, LLC is a Nevada limited liability company doing
18 business under the fictitious firm name Bowtie Cannabis.

19 115. Defendant Strive Wellness of Nevada, LLC is a Nevada limited liability company doing
20 business under the fictitious firm name Strive.

21 116. Defendant Sweet Goldy LLC is a Nevada limited liability company.

22 117. Defendant TGIG, LLC is a Nevada limited liability company doing business under the
23 fictitious firm names The Grove, The Grove Wellness Center, Vert Infusibles and/or Vert Edibles.

24 118. Defendant THC Nevada LLC is a Nevada limited liability company doing business
25 under the fictitious firm names Canna Vibe, FloraVega, and/or Welleaf.

26 119. Defendant The Harvest Foundation LLC is a Nevada limited liability company doing
27 business under the fictitious firm name Harvest Foundation.

28 ///

1 120. Defendant Thompson Farm One L.L.C. is a Nevada limited liability company doing
2 business under the fictitious firm names Green Zon, Gold Leaf, and/or Thompson Farm.

3 121. Defendant Tryke Companies Reno, LLC is a Nevada limited liability company doing
4 business under the fictitious firm name Reef.

5 122. Defendant Tryke Companies SONV, LLC is a Nevada limited liability company doing
6 business under the fictitious firm name Reef Dispensaries.

7 123. Defendant Twelve Twelve LLC is a Nevada limited liability company doing business
8 under the fictitious firm names 12/12 Dispensary and/or Twelve Twelve.

9 124. Defendant Vegas Valley Growers LLC is a Nevada limited liability company doing
10 business under the fictitious firm name Kiff Premium Cannabis.

11 125. Defendant WaveSeer of Nevada, LLC is a Nevada limited liability company doing
12 business under the fictitious firm name Jenny's Dispensary.

13 126. Defendant Wellness & Caregivers of Nevada NLV, LLC is a Nevada limited liability
14 company doing business under the fictitious firm names MMD Las Vegas and/or Las Vegas Cannabis.

15 127. Defendant Wendovera LLC is a Nevada limited liability company doing business under
16 the fictitious firm name Wendovera.

17 128. Defendant West Coast Development Nevada, LLC is a Nevada limited liability
18 company doing business under the fictitious firm name Sweet Goldy.

19 129. Defendant WSCC, Inc. is a Nevada corporation doing business under the fictitious firm
20 name Sierra Well.

21 130. Defendant YMY Ventures, LLC is a Nevada limited liability company doing business
22 under the fictitious firm names Stem and/or Cannavore.

23 131. Defendant Zion Gardens LLC is a Nevada limited liability company doing business
24 under the fictitious firm name Zion Garden.

25 132. On information and belief, ROES 1-100 are each Nevada individuals and residents or
26 Nevada entities whose identities are unknown.

27 133. On information and belief, the Defendants/Respondents identified in Paragraphs 22-
28 132 are natural persons or entities who are qualified holders of Medical Marijuana Establishment

1 ("MME") Certificates, who submitted an application to operate a recreational retail marijuana
2 establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September
3 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the "Denied
4 Applicants").

134. The true names and capacities, whether individual, corporate, association or otherwise of the Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated herein as DOES and/or ROE CORPORATIONS is responsible in some manner for the events and happenings herein referred to, and in some manner caused the injuries and damages to Plaintiff alleged herein. Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and capacities of said Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive when the same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such Defendants in this action.

II.

JURISDICTION AND VENUE

17 135. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,
18 Section 6, NEA 4.370(2), NRS 30, and because the acts and omissions complained of herein occurred
19 and caused harm throughout the State of Nevada, specifically in Clark County, Nevada. Further, the
20 amount in controversy exceeds \$15,000.00.

21 136. Venue is proper pursuant to NRS 13.020.

III.

GENERAL ALLEGATIONS

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

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

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

9 140. The application period for licenses opened on September 7, 2018 and closed on
10 September 20, 2018.

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

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

1 marijuana establishment or marijuana establishment in this State.

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

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

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

12 145. At that time, Plaintiff received a score of 198.62 and was ranked as the highest
13 applicant for a medical marijuana dispensary in Las Vegas, Nevada and received a score of 193.62 and
14 was ranked seventh highest applicant for a medical marijuana dispensary in the City of Henderson,
15 Nevada.

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

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

21 148. Plaintiff submitted applications for recreational marijuana retail store licenses to own
22 and operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark
23 County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno, Nevada.

24 149. On or about December 5, 2018, despite its prior exceptional rankings, Plaintiff was
25 informed by the Department that all of its applications to operate recreational marijuana retail stores
26 were denied.

27 150. Plaintiff is informed and believes that the Department improperly granted "conditional"
28 licenses to applicants that were ranked substantially lower than Plaintiff on the 2015 rankings.

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

4 152. Plaintiff timely filed an Appeal and Petition for Reconsideration with the State of
5 Nevada Department of Taxation on January 4, 2019.

6 153. Plaintiff is scheduled to meet with the Department of Taxation on January 17, 2019.

7 154. On January 10, 2019 the State of Nevada Department of Taxation notified Plaintiff that
8 there is no allowance for an appeal and that it would take no further action based on Plaintiff's Notice
9 of Appeal. See Exhibit 1.

10 155. Plaintiff not being satisfied with the results of its Appeal and Petition for
11 Reconsideration, has exhausted its administrative remedies.

12 156. Plaintiff therefore files the present Complaint in order to pursue its legal rights and
13 remedies.

14 **A. The Marijuana Legislation and Regulations**

15 157. NRS Chapter 453D and NAC 453D are the statutory guidelines for legalized
16 recreational marijuana in the State of Nevada. These statutes are incorporated herein by reference.

17 158. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to amend
18 Nevada's Constitution or enact legislation through the initiative process and precludes amendment or
19 modification of a voter-initiated law for three years.

20 159. In 2016, the initiative for the legalization of recreational marijuana was presented to
21 Nevada voters by way of Ballot Question 2 ("BQ2"), known as the "Regulation and Taxation of
22 Marijuana Act", which proposed an amendment of the Nevada Revised Statutes as follows:

23 Shall the Nevada Revised Statutes be amended to allow a person, 21
24 years old or older, to purchase, cultivate, possess, or consume a certain
25 amount of marijuana or concentrated marijuana, as well as
26 manufacture, possess, use, transport, purchase, distribute, or sell
27 marijuana paraphernalia; impose a 15 percent excise tax on wholesale
sales of marijuana; require the regulation and licensing of marijuana
cultivators, testing facilities, distributors, suppliers, and retailers; and
provide for certain criminal penalties.

28 160. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.

161. NRS 453D.020 (findings and declarations) provides:

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

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

3. 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.

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

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

- (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;
- (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
- (c) Requirements for the security of marijuana establishments;
- (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

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

3 (f) Requirements for the testing and labeling of marijuana and
4 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;

5 (g) Requirements for record keeping by marijuana
6 establishments;

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

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

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

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

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

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

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

19 163. NRS 453D.200(6) *mandates* the DOT to "conduct a background check of each
20 prospective owner, officer, and board member of a marijuana establishment license applicant."

21 164. NRS 453D.205 provides as follows:

22 1. When conducting a background check pursuant to subsection 6 of
23 NRS 453D.200, the Department may require each prospective owner,
officer and board member of a marijuana establishment license
24 applicant to submit a complete set of fingerprints and written
permission authorizing the Department to forward the fingerprints to
25 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
27 paragraph (c) of subsection 1 of NRS 453D.300, a marijuana
establishment may require the person to submit to the Department a
complete set of fingerprints and written permission authorizing the
28 Department to forward the fingerprints to the Central Repository for

1 Nevada Records of Criminal History for submission to the Federal
2 Bureau of Investigation for its report.

3 165. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;
4 conditions for approval of application; limitations on issuance of licenses to retail marijuana stores;
5 competing applications), provides in pertinent part:

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

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

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

10 (a) The prospective marijuana establishment has submitted an
11 application in compliance with regulations adopted by the
12 Department and the application fee required pursuant to NRS
13 453D.230;

14 (b) The physical address where the proposed marijuana
15 establishment will operate is owned by the applicant or the
16 applicant has the written permission of the property owner to
17 operate the proposed marijuana establishment on that property;

18 (c) The property is not located within:

19 (1) One thousand feet of a public or private school that
20 provides formal education traditionally associated with
21 preschool or kindergarten through grade 12 and that
22 existed on the date on which the application for the
23 proposed marijuana establishment was submitted to the
24 Department;

25 (2) Three hundred feet of a community facility that
26 existed on the date on which the application for the
27 proposed marijuana establishment was submitted to the
28 Department; or

(3) If the proposed marijuana establishment will be
located in a county whose population is 100,000 or
more, 1,500 feet of an establishment that holds a
nonrestricted gaming license described in subsection 1
or 2 of NRS 463.0177 and that existed on the date on
which the application for the proposed marijuana
establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail
marijuana store and there are not more than:

(1) Eighty licenses already issued in a county with a
population greater than 700,000;

(2) Twenty licenses already issued in a county with a
population that is less than 700,000 but more than
100,000;

(3) Four licenses already issued in a county with a
population that is less than 100,000 but more than
55,000;

(4) Two licenses already issued in a county with a
population that is less than 55,000;

(5) Upon request of a county government, the

1 Department may issue retail marijuana store licenses in
2 that county in addition to the number otherwise allowed
pursuant to this paragraph;

3 (e) The locality in which the proposed marijuana establishment
4 will be located does not affirm to the Department that the
proposed marijuana establishment will be in violation of zoning
or land use rules adopted by the locality; and

5 (f) The persons who are proposed to be owners, officers, or
board members of the proposed marijuana establishment:

6 (1) Have not been convicted of an excluded felony
offense; and

7 (2) Have not served as an owner, officer, or board
8 member for a medical marijuana establishment or a
marijuana establishment that has had its registration
certificate or license revoked.

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

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

15 167. The Task Force recommended that "the qualifications for licensure of a marijuana
16 establishment and the impartial numerically scored bidding process for retail marijuana stores be
17 maintained as in the medical marijuana program except for a change in how local jurisdictions
18 participate in selection of locations."

19 168. During the 2017 legislative session, Assembly Bill 422 transferred responsibility for
20 the registration, licensing and regulation of marijuana establishments to the DOT.

21 169. On February 27, 2018, the DOT adopted regulations governing the issuance,
22 suspension, or revocation of retail recreational marijuana licenses, which were codified in NAC 453D
23 (the "Regulations").

24 170. The Regulations for licensing were to be "directly and demonstrably related to the
25 operation of a marijuana establishment." NRS 453D.200(1)(b).

26 171. NRS 453D.200(1) provides, in part, "[t]he regulations must not prohibit the operation
27 of marijuana establishments, either expressly or through regulations that make their operation
28 unreasonably impracticable."

1 172. The limitation of "unreasonably impracticable" in NRS 453D.200(1) applies to the
2 Regulations adopted by the DOT, not the mandatory language of BQ2.

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

8 **B. The Licenses Applications**

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

12 175. The DOT posted the license application on its website and released the application for
13 recreational marijuana establishment licenses on July 6, 2018, which required disclosure of an actual
14 physical address for each establishment.

15 176. The DOT published a revised license application on July 30, 2018 eliminating the
16 physical address requirement, which was not publicly available and was only disseminated to some
17 but not all of the applicants via a DOT listserv.

18 177. The application period for retail recreational marijuana licenses ran from September
19 7, 2018 through September 20, 2018.

20 178. As of September 20, 2018, the DOT received a total of 462 applications.

21 179. When competing applications for licenses were submitted, the DOT was required to
22 use "an impartial and numerically scored competitive bidding process" to determine successful license
23 applicants. NRS 453D.210(6).

24 180. Under NAC 453D.272(1), when the DOT received more than one "*complete*"
25 application *in compliance with the Regulations and NRS 453D*, the DOT was required to "rank the
26 applications... in order from first to last based on the compliance with the provisions of [NAC 453D]
27 and [NRS 453D] and on the content of the applications relating to..." several enumerated factors.

28 ///

1 181. The factors set forth in NAC 453D.272(1) used to rank competing applications
2 (collectively, the "Factors") are:

3 a. Whether the owners, officers or board members have
4 experience operating another kind of business that has given them
5 experience which is applicable to the operation of a marijuana
6 establishment;

7 b. The diversity of the owners, officers or board members of the
8 proposed marijuana establishment;

9 c. The educational achievements of the owners, officers or
10 board members of the proposed marijuana establishment;

11 d. The financial plan and resources of the applicant, both liquid
12 and illiquid;

13 e. Whether the applicant has an adequate integrated plan for the
14 care, quality and safekeeping of marijuana from seed to sale;

15 f. The amount of taxes paid and other beneficial financial
16 contributions, including, without limitation, civic or philanthropic
17 involvement with this State or its political subdivisions, by the
18 applicant or the owners, officers or board members of the proposed
19 marijuana establishment;

20 g. Whether the owners, officers or board members of the
21 proposed marijuana establishment have direct experience with the
22 operation of a medical marijuana establishment or marijuana
23 establishment in this State and have demonstrated a record of operating
24 such an establishment in compliance with the laws and regulations of
25 this State for an adequate period of time to demonstrate success;

26 h. The experience of key personnel that the applicant intends to
27 employ in operating the type of marijuana establishment for which the
28 applicant seeks a license; and

 i. Any other criteria that the Department determines to be
relevant.

22 182. NAC 453D.255, enacted by Defendant DOT in contravention of NRS Chapter 453D
23 and implemented by Defendant PUPO and his subordinates, provides as follows:

24 1. Except as otherwise required in subsection 2, the requirements of this
25 chapter concerning owners of marijuana establishments only apply to
26 a person with an aggregate ownership interest of 5 percent or more in
27 a marijuana establishment.

28 2. If, in the judgment of the Department, the public interest will be
served by requiring any owner with an ownership interest of less than
5 percent in a marijuana establishment to comply with any provisions
of this chapter concerning owners of marijuana establishments, the

1 Department will notify that owner and he or she must comply with
2 those provisions.

3 183. Defendant DOT also enacted NAC 453D.258, NAC 453D.260, NAC 453D.265, NAC
4 453D.268 and NAC 453D.272. These administrated codes enforced by Defendant PUPO and his
5 subordinates established the procedures for recreational application process, ees to be charged for
6 applying, fees to be charged for applying if the applicant holds a medical marijuana establishment
7 registration certificate, and the ranking of applications if the Defendant D.O.T. received more than one
8 application for a retail marijuana license.

9 184. The application published by the DOT described how applications were to be scored,
10 dividing scoring criteria into identified criteria and non-identified criteria.

11 185. The application provided that "*[applications that have not demonstrated a sufficient*
12 *response related to the criteria set forth above will not have additional [unspecified, unpublished]*
13 *criteria considered in determining whether to issue a license and will not move forward win the*
14 *application process.*" (emphasis added).

15 186. NAC 453D.272(1) required the DOT to determine that an application is "complete and
16 in compliance" with the provisions of NAC 453D in order to properly apply the licensing criteria set
17 forth therein and the provisions of BQ2 and NRS 453D.

18 187. No later than December 5, 2018, the DOT was responsible for issuing conditional
19 licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one
20 of the allocated licenses in accordance with the impartial bidding process mandated by NRS 453D.210.

21 188. The DOT identified, hired, and trained eight individuals as temporary employees to
22 grade the applications in accordance with the provisions of BQ2 and NRS 453D.

23 189. The DOT allocated throughout the state of Nevada.

24 190. Plaintiff submitted applications to the DOT for a conditional licenses to own and
25 operate recreational marijuana retail stores in compliance with the specified, published requirements
26 of DOT regulations together with the required application fee in accordance with NRS 453D.210.

27 191. Plaintiff's applications identified each prospective owner, officer, and board member
28 for background check pursuant to NRS 453D.200(6).

1 192. Plaintiff secured and identified in its application addresses for each and every proposed
2 recreational marijuana establishment it intended to operate.

3 193. Plaintiff was informed by letter from the DOT that its applications to operate
4 recreational marijuana retail stores was denied "because it did not achieve a score high enough to
5 receive an available license."

6 194. On May 24, 2019, the Honorable Elizabeth Gonzales conducted an evidentiary hearing
7 concerning a motion for preliminary injunction sought by a group of unsuccessful applicants for retail
8 marijuana licenses in Nevada against Defendant D.O.T. The hearing concluded on August 16, 2019.
9 Thereafter, Judge Gonzales issued her findings of fact, conclusions of law granting preliminary
10 injunction. See Findings of Fact and Conclusions of Law Granting Preliminary Injunction, filed
11 August 23, 2019, Clark County District Court Case No. A-19-786962-B. Among her findings, Judge
12 Gonzales found that the DOT undertook no effort to determine if the applications were in fact
13 "complete and in compliance." Id., par. 37.

14 195. Judge Gonzales also found that the DOT departed from the mandatory language of NRS
15 453D.200(6) requiring "a background check of each prospective owner, officer, and board member
16 of a marijuana establishment license applicant" and made no attempt in the application process to
17 verify that the applicant's complied with the mandatory language of the BQ2 or even the impermissibly
18 modified language." Id., par. 41.

19 196. The DOT improperly issued conditional licenses to applicants who did not disclose in
20 their application an actual physical address for proposed retail recreational marijuana establishment.

21 197. Upon information and belief, the DOT's denial of Plaintiff's licenses applications was
22 not properly based upon actual implementation of the impartial and objective bidding process
23 mandated by NRS 453D.210, but was based upon arbitrary and capricious exercise of administrative
24 partiality and favoritism that was the policy and routine of the DOT as promulgated by Defendant
25 PUPPO and others in the DOT hierarchy.

26 198. Upon information and belief, the temporary employees hired by the DOT were
27 inadequately and improperly trained regarding the scoring process, leading to an arbitrary scoring
28 process in contravention of Nevada law.

1 199. Upon information and belief, the DOT undertook no effort to determine whether
2 applications were in fact "complete and in compliance."

3 200. By revising the application on July 30, 2018 and selectively eliminating the requirement
4 to disclose an actual physical address for each proposed retail recreational marijuana establishment,
5 the DOT limited the ability of the temporary employees to adequately assess graded criteria such as
6 (i) prohibited proximity to schools and certain other public facilities, (ii) impact on the community,
7 (iii) security, (iv) building plans and (v) other material considerations prescribed by the regulations.

8 201. The DOT's scoring process was impacted by its selective elimination of the requirement
9 to disclose an actual physical address for each proposed retail recreational marijuana establishment,
10 resulting in incomplete applications being considered and awarding of conditional licenses.

11 202. Upon information and belief, the DOT selectively discussed with applicants or their
12 agents the modification of the application related to physical address information.

13 203. Upon information and belief, the DOT undertook no effort to verify owners, officers
14 or board members in evaluating whether an application was "complete and in compliance."

15 204. Upon information and belief, if an applicant's disclosure in its application of its owners,
16 officers, and board members did not match the DOT's records, the DOT permitted the grading, and in
17 some cases, awarded a conditional license.

18 205. Upon information and belief, the DOT departed from the mandatory requirements of
19 NRS 453D.200(6), which provides that "[t]he DOT shall conduct a background check of each
20 prospective owner, officer, and board member of a marijuana establishment license application," by
21 adopting NAC 453D.255(1), which only required information on the application from persons "with
22 an aggregate ownership interest of 5 percent or more in a marijuana establishment."

23 206. The DOT's determination that only owners of a 5% or greater interest in the business
24 were required to submit information on the application was an impermissible regulatory modification
25 of BQ2 and violated Article 19, Section 3 of the Nevada Constitution.

26 207. The adoption of NAC 453D.255(1) as it applied to the marijuana establishment license
27 application process was an unconstitutional modification of BQ2.

28 ///

1 208. The failure of the DOT to carry out the mandatory provisions of NRS 53D.200(6),
2 which required the DOT to conduct a background check of each prospective owner, officer, and board
3 member of a marijuana establishment license applicant, is fatal to the application process and impedes
4 an important public safety goal in BQ2.

5 209. By adopting regulations in violation of BQ2's mandatory application requirements, the
6 DOT violated Article 19, Section 2(3) of the Nevada Constitution.

7 210. The DOT disregarded the voters' mandate in BQ2 when it decided the requirement that
8 each prospective owner be subject to a background check was too difficult for implementation by
9 industry. This decision was a violation of the Nevada Constitution, arbitrary and capricious.

10 211. The DOT did not comply with BQ2 by requiring applicants to provide information for
11 each prospective owner, officer and board member or verify ownership of applicants who applying for
12 retail recreational marijuana licenses.

13 212. The DOT's inclusion of the diversity category in the factors was implemented in a way
14 that created a process which was subject to manipulation by applicants.

15 213. The DOT's scoring process was impacted by personal relationships in decisions related
16 to the requirements of the application and the ownership structures of competing applicants.

17 214. Due to the DOT's violations of BQ2, Plaintiff was unconstitutionally denied
18 recreational marijuana licenses.

19 215. The DOT's constitutional violations and refusal to issue conditional licenses to Plaintiff
20 resulted in irreparable harm to Plaintiff.

21 **C. Jorge Pupo's Conduct Precludes Qualified Immunity**

22 1. **Jorge Pupo Knew the Requirements of Ballot Question 2, NRS 453D and NAC**
23 **453D.**

24 216. Jorge Pupo testified that he knew that the Nevada Constitution mandates that
25 statutory measures enacted by the citizens of the State of Nevada, cannot be amended by the
legislature for a period of three (3) years.

26 217. Jorge Pupo testified as follows:

27 Q And you're aware that the Nevada Constitution mandates that if a statutory
28 measure is enacted by the people, that statutory measure can't be amended by
the legislature for a period of three years; is that right?

1 A Yes.

2 Q And you're aware that it can't be amended by anyone else for a period
3 of three years, correct?

A Yes.

4 Q Was that a yes?

5 A Yes. June 19, 2019, Vol I-P19:L9-18

6 218. Jorge Pupo testified that the regulations adopted by the DOT required the evaluation
7 of the applicant's compliance history in operating marijuana establishments.

8 219. Jorge Pupo testified that NRS 453D.210(4)(f)(2) required compliance records to be
9 part of the application and evaluation process.

10 220. Jorge Pupo testified that the regulations require a proposed physical address on the
11 application.

12 221. Jorge Pupo testified that he knew that pursuant to Ballot Question Number 2 that the
13 location of marijuana establishments was an important factor.

14 222. Jorge Pupo testified that despite location being important to the state of Nevada and
15 mandated by the initiative it was removed from the scoring in the 2018 application process.

16 **2. Jorge Pupo's Role and Responsibilities as Deputy Director of Department of**
17 **Taxation Marijuana Enforcement Division**

18 223. Jorge Pupo testified that his duties and responsibilities as the Deputy Director of the
19 Department of Taxation Marijuana Enforcement Division were as follows:

- 20 1. Oversight of the Marijuana Enforcement Division program as a whole, the
21 medical and recreational side;
- 22 2. Administration of the Marijuana Enforcement Division;
- 23 3. Administration of the recreational marijuana application process;
- 24 4. Final review and approval of the 2018 recreational marijuana application;
- 25 5. Determination of the criteria used to evaluate the 2018 recreational marijuana
26 licensure process; and
- 27 6. Ensuring conditional recreational marijuana licenses were not awarded to
28 licensees with poor compliance records.

1 224. Jorge Pupo testified as follows:

2 Q And can you describe your duties and responsibilities as the Deputy
3 Director of the Marijuana Division?

4 A So I have, basically, oversight of the program as a whole, the medical
5 and recreational side. I also have other duties regarding other excise
6 taxes, cigarettes, other tobacco products, live entertainment tax, other
7 excise taxes. But generally, oversight of the Marijuana Enforcement
8 Division is my primary responsibility. P9:L2-9

6 Q And you're the person that's ultimately responsible for the enforcement
7 and the administration of the Marijuana Enforcement Division; is that
8 correct?

8 A Yes. P12:L18-21

9 225. Jorge Pupo testified that he knew his role at the DOT was to follow the initiative in
10 terms of creating regulations and the 2018 recreational marijuana application.

11 226. Notwithstanding his administrative responsibility relative to the marijuana application
12 process, Mr. Pupo allowed for 4 of the 6 graders of the recreational marijuana application to be
13 unqualified based upon the minimum educational requirements.

14 **3. Jorge Pupo Knew What the Ballot Question 2, NRS 453D and NAC 453D**
15 **Required to be in the Recreational Marijuana Application.**

16 227. Jorge Pupo testified the 2018 recreational marijuana license application required a
17 proposed physical address.

18 228. Jorge Pupo testified that applications without a physical location were incomplete.

19 229. Jorge Pupo testified that part of the criteria evaluated in the 2018 recreational marijuana
20 license process should have included a history of compliance with regulations.

21 230. Jorge Pupo testified as follows:

22 Q Yeah. That provision that explains to you how you're going to rank the
23 applications. It says, You'll rank the applications from first to last based
24 on compliance with the provisions of this chapter --

24 A Yes. P102:L17-21

25 231. While Jorge Pupo testified he doesn't know who removed compliance records from the
26 application and evaluation process, an email has been produced documenting Mr. Pupo's instruction
27 to employees of the Department of Taxation to remove violations committed by certain applicants
28 from the investigation logs of the Department of Taxation.

1 232. Jorge Pupo testified that applications that did not identify all the owners were
2 incomplete.

3 233. Jorge Pupo testified that as of September 9, 2018 the DOT could not provide guidance
4 to individual applicants beyond what was included in the instructions.

5 **IV. Jorge Pupo's Conduct Despite is Knowledge of the Requirements of Ballot**
6 **Question 2, NRS 453D and NAC 453D.**

7 234. Despite knowing that Ballot Question 2, NRS 453D and NAC453D placed significant
8 importance on physical location for proposed recreational marijuana establishments, Jorge Pupo
9 testified that location was not a part of the scoring criterion in the 2018 recreational marijuana
10 licensure process.

11 235. A grader selected by the DOT testified under oath that applicants, who followed the
12 application by providing physical addresses, were deducted two points for each physical address
13 identified.

14 236. Jorge Pupo was aware of the anti-monopoly provisions of NRS 453D.272 as well as
15 the application which states in bold text: "No Applicant may be awarded more than one (1) license in
16 a jurisdiction/locality unless there are less applicants than licenses allowed in the jurisdiction."
17 Despite having this knowledge Jorge Pupo awarded more than one conditional license to the same
18 owners in the same jurisdiction.

19 237. Despite Jorge Pupo knowing that it would be unfair to allow certain applicants to get
20 information from the DOT while others were denied answers, he spoke with and met with certain
21 applicants and their representatives providing inside information.

22 238. Jorge Pupo testified that if certain applicants are provided with information while
23 others are not, that potentially those who received the information or answers to their questions would
24 have an advantage over those who were not answered.

25 239. Jorge Pupo knew Ballot Question 2 and NRS 435D required prospective owners,
26 officers, and board members of a marijuana establishment license applicant to be background checked.
27 In violation of Ballot Question 2, and NRS 453D, Jorge Pupo granted conditional licenses to
28 applicants that did not identify all prospective owners, officers, and board members and as a

1 consequence not background checked.

2 **V. Jorge Pupo's, in Clear Dereliction of his Position, gave Applicants and Their**
3 **Consultants a Material Advantage by Providing Inside Information not**
4 **Available to Other Applicants**

5 240. Amanda Connor, according to testimony of several witnesses including Mr. Pupo,
6 represented several applicants in the 2018 Recreational Marijuana Application Process. Jorge Pupo
7 testified that Amanda Connor contacted him several times on his personal cellular telephone and asked
8 questions about the application. He provided her with responses to her questions. Some of these
9 questions were regarding whether physical addresses were required on the applications and whether
10 physical location would be evaluated as part of the scoring criteria.

11 241. Jorge Pupo testified as follows:

12 June 20, 2019 Vol I

13 Q Okay. So Amanda Connor was able to call your personal cell phone and
14 ask questions about the application. Did you give her responses to those
15 questions?

16 A She really only kept bugging me and annoying me about one question.

17 Q Okay. What question was that?

18 A Physical location. Physical address.

19 Q What was the question that Amanda Connor asked you with respect to
20 physical address?

21 A It was something to the effect of is physical address required or do they
22 need a physical address if it's not scored. P55L11-21

23 Q -- she nevertheless still had a question about how physical --
24 post-physical location was going to be evaluated as part of my scoring
25 criteria, correct?

26 A Right. I mean, she -- she said she just want to confirm, because her
27 clients were asking.

28 Q Okay. And she sent you an email, I think you were starting to --

 A I believe I received an email.

 Q Okay. When was that?

 A Oh, I don't know.

 Q Prior to the application being released is what you told us yesterday, I
25 believe; is that correct?

26 A Prior to the application? Yeah, I believe so.

27 Q First and you said she pestered you. What was the next communication
28 that you had with her?

 A Oh, I don't know.

1 Q She asked that question via email and what did you tell her?
2 A That location wasn't scored. That, you know, they've basically -- they
3 just put -- they need to put an address because the application requires
4 an address.

5 Q Okay. And you thought that answer was pretty clear?
6 A I thought so. P57L23-P58L20
7 June 20, 2019 Vol II.

8 Q All right. So if an applicant did not provide all of the owners, would
9 you agree with me, as well, that those applicants failed to provide a
10 complete application as required?
11 A Yes. P22L21-25

12 August 13, 2019 Vol I
13 Q Now, above that is says, and this again the same day from Amanda
14 Connor, it says that, "A person who has a lease or owns the property,
15 they might get more points simply for having the property secured"
16 correct? You see that?
17 A Yes.

18 Q All right. And your response is, "No, Location is not scored then." You
19 were emphatic at that point?
20 A Yes. P68L23-69L16

21 242. Pupo testified that he informed Amanda Connor that the application required a physical
22 address and yet awarded conditional licenses to applicants who provided proposed floor plans as
23 opposed to proposed physical addresses.

24 243. Jorge Pupo testified that he went to dinner, lunch and drinks with applicants and their
25 representatives. As an example, he went to lunch with Amanda Connor at the Barcelona at the Artisan
26 on July 27, 2018. Mrs. Connor brought the owner of an applicant with her on July 27, 2018 to the
27 Barcelona at the Artisan.

28 244. Jorge Pupo testified that Amanda Connor represented several entities that provided
identical addresses on their applications. These addresses were to UPS locations and a Mailing and
More locations. These were not proposed physical addresses. One applicant testified that these UPS
addresses were used by his company and were never meant to be the location where the dispensary
would be opened.

245. Jorge Pupo testified that Amanda Connor represented two entities that were given two
licenses in Unincorporated Clark County, despite the anti-monopoly regulation and the express

1 language in the application prohibiting the same.

2 246. Jorge Pupo testified that his conversations with Amanda Connor could have resulted
3 in her clients having gained an advantage in the application process.

4 247. On several occasions Jorge Pupo met with an owner of Integral Associates LLC.
5 Integral Associates LLC owns one hundred percent (100%) of the Essence Entities (Essence Tropicana
6 and Essence Henderson.) Integral Associates LLC received eight conditional licenses.

7 248. Between June and December 2018, the owner of Integral Associates LLC met with
8 Jorge Pupo outside of the DOT office for four dinners and one meeting for coffee. In addition to these
9 in-person meetings, Integral's owner communicated with Mr. Pupo via text and through verbal
10 communications. These meetings included discussions between Integral's owner and Mr. Pupo that
11 indicated that Integral was entering into a Letter of Intent ("LOI") agreeing to be purchased by another
12 company. This meeting took on September 20, 2018, the very same day Integral submitted its
13 recreational marijuana applications in the names of the Essence Entities. Integral signed the LOI on
14 September 21, 2018. The prospective owners were not identified in Essence Entities' applications for
15 recreational marijuana licenses.

16 249. Despite numerous violations of NRS Chapter 453D and NAC 453D in multiple sales
17 to individuals under the age of 21 by certain applicants, Mr. Pupo failed to impose a single fine against
18 these particular applicants who were awarded conditional recreational marijuana licenses. Two of these
19 applicants who had multiple sales to individual under the age of 21 were represented by Amanda
20 Connor. These entities were conditionally awarded 15 recreational marijuana licenses.

21 250. Despite numerous violations by conditionally awarded applicants, Mr. Pupo, without
22 the authority of the Tax Commission, removed compliance from the application process.

23 251. Deonne Contine, former Director of the Department of Taxation, testified that the law
24 required the DOT to take into account the history of regulatory compliance of applicants. Past
25 deficiencies should have been taken into account.

26 252. Jorge Pupo removed regulatory compliance and past deficiencies from consideration
27 during the application and grading process.

28 253. Damon Hernandez testified that in 2018, he reported to Jorge Pupo on

1 investigations. Mr. Hernandez testified that he became aware that a certain entity had sold marijuana
2 to minors three times in close succession. Mr. Hernandez recommended a 30 day suspension.

3 254. Jorge Pupo decided not to follow the recommendation and instead allowed the license
4 holder to self correct, with no punishment for the serious infractions. Again, these license holders
5 were awarded several conditional recreational marijuana licenses.

6 IV.

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **(Declaratory Relief)**

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

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

13 257. Plaintiff and the Defendants have adverse and/or competing interests as the Department,
14 through its Marijuana Enforcement Division, has denied the applications submitted by Plaintiff and
15 has violated Plaintiff's Constitutional Rights, Nevada law, and State policy.

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

18 259. Further, the Department's improper ranking of the other applicants for a recreational
19 marijuana establishment license and the Department's subsequent, improper issuance to each of a
20 "conditional" license also affects the rights of Plaintiff afforded it by NRS 453D, NAC 453D, R09217,
21 and other Nevada laws and regulations.

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

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

28 262. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

- 1 a. That the Department improperly denied Plaintiff four (4) "conditional" licenses
2 for the operation of a recreational marijuana establishment in the following
3 jurisdictions: unincorporated Clark County, Nevada; Las Vegas, Nevada; North
4 Las Vegas, Nevada; and Reno, Nevada.
- 5 b. The denial of a "conditional" license to Plaintiff is void *ab initio*;
- 6 c. The procedures employed in the denial violated Plaintiff's procedural due
7 process rights and equal protection rights under the Nevada and United States
8 Constitutions and, therefore, the denial is void and unenforceable;
- 9 d. The denial violates Plaintiff's substantive due process rights and equal
10 protection rights under the Nevada and United States Constitutions and,
11 therefore, the denial is void and unenforceable;
- 12 e. The denial is void for vagueness and therefore unenforceable;
- 13 f. Defendant acted arbitrarily and capriciously or in contravention of a legal duty
14 and Plaintiff is therefore entitled to a writ of mandamus;
- 15 g. Plaintiff is entitled to judicial review; and
- 16 h. The Department's denial lacked substantial evidence.

17 263. Plaintiff also seeks a declaration from this Court that the Department must issue
18 Plaintiff four (4) "conditional" licenses for the operation of a recreational marijuana establishment in
19 unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno,
20 Nevada, since Plaintiff's score issued by the Department would have ranked high enough to entitle it
21 to "conditional" licenses had the Department properly applied the provisions of NRS 453D, NAC
22 Chapter 453D, and R092-17.

23 264. Plaintiff asserts and contends that a declaratory judgment is both necessary and proper
24 at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of
25 the Plaintiff afforded it by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and
26 regulations.

27 ///

28 ///

265. Plaintiff has found it necessary to retain the legal services of Parker, Nelson & Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

SECOND CLAIM FOR RELIEF

(Injunctive Relief)

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

267. The Department's flawed interpretation of the provisions of NRS 453D, NAC Chapter 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the law constitute and cause continuing and irreparable harm to Plaintiff with no adequate remedy at law.

268. The purpose of this refusal was and is to unreasonably interfere with Plaintiff's business and causing Plaintiff to suffer irreparable harm.

269. The Department will suffer no harm by following the law with respect to issuing "conditional" licenses.

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

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

272. Therefore, Plaintiff is entitled to preliminary injunctive relief, and after a trial on the merits, permanent injunctive relief, ordering the Department to issue "conditional" licenses to Plaintiff in accordance with NRS 453D, NAC 453D, and R092-17.

273. Plaintiff has retained the legal services of Parker, Nelson & Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

THIRD CLAIM FOR RELIEF

(Violation of Procedural Due Process)

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

275. The procedures employed by the Department in denying Plaintiff's applications have deprived Plaintiff of due process of law as guaranteed by the Nevada Constitution and the United

1 States Constitution.

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

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

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

10 279. As the action of the Department necessitated that Plaintiff retain the legal services of
11 Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
12 entitled to attorneys' fees and costs of suit.

13 280. Plaintiff has found it necessary to bring this action, and Plaintiff is entitled to recover
14 its reasonable attorneys' fees and costs therefor.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Violation of Substantive Due Process)**

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

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

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

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

24 285. As the action of the Department necessitated that Plaintiff retain the legal services of
25 Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
26 entitled to attorneys' fees and costs of suit.

27 ///

28 ///

1 **FIFTH CLAIM FOR RELIEF**

2 **(Equal Protection Violation)**

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

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

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

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

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

12 291. As the action of the Department necessitated that Plaintiff retain the legal services of
13 Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also
14 entitled to attorneys' fees and costs of suit.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Petition for Judicial Review)**

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

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

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

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

28 296. Accordingly, Plaintiff petitions this Court for judicial review of the record on which

1 the Department's denial was based, including but not limited to:

- 2 a. A determination that the decision lacked substantial evidence;
- 3 b. A determination that the denial is void ab initio for non-compliance with NRS
- 4 453D, NAC 453D, R092-17, and other Nevada state laws or regulations; and
- 5 c. Other relief consistent with those determinations.

6 297. Plaintiff has found it necessary to retain the legal services of Parker, Nelson &
7 Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees
8 and costs therefor.

9 **SEVENTH CLAIM FOR RELIEF**

10 **(Petition for Writ of Mandamus)**

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

12 299. When a governmental body fails to perform an act "that the law requires" or acts in an
13 arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev. Rev. Stat.
14 § 34.160.

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

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

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

- 21 a. The Board lacked substantial evidence to deny the application; and
- 22 b. The Board denied the application solely to approve other competing applicants
- 23 without regard to the merit of Plaintiff's application.

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

27 303. As a result of the Defendants' unlawful and arbitrary and capricious actions, Plaintiff
28 has been forced to retain legal services of Parker, Nelson & Associates, Chtd. to prosecute this action,

1 and is therefore also entitled to its damages, costs in this suit, and an award of attorneys' fees pursuant
2 to NRS 34.270.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(Violation of 42 USC 1983 by Defendants Jorge Pupo and Department of Taxation)**

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

6 305. The Fourteenth Amendment to the United States Constitution provides that "no state
7 [may] deprive any person of life, liberty, or property, without due process of law....nor shall any
8 State...deny to any person within its jurisdictions the equal protection of the laws."

9 306. Article 1, Section 8 of the Nevada Constitution provides that "[n]o person shall be
10 deprived of life, liberty, or property, without due process of law."

11 307. Plaintiff is a person within the meaning of the Nevada Constitution and the United
12 States Constitution guarantees of due process. Plaintiff's managers and members are also of African
13 American descent warranting strict scrutiny of Plaintiff's claim for a violation of 42 USC 1983.

14 308. Plaintiff and those similarly situated have a protected property interest in the
15 recreational license application process deriving from the mandatory statutory language couched in
16 NRS 453D, NAC453D and R092-17 as set forth above. See *Board of Regents v. Roth*, 408 U.S., 577
17 (1972) and *Goodisman v. Lyle*, 724 F.2d 818, 820 (9th Cir. 1984).

18 309. The arbitrary and illegal conduct of the DOT and Defendant JORGE PUPO have
19 deprived Plaintiff of the guarantees afforded by the Nevada Constitution and the United States
20 Constitution as set forth in paragraphs 266 and 267 above.

21 310. Plaintiff was not given a meaningful opportunity to be heard at a consequential time
22 which was fundamentally unfair and violated procedural and substantive due process as afforded by
23 the Nevada and United States Constitution.

24 311. Plaintiff's injury as described above by the failure of the DOT and Defendant PUPO
25 to follow the mandate of Nevada law explicitly set forth above is a result of Defendants' official policy
26 and/or custom to deprive Plaintiff and those similarly situated of the rights and entitlements afforded
27 to them under the Nevada and United States Constitution.

28 312. Defendants the DOT and PUPO conducted illegal and unconstitutional actions

1 described above under color of state Law.

2 313. While acting under color of state law, Defendants' actions described above where the
3 official policy and/or custom of Defendants to deprive Plaintiff and those similarly situated of their
4 constitutional rights afforded to them under the Nevada and United States Constitution, specifically
5 the 14th Amendment to the United States Constitution and Article 1, Section 8 of the Nevada
6 Constitution. Specifically, Defendants through Defendant PUPO and his subordinates, directed the
7 unconstitutional and illegal conduct in violation of the Nevada and United States Constitution.
8 Moreover, Defendants had direct and actual knowledge of the violations and/or were deliberately
9 indifferent to the constitutional violations that harmed Plaintiff.

10 314. The harm occasioned upon Plaintiff resulting from Defendants' illegal and
11 unconstitutional conduct, in addition, resulted from inadequate supervision, training, and screening
12 of agents/employees of the DOT.

13 315. As a direct and proximate result of Defendants' violations of Plaintiff's rights afforded
14 to him under the Nevada and United States Constitution, Defendants are liable to Plaintiff for damages
15 pursuant to 42 USC 1983. Moreover, because Defendant PUPO's conduct was reckless and/or showed
16 callous indifference to the federally protected rights of Plaintiff, punitive damages should be awarded.

17 316. Moreover, pursuant 42 USC 1988, Plaintiff is entitled to its reasonable attorney's fees
18 and costs.

19 **NINTH CLAIM FOR RELIEF**

20 **(Unjust Enrichment)**

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

22 317. Plaintiff applied for recreational marijuana licenses in accordance with NRS Chapter
23 453D and the regulations and rules promulgated by the DOT.

24 318. Plaintiff applied for these licenses because NRS Chapter 453's mandate that did not
25 allow the DOT to "pick and choose" winners and losers at their whim, but provided specific,
26 mandatory criterion that the DOT was obligated to comply with in awarding the recreational marijuana
27 licenses.

28 319. Plaintiff paid to the DOT in excess of \$15,000 to apply for the recreational marijuana

1 licenses that as of the date of the filing of this complaint, the DOT has not returned.

2 320. In the event that this Court finds that Plaintiff is not entitled to the relief requested in
3 the first through fifth claims for relief, under the circumstances as alleged in this Complaint, it would
4 be unjust for the DOT to retain the benefit of Plaintiff's expenditures to apply for the recreational
5 marijuana licenses.

6 321. As a direct and proximate result of the DOT being unjustly enriched, Plaintiff has
7 incurred damages in excess of \$15,000.00.

8 **V.**

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff prays for judgment as follows:

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

18 **VI.**

19 **JURY DEMAND**

20 Trial by jury is hereby demanded on all claims and issues so triable

21 DATED this 26th, day of March, 2020.

22 **PARKER, NELSON & ASSOCIATES, CHTD.**

23 

24 THEODORE PARKER, III, ESQ.

Nevada Bar No. 4716

25 MAHOGANY TURFLEY, ESQ.

Nevada Bar No. 13974

26 2460 Professional Court, Suite 200

27 Las Vegas, Nevada 89128

28 *Attorneys for Plaintiff,
Nevada Wellness Center, LLC*

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 26th, day of March 2020, I served a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW OR WRIT OF MANDAMUS** on all parties currently on the electronic service list as set forth below:

- ☐ By placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

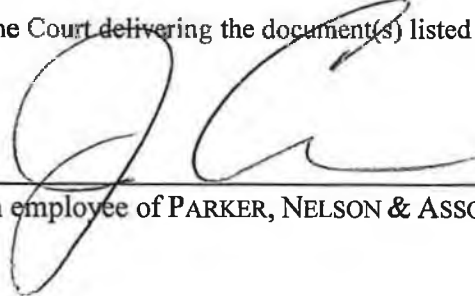
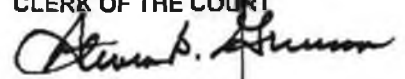

An employee of PARKER, NELSON & ASSOCIATES, CHTD.

EXHIBIT 2-H



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2 Nevada Bar No. 4268
3 RAMOS LAW
4 3000 Youngfield Street, Suite 200
5 Wheat Ridge, CO 80215
6 Phone: (303) 733-6353 Fax: (303) 856-5666
7 Clarence@ramoslaw.com

8 *Attorney for Defendant/Respondent*
9 *RURAL REMEDIES, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

10 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

Department No. XI

**DEFENDANT RURAL REMEDIES,
LLC'S AMENDED COMPLAINT IN
INTERVENTION, PETITION FOR
JUDICIAL REVIEW OR WRIT OF
MANDAMUS**

Arbitration Exemption Claimed:

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

1 Plaintiff, RURAL REMEDIES, LLC, a Nevada limited liability company, by
2 and through its attorney of record, CLARENCE E. GAMBLE, ESQ., of RAMOS
3 LAW, LLC, hereby complains and alleges against Defendant STATE OF
4 NEVADA DEPARTMENT OF TAXATION; DOES I through X; and ROE
5 BUSINESS ENTITIES I through X, in their official and personal capacities, as
6 follows:
7

8 I. PARTIES

- 9 1. Plaintiff RURAL REMEDIES, LLC, was and is a Nevada limited liability
10 company and does business throughout the State of Nevada. Plaintiff
11 RURAL REMEDIES, LLC's members and managers are of Latino descent
12 and are a member of a protected class.
13
- 14 2. Defendant STATE OF NEVADA DEPARTMENT OF TAXATION ("DOT") is
15 an agency of the State of Nevada. DOT is responsible for licensing and
16 regulating retail marijuana business in Nevada through its Marijuana
17 Enforcement Division.
18
- 19 3. Defendant JORGE PUPO, at all material times mentioned herein, was the
20 Deputy Executive Director, Department of Taxation, Marijuana
21 Enforcement Division and it was his responsibility to implement Nevada
22 law in the award of recreational licenses as more fully described below.
23
- 24 4. The following Defendants all applied for recreational marijuana licenses
25 and are being named in accordance with the Nevada Administrative
26 Procedure Act: D.H. FLAMINGO, INC., d/b/a THE APOTHECARY
27

1 SHOPPE, a Nevada corporation; CLARK NATURAL MEDICINAL
2 SOLUTIONS LLC, d/b/a NuVEDA, a Nevada limited liability company;
3 NYE NATURAL MEDICINAL SOLUTIONS LLC, d/b/a. NUVEDA, a
4 Nevada limited liability company; CLARK NMSD LLC, d/b/a NuVEDA,
5 a Nevada limited liability company; INYO FINE CANNABIS
6 DISPENSARY L.L.C., d/b/a INYO FINE CANNABIS DISPENSARY, a
7 Nevada limited liability company; and. SURTERRA HOLDINGS. INC.,
8 a Delaware corporation; STATE EX REL. DEPARTMENT OF TAXATION;
9 STATE EX REL. NEVADA TAX COMMISSION; 3AP INC., a Nevada
10 limited liability company; 5SEAT INVESTMENTS LLC, a Nevada limited
11 liability company; ACRES DISPENSARY LLC, a Nevada limited liability
12 company; ACRES MEDICAL LLC, a Nevada limited liability company;
13 AGUA STREET LLC, a Nevada limited liability company; ALTERNATIVE
14 MEDICINE ASSOCIATION LC, a Nevada limited liability company;
15 BIONEVA INNOVATIONS OF CARSON CITY LLC, a Nevada limited
16 liability company; BLOSSUM GROUP LLC, a Nevada limited liability
17 company; BLUE COYOTE RANCH LLC, a Nevada limited liability
18 company; CARSON CITY AGENCY SOLUTIONS L.L.C., a Nevada
19 limited liability company; CHEYENNE MEDICAL, LLC, a Nevada
20 limited liability company; CIRCLE S FARMS LLC, a Nevada limited
21 liability company; CLEAR RIVER, LLC, a Nevada limited liability
22 company; CN LICENSECO Inc., a Nevada corporation; COMMERCE
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1 PARK MEDICAL L.L.C., a Nevada limited liability company;
2 COMPASSIONATE TEAM OF LAS VEGAS LLC , a Nevada limited
3 liability company; CWNEVADA, LLC, a Nevada limited liability
4 company; D LUX LLC, a Nevada limited liability company; DEEP
5 ROOTS MEDICAL LLC, a Nevada limited liability company;
6 DIVERSIFIED MODALITIES MARKETING LTD., a Nevada limited
7 liability company; DP HOLDINGS, INC., a Nevada corporation;
8 ECONEVADA LLC, a Nevada limited liability company; ESSENCE
9 HENDERSON, LLC, a Nevada limited liability company; ESSENCE
10 TROPICANA, LLC, a Nevada limited liability company; ETW
11 MANAGEMENT GROUP LLC, a Nevada limited liability company;
12 EUPHORIA. WELLNESS LLC, a Nevada limited liability company;
13 EUREKA NEWGEN FARMS LLC, a Nevada limited liability company;
14 FIDELIS HOLDINGS, LLC., a Nevada limited liability company;
15 FOREVER GREEN, LLC, a Nevada limited liability company;
16 FRANKLIN BIOSCIENCE NV LLC, a Nevada limited liability company;
17 FSWFL, LLC, a Nevada limited liability company; GB SCIENCES
18 NEVADA LLC, a Nevada limited liability company; GBS NEVADA
19 PARTNERS, LLC, a Nevada limited liability company; GFIVE
20 CULTIVATION LLC, a Nevada limited liability company; GLOBAL
21 HARMONY LLC, a Nevada limited liability company; GOOD
22 CHEMISTRY NEVADA, LLC, a Nevada limited liability company;
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1 GRAVITAS HENDERSON L.L.C., a Nevada limited liability company;
2 GRAVITAS NEVADA LTD., a Nevada limited liability company; GREEN
3 LEAF FARMS HOLDINGS LLC, a Nevada limited liability company;
4 GREEN LIFE PRODUCTIONS LLC, a Nevada limited liability company;
5 GREEN THERAPEUTICS LLC, a Nevada limited liability company;
6 GREENLEAF WELLNESS, INC., a Nevada corporation; GREENMART
7 OF NEVADA NLV, LLC, a Nevada limited liability company;
8 GREENPOINT NEVADA INC., a Nevada corporation; GREENSCAPE
9 PRODUCTIONS LLC, a Nevada limited liability company; GREENWAY
10 HEALTH COMMUNITY L.L.C., a Nevada limited liability company;
11 GREENWAY. MEDICAL LLC, a Nevada limited liability company; GTI
12 NEVADA, LLC, a Nevada limited liability company; H & K GROWERS
13 CORP., a Nevada corporation; HARVEST OF NEVADA LLC; a Nevada
14 limited liability company; HEALTHCARE OPTIONS FOR PATIENTS
15 ENTERPRISES, LLC, a Nevada limited liability company; HELIOS NV
16 LLC; a Nevada limited liability company; HELPING HANDS WELLNESS
17 CENTER, INC., a Nevada corporation; HERBAL CHOICE INC., a
18 Nevada corporation; HIGH SIERRA CULTIVATION LLC, a Nevada
19 limited liability company; HIGH SIERRA HOLISTICS LLC, a Nevada
20 limited liability company; INTERNATIONAL SERVICE AND
21 REBUILDING, INC., a domestic corporation; JUST QUALITY, LLC, a
22 Nevada limited liability company; KINDIBLES LLC, a Nevada limited
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1 liability company; LAS VEGAS WELLNESS AND COMPASSION LLC; a
2 Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a
3 Nevada limited liability company; LIVFREE WELLNESS LLC, a Nevada
4 limited liability company; LNP, LLC, a Nevada limited liability
5 company; LONE MOUNTAIN PARTNERS, LLC, a Nevada limited
6 liability company; LUFF ENTERPRISES NV, INC., a Nevada
7 corporation; LVMC C&P LLC, a Nevada limited liability company;
8 MALANA LV L.L.C., a Nevada limited liability, company; MATRIX NV,
9 LLC, a Nevada limited liability company; MEDIFARM IV, LLC, a Nevada
10 limited liability company; MILLER FARMS, LLC, a Nevada limited
11 liability company; MM DEVELOPMENT COMPANY, INC., a Nevada
12 corporation; MM R & D, LLC, a Nevada limited liability company;
13 MMNV2 HOLDINGS I, LLC, a Nevada limited liability company; MM OF
14 VEGAS RETAIL, INC. a Nevada corporation; NATURAL MEDICINE
15 L.L.C., a Nevada limited liability company; NCMM, LLC, a Nevada
16 limited liability company; NEVADA BOTANICAL SCIENCE, INC., a
17 Nevada corporation; NEVADA GROUP WELLNESS LLC, a Nevada
18 limited liability company; NEVADA HOLISTIC MEDICINE LLC, a
19 Nevada limited liability company; NEVADA MEDICAL GROUP LLC, a
20 Nevada limited liability company; NEVADA ORGANIC REMEDIES LLC,
21 a Nevada limited liability company; NEVADA WELLNESS CENTER
22 LLC, a Nevada limited liability company; NEVADAPURE, LLC, a Nevada
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1 limited liability company; NEVCANN LLC, a Nevada limited liability
2 company; NLV WELLNESS LLC, a Nevada limited liability company;
3 NLVG, LLC, a Nevada limited liability company; NULEAF INCLINE
4 DISPENSARY LLC, a Nevada limited liability company; NV 3480
5 PARTNERS LLC, a Nevada limited liability company; NV GREEN INC.,
6 a Nevada corporation; NYE FARM TECH LTD., a Nevada limited
7 liability company; PARADISE WELLNESS CENTER LLC, a Nevada
8 limited liability company; PHENOFARM NV LLC, a Nevada limited
9 liability company; PHYSIS ONE LLC, a Nevada limited liability
10 company; POLARIS WELLNESS CENTER L.L.C., a Nevada limited
11 liability company; PURE TONIC CONCENTRATES LLC, a Nevada
12 limited liability company; QUALCAN L.L.C., a Nevada limited liability
13 company; RED EARTH, LLC, a Nevada limited liability company;
14 RELEASEAF CULTIVATION, LLC, a Nevada limited liability company, RG
15 HIGHLAND ENTERPRISES INC., a Nevada corporation; ROMBOUGH
16 REAL ESTATE INC., a Nevada corporation; RURAL REMEDIES LLC, a
17 Nevada limited liability company; SERENITY WELLNESS CENTER
18 LLC, a Nevada limited liability company; SILVER SAGE WELLNESS
19 LLC, a Nevada limited liability company; SOLACE ENTERPRISES, LLP,
20 a Nevada limited-liability limited partnership; SOUTHERN NEVADA
21 GROWERS, LLC, a Nevada limited liability company; STRIVE
22 WELLNESS OF NEVADA, LLC, a Nevada limited liability company;
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1 SWEET GOLDDY LLC, a Nevada limited liability company; TGIG, LLC, a
2 Nevada limited liability company; THC NEVADA LLC, a Nevada limited
3 liability company; THE HARVEST FOUNDATION LLC, a Nevada limited
4 liability company; THOMPSON FARM ONE L.L.C., a Nevada limited
5 liability company; TRNVP098 LLC, a Nevada limited liability company;
6 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company;
7 TRYKE COMPANIES SO NV, LLC, a Nevada limited liability company;
8 TWELVE TWELVE LLC, a Nevada limited liability company; VEGAS
9 VALLEY GROWERS LLC, a Nevada limited liability company;
10 WAVESEER OF NEVADA, LLC, a Nevada limited liability company;
11 WELLNESS & CAREGIVERS OF NEVADA NLV, LLC, a Nevada limited
12 liability company; WELLNESS CONNECTION OF NEVADA, LLC, a
13 Nevada limited liability company; WENDOVERA LLC, a Nevada limited
14 liability company; WEST COAST DEVELOPMENT NEVADA, LLC, a
15 Nevada limited liability company; WSCC, INC., a Nevada corporation;
16 YMY VENTURES LLC, a Nevada limited liability company; ZION
17 GARDENS LLC, a Nevada limited liability company.

- 22 5. The true names of DOES I and X and ROE BUSINESS ENTITIES I
23 through X, their citizenship and capacities, where individual, corporate,
24 associate, partnership or otherwise, are unknown to Plaintiff, who
25 therefore alleges that each of the unknown DOE and ROE Defendants
26 are legally responsible for the events referred in this action, and caused
27
28

1 damages to Plaintiff. Plaintiff will seek leave of this Court to amend the
2 Complaint to insert the true names and capacities of these unknown
3 Defendants when the same has been ascertained.
4

5 **II. JURISDICTION AND VENUE**

- 6 6. Jurisdiction is proper in this Court pursuant to the Nevada
7 Constitution, Article 6, Section 6, NEA 4.370(2), NRS 30, and because
8 the acts and omissions complained of herein occurred and caused harm
9 throughout the State of Nevada, specifically in Clark County, Nevada.
10 Further, the amount in controversy exceeds \$15,000.00.
11
12 7. Venue is proper pursuant to NRS 13.020.

13 **III. GENERAL ALLEGATIONS**

14 **A. The Marijuana Legislation and Regulations**

- 15
16 8. NRS Chapter 453D and NAC 453D are the statutory guidelines for
17 legalized recreational marijuana in the State of Nevada. These statutes
18 are incorporated herein by reference.
19
20 9. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to
21 amend Nevada's Constitution or enact legislation through the initiative
22 process and precludes amendment or modification of a voter-initiated
23 law for three years.
24
25 10. In 2016, the initiative for the legalization of recreational marijuana was
26 presented to Nevada voters by way of Ballot Question 2 ("BQ2"), known
27
28

1 as the "Regulation and Taxation of Marijuana Act", which proposed an
2 amendment of the Nevada Revised Statutes as follows:

3 Shall the Nevada Revised Statutes be amended to allow a
4 person, 21 years old or older, to purchase, cultivate, possess,
5 or consume a certain amount of marijuana or concentrated
6 marijuana, as well as manufacture, possess, use, transport,
7 purchase, distribute, or sell marijuana paraphernalia; impose
8 a 15 percent excise tax on wholesale sales of marijuana;
9 require the regulation and licensing of marijuana cultivators,
10 testing facilities, distributors, suppliers, and retailers; and
11 provide for certain criminal penalties.

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

13 12. NRS 453D.020 (findings and declarations) provides:

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

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

27 3. The People of the State of Nevada proclaim that marijuana
28 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.

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

- 1. Not later than January 1, 2018, the Department ***shall adopt all regulations*** necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:
 - (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;
 - (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
 - (c) Requirements for the security of marijuana establishments;
 - (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;
 - (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;
 - (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;
 - (g) Requirements for record keeping by marijuana establishments;
 - (h) Reasonable restrictions on signage, marketing, display, and advertising;

1
2 (i) Procedures for the collection of taxes, fees, and penalties
3 imposed by this chapter;

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

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

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

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

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

18 14. NRS 453D.200(6) ***mandates*** the DOT to "conduct a background check
19 of each prospective owner, officer, and board member of a marijuana
20 establishment license applicant."

21 15. NRS 453D.205 provides as follows:

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

2. When determining the criminal history of a person pursuant to
paragraph (c) of subsection 1 of NRS 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

1 Nevada Records of Criminal History for submission to the Federal
2 Bureau of Investigation for its report.

3
4 16. NRS 453D.210 (Acceptance of applications for licensing; priority in
5 licensing; conditions for approval of application; limitations on issuance
6 of licenses to retail marijuana stores; competing applications), provides
7 in pertinent part:

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

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

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

13 (a) The prospective marijuana establishment has
14 submitted an application in compliance with regulations
15 adopted by the Department and the application fee
16 required pursuant to [NRS 453D.230](#);

17 (b) The physical address where the proposed marijuana
18 establishment will operate is owned by the applicant or
19 the applicant has the written permission of the property
20 owner to operate the proposed marijuana establishment
21 on that property;

22 (c) The property is not located within:

23 (1) One thousand feet of a public or private school
24 that provides formal education traditionally associated
25 with preschool or kindergarten through grade 12 and that
26 existed on the date on which the application for the
27 proposed marijuana establishment was submitted to the
28 Department;

(2) Three hundred feet of a community facility that
existed on the date on which the application for the
proposed marijuana establishment was submitted to the
Department; or

(3) If the proposed marijuana establishment will be
located in a county whose population is 100,000 or more,
1,500 feet of an establishment that holds a nonrestricted
gaming license described in subsection 1 or 2 of [NRS](#)
[463.0177](#) and that existed on the date on which the

1 application for the proposed marijuana establishment
2 was submitted to the Department;

3 (d) The proposed marijuana establishment is a proposed
4 retail marijuana store and there are not more than:

5 (1) Eighty licenses already issued in a county with a
6 population greater than 700,000;

7 (2) Twenty licenses already issued in a county with
8 a population that is less than 700,000 but more than
9 100,000;

10 (3) Four licenses already issued in a county with a
11 population that is less than 100,000 but more than
12 55,000;

13 (4) Two licenses already issued in a county with a
14 population that is less than 55,000;

15 (5) Upon request of a county government, the
16 Department may issue retail marijuana store licenses in
17 that county in addition to the number otherwise allowed
18 pursuant to this paragraph;

19 (e) The locality in which the proposed marijuana
20 establishment will be located does not affirm to the
21 Department that the proposed marijuana establishment
22 will be in violation of zoning or land use rules adopted by
23 the locality; and

24 (f) The persons who are proposed to be owners, officers,
25 or board members of the proposed marijuana
26 establishment:

27 (1) Have not been convicted of an excluded felony
28 offense; and

(2) Have not served as an owner, officer, or board
member for a medical marijuana establishment or a
marijuana establishment that has had its registration
certificate or license revoked.

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

17. On November 8, 2016, by Executive Order 2017-02, Governor Brian
Sandoval established a Task Force composed of 19 members to offer

1 suggestions and proposals for legislative, regulatory, and executive
2 actions to be taken in implementing BQ2.

3
4 18. The Task Force recommended that "the qualifications for licensure of a
5 marijuana establishment and the impartial numerically scored bidding
6 process for retail marijuana stores be maintained as in the medical
7 marijuana program except for a change in how local jurisdictions
8 participate in selection of locations."

9
10 19. During the 2017 legislative session, Assembly Bill 422 transferred
11 responsibility for the registration, licensing and regulation of marijuana
12 establishments to the DOT.

13 20. On February 27, 2018, the DOT adopted regulations governing the
14 issuance, suspension, or revocation of retail recreational marijuana
15 licenses, which were codified in NAC 453D (the "Regulations").
16

17 21. The Regulations for licensing were to be "directly and demonstrably
18 related to the operation of a marijuana establishment." NRS
19 453D.200(1)(b).
20

21 22. NRS 453D.200(1) provides, in part, "[t]he regulations must not prohibit
22 the operation of marijuana establishments, either expressly or through
23 regulations that make their operation unreasonably impracticable."
24

25 23. The limitation of "unreasonably impracticable" in NRS 453D.200(1)
26 applies to the Regulations adopted by the DOT, not the mandatory
27 language of BQ2.
28

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

9 **B. The Licensing Applications**
10

11 25. The DOT issued a notice for an application period wherein the DOT
12 sought applications from qualified applicants to award sixty-four (64)
13 recreational marijuana retail store licenses throughout various
14 jurisdictions in Nevada.
15

16 26. The DOT posted the license application on its website and released the
17 application for recreational marijuana establishment licenses on July 6,
18 2018, which required disclosure of an actual physical address for each
19 establishment.
20

21 27. The DOT published a revised license application on July 30, 2018
22 eliminating the physical address requirement, which was not publicly
23 available and was only disseminated to some but not all of the applicants
24 via a DOT listserv.
25

26 28. The application period for retail recreational marijuana licenses ran from
27 September 7, 2018 through September 20, 2018.
28

- 1 29. As of September 20, 2018, the DOT received a total of 462 applications.
- 2 30. When competing applications for licenses were submitted, the DOT was
- 3 required to use "an impartial and numerically scored competitive bidding
- 4 process" to determine successful license applicants. NRS 453D.210(6).
- 5
- 6 31. Under NAC 453D.272(1), when the DOT received more than one
- 7 "**complete**" application ***in compliance with the Regulations and NRS***
- 8 **453D**, the DOT was required to "rank the applications... in order from
- 9 first to last based on the compliance with the provisions of [NAC 453D]
- 10 and [NRS 453D] and on the content of the applications relating to..."
- 11 several enumerated factors.
- 12
- 13 32. The factors set forth in NAC 453D.272(1) used to rank competing
- 14 applications (collectively, the "Factors") are:
- 15
- 16 a. Whether the owners, officers or board members have
- 17 experience operating another kind of business that has given
- 18 them experience which is applicable to the operation of a
- 19 marijuana establishment;
- 20
- 21 b. The diversity of the owners, officers or board members of
- 22 the proposed marijuana establishment;
- 23
- 24 c. The educational achievements of the owners, officers or
- 25 board members of the proposed marijuana establishment;
- 26
- 27 d. The financial plan and resources of the applicant, both
- 28 liquid and illiquid;
- 29
- 30 e. Whether the applicant has an adequate integrated plan for
- 31 the care, quality and safekeeping of marijuana from seed to sale;
- 32
- 33 f. The amount of taxes paid and other beneficial financial
- 34 contributions, including, without limitation, civic or
- 35 philanthropic involvement with this State or its political

1 subdivisions, by the applicant or the owners, officers or board
2 members of the proposed marijuana establishment;

3 g. Whether the owners, officers or board members of the
4 proposed marijuana establishment have direct experience with
5 the operation of a medical marijuana establishment or marijuana
6 establishment in this State and have demonstrated a record of
7 operating such an establishment in compliance with the laws and
8 regulations of this State for an adequate period of time to
9 demonstrate success;

10 h. The experience of key personnel that the applicant intends
11 to employ in operating the type of marijuana establishment for
12 which the applicant seeks a license; and

13 i. Any other criteria that the Department determines to
14 be relevant.

15 33. NAC 453D.255, enacted by Defendant DOT in contravention of NRS
16 Chapter 453D and implemented by Defendant PUPO and his
17 subordinates, provides as follows:

18 1. Except as otherwise required in subsection 2, the
19 requirements of this chapter concerning owners of marijuana
20 establishments only apply to a person with an aggregate
21 ownership interest of 5 percent or more in a marijuana
22 establishment.

23 2. If, in the judgment of the Department, the public interest
24 will be served by requiring any owner with an ownership interest
25 of less than 5 percent in a marijuana establishment to comply
26 with any provisions of this chapter concerning owners of
27 marijuana establishments, the Department will notify that owner
28 and he or she must comply with those provisions.

34. Defendant DOT also enacted NAC 453D.258, NAC 453D.260, NAC
453D.265, NAC 453D.268 and NAC 453D.272. These administrated

1 codes enforced by Defendant PUPPO and his subordinates established the
2 procedures for recreational application process, fees to be charged for
3 applying, fees to be charged for applying if the applicant holds a medical
4 marijuana establishment registration certificate, and the ranking of
5 applications if the Defendant D.O.T. received more than one application
6 for a retail marijuana license.
7

8 35. The application published by the DOT described how applications were
9 to be scored, dividing scoring criteria into identified criteria and non-
10 identified criteria.
11

12 36. The application provided that "[**applications that have not**
13 **demonstrated a sufficient response related to the criteria set forth**
14 **above will not have additional [unspecified, unpublished] criteria**
15 **considered in determining whether to issue a license and will not**
16 **move forward in the application process.**" (emphasis added).
17

18 37. NAC 453D.272(1) required the DOT to determine that an application is
19 "complete and in compliance" with the provisions of NAC 453D in order
20 to properly apply the licensing criteria set forth therein and the
21 provisions of BQ2 and NRS 453D.
22

23 38. No later than December 5, 2018, the DOT was responsible for issuing
24 conditional licenses to those applicants who score and rank high enough
25 in each jurisdiction to be awarded one of the allocated licenses in
26
27
28

1 accordance with the impartial bidding process mandated by NRS
2 453D.210.

3 39. The DOT identified, hired, and trained eight individuals as temporary
4 employees to grade the applications in accordance with the provisions of
5 BQ2 and NRS 453D.
6

7 **C. Plaintiff's Application**

8 41. Plaintiff submitted applications to the DOT for a conditional licenses to
9 own and operate recreational marijuana retail stores in compliance with
10 the specified, published requirements of DOT regulations together with
11 the required application fee in accordance with NRS 453D.210.
12

13 42. Plaintiff's applications identified each prospective owner, officer, and
14 board member for background check pursuant to NRS 453D.200(6).
15

16 43. Plaintiff secured and identified in its application addresses for each and
17 every proposed recreational marijuana establishment it intended to
18 operate.
19

20 44. Plaintiff was informed by letter from the DOT that its applications to
21 operate recreational marijuana retail stores was denied "because it did
22 not achieve a score high enough to receive an available license."
23

24 45. On May 24, 2019, the Honorable Elizabeth Gonzales conducted an
25 evidentiary hearing concerning a motion for preliminary injunction
26 sought by a group of unsuccessful applicants for retail marijuana
27 licenses in Nevada against Defendant D.O.T. The hearing concluded on
28

1 August 16, 2019. Thereafter, Judge Gonzales issued her findings of fact,
2 conclusions of law granting preliminary injunction. See Findings of Fact
3 and Conclusions of Law Granting Preliminary Injunction, filed August 23,
4 2019, Clark County District Court Case No. A-19-786962-B. Among her
5 findings, Judge Gonzales found that the DOT undertook no effort to
6 determine if the applications were in fact “complete and in compliance.”
7 Id., par. 37.
8

9
10 46. Judge Gonzales also found that the DOT departed from the mandatory
11 language of NRS 453D.200(6) requiring “a background check of each
12 prospective owner, officer, and board member of a marijuana
13 establishment license applicant” and made no attempt in the application
14 process to verify that the applicant’s complied with the mandatory
15 language of the BQ2 or even the impermissibly modified language.” Id.,
16 par. 41.
17

18 47. The DOT improperly issued conditional licenses to applicants who did
19 not disclose in their application an actual physical address for proposed
20 retail recreational marijuana establishment.
21

22 48. Upon information and belief, the DOT’s denial of Plaintiff’s licenses
23 applications was not properly based upon actual implementation of the
24 impartial and objective bidding process mandated by NRS 453D.210, but
25 was based upon arbitrary and capricious exercise of administrative
26
27
28

1 partiality and favoritism that was the policy and routine of the DOT as
2 promulgated by Defendant PUPO and others in the DOT hierarchy.

3 49. Upon information and belief, the temporary employees hired by the DOT
4 were inadequately and improperly trained regarding the scoring process,
5 leading to an arbitrary scoring process in contravention of Nevada law.
6

7 50. Upon information and belief, the DOT undertook no effort to determine
8 whether applications were in fact "complete and in compliance."
9

10 51. By revising the application on July 30, 2018 and selectively eliminating
11 the requirement to disclose an actual physical address for each proposed
12 retail recreational marijuana establishment, the DOT limited the ability
13 of the temporary employees to adequately assess graded criteria such as
14 (i) prohibited proximity to schools and certain other public facilities, (ii)
15 impact on the community, (iii) security, (iv) building plans and (v) other
16 material considerations prescribed by the regulations.
17

18 52. The DOT's scoring process was impacted by its selective elimination of
19 the requirement to disclose an actual physical address for each proposed
20 retail recreational marijuana establishment, resulting in incomplete
21 applications being considered and awarding of conditional licenses.
22

23 53. Upon information and belief, the DOT selectively discussed with
24 applicants or their agents the modification of the application related to
25 physical address information,
26
27
28

1 54. Upon information and belief, the DOT undertook no effort to verify
2 owners, officers or board members in evaluating whether an application
3 was "complete and in compliance."
4

5 55. Upon information and belief, if an applicant's disclosure in its application
6 of its owners, officers, and board members did not match the DOT's
7 records, the DOT permitted the grading, and in some cases, awarded a
8 conditional license.
9

10 56. Upon information and belief, the DOT departed from the mandatory
11 requirements of NRS 453D.200(6), which provides that "[t]he DOT shall
12 conduct a background check of each prospective owner, officer, and
13 board member of a marijuana establishment license application," by
14 adopting NAC 453D.255(1), which only required information on the
15 application from persons "with an aggregate ownership interest of 5
16 percent or more in a marijuana establishment."
17

18 57. The DOT's determination that only owners of a 5% or greater interest in
19 the business were required to submit information on the application was
20 an impermissible regulatory modification of BQ2 and violated Article 19,
21 Section 3 of the Nevada Constitution.
22

23 58. The adoption of NAC 453D.255(1) as it applied to the marijuana
24 establishment license application process was an unconstitutional
25 modification of BQ2.
26
27
28

- 1 59. The failure of the DOT to carry out the mandatory provisions of NRS
2 53D.200(6), which required the DOT to conduct a background check of
3 each prospective owner, officer, and board member of a marijuana
4 establishment license applicant, is fatal to the application process and
5 impedes an important public safety goal in BQ2.
6
- 7 60. By adopting regulations in violation of BQ2's mandatory application
8 requirements, the DOT violated Article 19, Section 2(3) of the Nevada
9 Constitution.
10
- 11 61. The DOT disregarded the voters' mandate in BQ2 when it decided the
12 requirement that each prospective owner be subject to a background
13 check was too difficult for implementation by industry. This decision was
14 a violation of the Nevada Constitution, arbitrary and capricious.
15
- 16 62. The DOT did not comply with BQ2 by requiring applicants to provide
17 information for each prospective owner, officer and board member or
18 verify ownership of applicants who applying for retail recreational
19 marijuana licenses.
20
- 21 63. The DOT's inclusion of the diversity category in the factors was
22 implemented in a way that created a process which was subject to
23 manipulation by applicants.
24
- 25 64. The DOT's scoring process was impacted by personal relationships in
26 decisions related to the requirements of the application and the
27 ownership structures of competing applicants.
28

1 65. Due to the DOT's violations of BQ2, Plaintiff was unconstitutionally
2 denied recreational marijuana licenses.

3 66. The DOT's constitutional violations and refusal to issue conditional
4 licenses to Plaintiff resulted in irreparable harm to Plaintiff.
5

6 **IV. CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF** 8 **(Declaratory Relief)**

9
10 67. Plaintiff repeats and re-alleges all prior paragraphs as though fully set
11 forth herein.

12 68. A justiciable controversy exists that warrants a declaratory judgment
13 pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010
14 to 30.160, inclusive.
15

16 69. Plaintiff and Defendant have adverse and/or competing interests as the
17 DOT, through its Marijuana Enforcement Division, has denied the
18 application that violates Plaintiff's Constitutional Rights, Nevada law,
19 and State policy.
20

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

24 71. The DOT's improper ranking of other applicants for a recreational
25 marijuana establishment license and the DOT's subsequent, improper
26 issuance to each of a conditional license also affects the rights of Plaintiff
27

afforded to it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

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

73. The DOT's actions and/or inactions failed to appropriately address the necessary considerations and intent of BQ2 and NRS 453D.210, designed to restrict monopolies.

74. On August 23, 2019, Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case No. A-19-786962-B, issued an Order Granting Preliminary Injunction enjoining the DOT "from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits."

75. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

- a. The Department improperly denied Plaintiff conditional licenses for the operation for a recreational marijuana establishments;
- b. The denial of conditional licenses to Plaintiff is void ab initio;

- c. The procedures employed in the denial violated Plaintiff's procedural, substantive due process rights and equal protection rights under the Nevada and United States Constitutions and therefore, the denial is void and unenforceable;
- d. The denial violates Plaintiff's substantive due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- e. The denial is void for vagueness and therefore unenforceable;
- f. Defendant acted arbitrarily and capriciously or in contravention of a legal duty and Plaintiff is therefore entitled to a writ of mandamus;
- g. Plaintiff is entitled to judicial review; and
- h. The DOT's denial lacked substantial evidence.

76. Plaintiff also seeks a declaration from this Court that the DOT must revoke the conditional licenses of those applicants whose applications are not in compliance with Nevada law.

77. Plaintiff also seeks a declaration from this Court that the DOT must issue Plaintiff conditional licenses for the operation of a recreational marijuana establishments applied for.

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

1 79. Plaintiff is entitled to reasonable attorney's fees and costs.

2 **SECOND CLAIM FOR RELIEF**
3 **(Permanent Injunction)**

4
5 80. Plaintiff repeats and re-alleges all prior paragraphs as though fully set
6 forth herein.

7 81. The DOT's refusal to issue conditional licenses in violation of the
8 mandatory provisions of Nevada law set forth above causes and
9 continues to cause Plaintiff irreparable harm with no adequate remedy
10 at law.

11
12 82. The purpose of the DOT's refusal was and is to unreasonably interfere
13 with Plaintiff's business and is causing Plaintiff to suffer irreparable
14 harm.

15
16 83. The DOT will suffer no harm by following the law with respect to issuing
17 conditional licenses.

18 84. The DOT has violated the mandatory provisions of NRS 453D, NAC 453D
19 and RO292-17, and Plaintiff is likely to succeed on the merits of this
20 litigation.

21
22 85. The public interest favors Plaintiff because in the absence of injunctive
23 relief, the consumers who would have benefitted will have less available
24 options from which they can purchase recreational marijuana.

25
26 86. Therefore, Plaintiff is entitled to a permanent injunction ordering the DOT
27 to issue conditional licenses to Plaintiff in accordance with Nevada law.

THIRD CLAIM FOR RELIEF
(Violation of 42 USC 1983 by Defendants Jorge Pupo and Department of Taxation)

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

88. The Fourteenth Amendment to the United States Constitution provides that "no state [may] deprive any person of life, liberty, or property, without due process of law....nor shall any State...deny to any person within its jurisdictions the equal protection of the laws."

89. Plaintiff is a person within the meaning of the the United States Constitution guarantees of due process. Plaintiff's managers and members are also of Latino descent warranting strict scrutiny of Plaintiff's claim for a violation of 42 USC 1983.

91. Plaintiff and those similarly situated have a protected property interest in the recreational license application process deriving from the mandatory statutory language in NRS 453D, NAC453D and R092-17 as set forth above. See *Board of Regents v. Roth*, 408 U.S., 577 (1972) and *Goodisman v. Lytle*, 724 F.2d 818, 820 (9th Cir. 1984).

92. The arbitrary and illegal conduct of the DOT and Defendant JORGE PUPO have deprived Plaintiff of the guarantees afforded by the Nevada Constitution and the United States Constitution as set forth in paragraphs 83 and 84 above. Specifically, Defendant PUPO on behalf of

1 and at the behest of Defendant DOT committed the following arbitrary
2 and illegal conduct:

- 3 • Defendant PUPO ignored NRS 453D.210's requirement that
4 each recreational application must contain background
5 checks on all owners.
- 6 • Defendant PUPO ignored NRS Chapter 453's requirement
7 that each application must contain a physical address of the
8 location of the proposed recreational establishment and
9 directed his staff to score and rank those applications that
10 did not include a physical address and further deducted
11 points from applicants who did include a physical address.
- 12 • Although the law required the DOT to take into consideration
13 applicants' compliance with Nevada law relative to operating
14 a marijuana establishment, Defendant PUPO directed his
15 staff not to consider compliance in the recreational
16 marijuana applications.

17 93. Plaintiff was not given a meaningful opportunity to be heard at a
18 consequential time which was fundamentally unfair and violated
19 procedural and substantive due process as afforded by the Nevada and
20 United States Constitution.

21 94. Plaintiff's injury as described above by the failure of the DOT and
22 Defendant PUPO to follow the mandate of Nevada law explicitly set forth
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1 above is a result of Defendants' official policy and/or custom to deprive
2 Plaintiff and those similarly situated of the rights and entitlements
3 afforded to them under the Nevada and United States Constitution.
4

5 95. Defendants the DOT and PUPO conducted illegal and unconstitutional
6 actions described above under color of state Law.

7 96. While acting under color of state law, Defendants' actions described
8 above where the official policy and/or custom of Defendants to deprive
9 Plaintiff and those similarly situated of their constitutional rights
10 afforded to them under the Nevada and United States Constitution,
11 specifically the 14th Amendment to the United States Constitution and
12 Article 1, Section 8 of the Nevada Constitution. Specifically, Defendants
13 through Defendant PUPO and his subordinates, directed the
14 unconstitutional and illegal conduct in violation of the Nevada and
15 United States Constitution. Moreover, Defendants had direct and actual
16 knowledge of the violations and/or were deliberately indifferent to the
17 constitutional violations that harmed Plaintiff.
18
19
20

21 97. The harm occasioned upon Plaintiff resulting from Defendants' illegal
22 and unconstitutional conduct, in addition, resulted from inadequate
23 supervision, training, and screening of agents/employees of the DOT.

24 98. As a direct and proximate result of Defendants' violations of Plaintiff's
25 rights afforded to him under the Nevada and United States Constitution,
26 Defendants are liable to Plaintiff for damages pursuant to 42 USC 1983.
27
28

Moreover, because Defendant PUPPO's conduct was reckless and/or showed callous indifference to the federally protected rights of Plaintiff, punitive damages should be awarded.

99. Moreover, pursuant 42 USC 1988, Plaintiff is entitled to its reasonable attorney's fees and costs.

**FOURTH CLAIM FOR RELIEF
(Petition for Judicial Review)**

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

101. The DOT, in failing to comply with the mandatory directive in issuing recreational licenses as set for under Nevada law more fully described above, has exceeded its jurisdiction by issuing conditional licenses to applicants that do not merit them.

102. Plaintiff is aggrieved by the decision of the DOT to deny Plaintiffs' application without proper notice, substantial evidence, or in compliance with Nevada law more fully described above.

103. Nevada law does not allow for an administrative appeal of the DOT's decision, and apart from injunction relief, no plain, speedy and adequate remedy for the DOT's violations.

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

a. A determination that the decision lacked substantial evidence;

1 b. A determination that the denial is void ab initio for non-compliance
2 with NRS 453D, NAC 453D, R092-17 and other Nevada state laws
3 or regulations; and

4
5 c. Other relief consistent with those determinations.

6 105. Plaintiff has found it necessary to retain the legal services of Ramos
7 Law, LLC to bring this action, and Plaintiff is entitled to recover its
8 reasonable attorneys' fees and costs therefor.

9
10 **FIFTH CLAIM FOR RELIEF**
11 **(Petition for Writ of Mandamus)**

12 106. Plaintiff repeats and re-alleges all prior paragraphs as though fully set
13 forth herein.

14 107. When a governmental body fails to perform an act "that the law requires"
15 or acts in an arbitrary or capricious manner, a writ of mandamus shall
16 issue to correct the action. NRS 34.160.

17 108. The DOT failed to perform acts that the law requires including, but not
18 limited to:

19
20 a. Providing proper pre-hearing notice of the denial;

21 b. Arbitrarily, capriciously and illegally denying Plaintiffs' applications
22 for recreational licenses for no legitimate reasons.

23
24 109. The DOT acted arbitrarily, capriciously and illegally in the denial by
25 performing or failing to perform the acts enumerated above and because,
26 *inter alia*:

27 a. Lack of substantial evidence to deny the application; and
28

1 b. The denial was made solely to approve other competing applications
2 without regard to Nevada law as more specifically described above.

3 110. These violations of the DOT's legal duties were arbitrary and capricious
4 actions

5
6 that compel this Court to issue a Writ of Mandamus directing the
7 department to approve Plaintiffs' license applications and issue Plaintiff
8 conditional licenses.

9
10 **SIXTH CLAIM FOR RELIEF PLED IN THE ALTERNATIVE**
11 **(Unjust Enrichment)**

12 111. Plaintiff repeats and re-alleges all prior paragraphs as though fully
13 set forth herein.

14 112. Plaintiff applied for recreational marijuana licenses in accordance
15 with NRS Chapter 453D and the regulations and rules promulgated by
16 the DOT.

17 113. Plaintiff applied for these licenses because NRS Chapter 453's
18 mandate that did not allow the DOT to "pick and choose" winners and
19 losers at their whim, but provided specific, mandatory criterion that the
20 DOT was obligated to comply with in awarding the recreational
21 marijuana licenses.

22
23 114. Plaintiff paid to the DOT in excess of \$300,000 to apply for the
24 recreational marijuana licenses that as of the date of the filing of this
25 complaint, the DOT has not returned.
26
27
28

1 115. In the event that this Court finds that Plaintiff is not entitled to the relief
2 requested in the first through fifth claims for relief, under the
3 circumstances as alleged in this Complaint, it would be unjust for the
4 DOT to retain the benefit of Plaintiff's expenditures to apply for the
5 recreational marijuana licenses.
6

7 116. As a direct and proximate result of the DOT being unjustly
8 enriched, Plaintiff has incurred damages in excess of \$15,000.00.
9

10 **V. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

- 12 1. For declaratory relief set forth above;
- 13 2. For a preliminary and permanent injunction enjoining the enforcement
14 of the denial;
- 15 3. For judicial review of the record and history on which the denial was
16 based;
- 17 4. For issuance of a writ of mandamus;
- 18 5. For compensatory, special, consequential and punitive damages in
19 excess of \$15,000 on those causes of action that damages are available.
20
- 21 6. For attorney's fees and costs of suit; and
- 22 7. For all other and further relief as the Court deems proper and just.
23

24 **VI. JURY DEMAND**

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1 Comes now Plaintiff RURAL REMEDIES, LLC and pursuant to NRCP 38,
2 demands a jury trial on all the issues so triable above, including Plaintiff's
3 cause of action for violation of 42 USC 1983.
4

5 DATED this 26th day of March, 2020.

6 RAMOS LAW
7

8 /s/ Clarence Gamble
9 Clarence Gamble, Esq.
10 Nevada Bar No. 4268
11 3000 Youngfield Street, Suite 200
12 Wheat Ridge, CO 80215

13 Attorney for Plaintiff Rural Remedies, LLC
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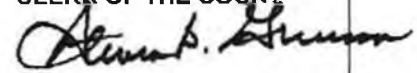
/s/ Gail L. May

37

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EXHIBIT PAGE ONLY

EXHIBIT 3
Orders of NRCP 41(a) Dismissals

EXHIBIT 3-A



1 **NEOJ**

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13 *Counter-Defendant D.H. FLAMINGO, INC.*

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16
17 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

23
24 **Notice of Entry of Order Granting Motion for**
25 **(1) Voluntary Dismissal of Certain Defendants/Respondents with**
26 **Prejudice; and (2) Allowing Service By Electronic Means Only**

27 TO: ALL INTERESTED PARTIES

28 PLEASE TAKE NOTICE that an Order Granting Motion for (1) Voluntary Dismissal of
Certain Defendants/Respondents with Prejudice; and (2) Allowing Service By Electronic Means

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

1 Only was entered on the 11th day of March 2020. A true and correct copy of which is attached
2 hereto.

3 DATED this 11th day of March, 2020.

4 BAILEY ♦ KENNEDY

5
6 By: /s/ Kelly B. Stout

7 DENNIS L. KENNEDY

8 JOSHUA M. DICKEY

9 SARAH E. HARMON

10 KELLY B. STOUT

11 STEPHANIE J. GLANTZ

12 *Attorneys for Plaintiff/Petitioner/*

13 *Counter-Defendant D.H. FLAMINGO, INC.*

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 11th day of March, 2020, service of the foregoing **Notice of Entry of Order Granting Motion for (1) Voluntary Dismissal of Certain Defendants/Respondents with Prejudice; and (2) Allowing Service By Electronic Means Only** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

Specifically, the following parties were served via the Eighth Judicial District Court's electronic filing system:

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	2970 West Sahara Avenue Las Vegas, Nevada 89102	

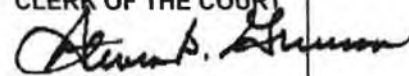
1	Craig D. Slater, Esq. LUH & ASSOCIATES 8987 West Flamingo Road, Suite 100 Las Vegas, Nevada 89147	<i>Attorney for Plaintiff/Petitioners</i> Clark Natural Medicinal Solutions LLC; Nye Natural Medicinal Solutions LLC; Clark NMSD LLC; and Inyo Fine Cannabis Dispensary L.L.C.
4	Service was made on the following parties by depositing a true and correct copy in the U.S.	
5	Mail, first class postage prepaid, and addressed to the following at their last known address:	
6	Alex Amelburu 3020 North Nellis Boulevard Las Vegas, Nevada 89115	<i>Owner/Treasurer for Defendant/Respondent</i> 3AP Inc.
8	5Seat Investments LLC PO Box 12187 Zephyr Cove, Nevada 89448	<i>Last Known Address</i> 5Seat Investments LLC
10	Incorp Services, Inc. 3773 Howard Hughes Parkway, Suite 500S Las Vegas, Nevada 89169-6014	<i>Registered Agent for Defendants/Respondents</i> Acres Medical LLC
11	John Mueller 2325 Western Avenue, Suite 12 Las Vegas, Nevada 89102	<i>Registered Agent for Defendant/Respondent</i> Acres Dispensary
12	Jeffrey R. Hall HUTCHISON & STEFFEN, PLLC Peccole Professional Park 10080 West Alta Drive, Suite 200 Las Vegas, Nevada 89145	<i>Attorney for Defendant/Respondent Alternative</i> Medicine Association LC
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16	Diversified Modalities Marketing Ltd. Attn: Dr. Vu Luu 5172 West Patrick Lane, Suite 100 Las Vegas, Nevada 89118	<i>Registered Agent for Defendant/Respondent</i> Diversified Modalities Marketing Ltd

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11		
12	Judith Woodward 8200 Omni Court Las Vegas, Nevada 89149	<i>Registered Agent for Defendant/Respondent</i> NLVG, LLC
13		
14	Conrad Kupferman 11 Soundview Drive Port Jefferson, New York 11777 – 7928	<i>Manager for Defendant/Respondent</i> NLV Wellness LLC
15		
16	Michael McNerny, Esq. McNERNY LAW GROUP 7995 West Sahara Avenue, #101 Las Vegas, Nevada 89117	<i>Attorneys for Defendant/Respondent</i> NV 3480 Partners LLC
17		
18	Nye Farm Tech Ltd PO Box 337 Amargosa Valley, Nevada 89020	<i>Last Known Address</i> Nye Farm Tech Ltd
19		
20	Ross C. Goodman, Esq. 520 South Fourth Street, 2nd Floor Las Vegas, Nevada 89101	<i>Attorney for Defendant/Respondent</i> Paradise Wellness Center LLC
21		
22	GOODSELL LAW GROUP 10155 West Twain Avenue, Suite 100 Las Vegas, Nevada 89147	<i>Registered Agent for Defendant/Respondent</i> Physis One LLC
23		
24	SMITH & SHAPIRO, PLLC 3333 Serene Avenue, Suite 130 Henderson, Nevada 89074	<i>Registered Agent for Defendant/Respondent</i> Releaf Cultivation, LLC
25		
26		
27		
28		

1	Amy L. Sugden SUGDEN LAW 9728 Gilespe Street Las Vegas, Nevada 89183	<i>Attorneys for Defendant/Respondent</i> RG Highland Enterprises Inc.
2		
3	Kristina Wildeveld LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES 550 East Charleston Boulevard, Suite A Las Vegas, Nevada 89104	<i>Registered Agent for Defendant/Respondent</i> Silver Sage Wellness LLC
4		
5	John Spilotro, Esq. 626 South 3rd Street Las Vegas, Nevada 89101	<i>Attorneys for Defendant/Respondent</i> Southern Nevada Growers, LLC
6		
7	West Coast Development Nevada, as Manager of Sweet Goldy LLC c/o CT Corporation System 701 South Carson Street, Suite 200 Carson City, Nevada 89701	<i>Manager for Defendant/Respondent</i> Sweet Goldy LLC
8		
9	The Harvest Foundation LLC 3395 Pinks Place Las Vegas, Nevada 89102	<i>Last Known Address</i> The Harvest Foundation LLC
10	The Harvest Foundation LLC 10407 East Mayberry Heights Drive Cypress, Texas 77433	
11		
12	Kristine Torosyan 9518 Gainey Ranch Avenue Las Vegas, Nevada 89147	<i>Registered Agent for Defendant/Respondent</i> Thompson Farm One LLC
13		
14	Shane Terry 1930 Village Center Circle, #3-1747 Las Vegas, Nevada 89134	<i>Last Known Address</i> TRNVP098 LLC
15		
16	Vegas Valley Growers LLC 4616 West Sahara Avenue, Suite 326 Las Vegas, Nevada 89102	<i>Last Known Address</i> Vegas Valley Growers LLC
17		
18	Rebecca Gasca PISTIL + STIGMA, INC. 3500 Lakeside Court, Suite 205 Reno, Nevada 89509	<i>Registered Agent for Defendant/Respondent</i> Wendovera LLC
19		
20	COOK & KELESIS, LTD. 517 South 9th Street Las Vegas, Nevada 89101	<i>Registered Agent for Defendant/Respondent</i> YMY Ventures LLC
21		
22		
23		
24		
25		
26		

/s/ Karen Rodman
Karen Rodman, an Employee of
BAILEY ♦ KENNEDY



ORDG

DENNIS L. KENNEDY
Nevada Bar No. 1462

JOSHUA M. DICKEY
Nevada Bar No. 6621

SARAH E. HARMON
Nevada Bar No. 8106

KELLY B. STOUT
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STEPHANIE J. GLANTZ
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SGlantz@BaileyKennedy.com

*Attorneys for Plaintiff/Petitioner/
Counter-Defendant D.H. FLAMINGO, INC.*

**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 Motion for
(1) Voluntary Dismissal of Certain Defendants/Respondents with Prejudice; and
(2) Allowing Service By Electronic Means Only**

This matter came before the Court (the Honorable Elizabeth Gonzalez presiding) on the 28th day of February, 2020 at 9:00 a.m., in Department 11, on Plaintiffs/Petitioners' Motion for Voluntary Dismissal of Certain Defendants/Respondents with Prejudice and for an Order Allowing Service By Electronic Means Only (the "Motion").¹ Kelly B. Stout, Esq. of Bailey ♦ Kennedy,

¹ Joinders to the Motion were filed by Rural Remedies, LLC; Nevada Wellness Center, LLC; Solace Enterprises,

1 appeared on behalf of Plaintiff/Petitioner/Counter-Defendant D.H. Flamingo, Inc. and
2 Plaintiff/Petitioner Inyo Fine Cannabis Dispensary L.L.C.²

3 **ORDER**

4 The Court, having considered the pleadings, papers and memoranda on file, heard argument
5 of counsel, and good cause appearing,

6 **IT IS HEREBY ORDERED** that the following Defendants/Respondents that have
7 expressed a desire not to participate in this action are hereby dismissed with prejudice:

- 8 • Alternative Medicine Associates, L.C.;
- 9 • Blossom Group, LLC;
- 10 • CN Licenseco I, Inc.;
- 11 • D Lux, LLC;
- 12 • GB Sciences Nevada, LLC;
- 13 • Gravitas Henderson, LLC;
- 14 • Greenpoint Nevada, Inc.;
- 15 • Greenway Health Community, L.L.C.;
- 16 • Greenway Medical LLC;
- 17 • FSWFL, LLC;
- 18 • International Service and Rebuilding, Inc.;
- 19 • LNP LLC;
- 20 • Matrix NV, LLC;
- 21 • NV 3480 Partners, LLC;
- 22 • NV Green Inc.;
- 23 • Nevada Group Wellness LLC;
- 24 • Releaf Cultivation, LLC;
- 25 • Releaf Wellness, LLC;
- 26 • Silver Sage Wellness, LLC;
- 27 • Wendovera LLC;
- 28 • Wellness & Caregivers of Nevada LLV, LLC;
- WSCC, Inc.; and
- YMY Ventures LLC.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26
27 LLLP; Franklin Bioscience NV LLC; and Harvest of Nevada LLC.

28 ² On March 4, 2020, Craig D. Slater, of the law firm Luh & Associates, substituted as counsel for Inyo Fine Cannabis Dispensary L.L.C.

1 **IT IS FURTHER ORDERED** that, all parties in this consolidated action shall register for
2 the E-Filing System and all documents shall be served using the E-Filing System only.

3 Dated this 11 day of March, 2020.


DISTRICT COURT JUDGE


6 Respectfully submitted by:

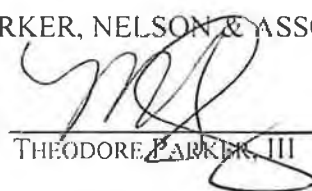
7 BAILEY ♦ KENNEDY

8 By: 
9 DENNIS L. KENNEDY
10 JOSHUA M. DICKEY
11 SARAH E. HARMON
12 KELLY B. STOUT
13 STEPHANIE J. GLANTZ

14 *Attorneys for Plaintiff/Petitioner/
15 Counter-Defendant D.H. FLAMINGO, INC.*

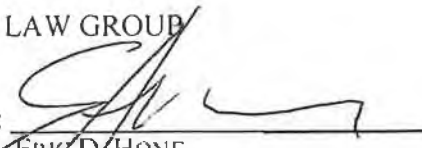
16 Approved as to form and content:

17 PARKER, NELSON & ASSOCIATES CHTD.

18 By: 
19 THEODORE PARKER, III

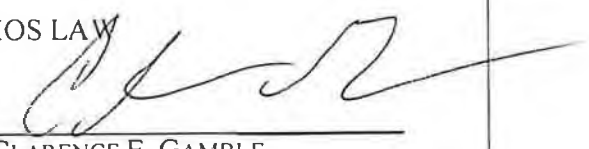
20 *Attorneys for Defendant/Respondent
21 Nevada Wellness Center LLC*

22 HI LAW GROUP

23 By: 
24 ERIC D. HONE
25 JAMIE L. ZIMMERMAN
26 MOOREA L. KATZ

27 *Attorneys for Defendant/Respondent
28 Lone Mountain Partners, LLC*

RAMOS LAW

By: 
CLARENCE E. GAMBLE

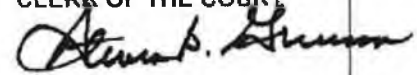
*Attorney for Defendant/Respondent
Rural Remedies LLC*

ARMSTRONG TEASDALE LLP

By: 
ALICIA R. ASHCRAFT
JEFFREY F. BARR

*Attorneys for Defendants/Respondents
Franklin Bioscience Nevada LLC; Harvest
of Nevada LLC; and Solace Enterprises,
LLLP*

EXHIBIT 3-B



1 **NEOJ**
DENNIS L. KENNEDY
2 Nevada Bar No. 1462
JOSHUA M. DICKEY
3 Nevada Bar No. 6621
SARAH E. HARMON
4 Nevada Bar No. 8106
KELLY B. STOUT
5 Nevada Bar No. 12105
STEPHANIE J. GLANTZ
6 Nevada Bar No. 14878
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Facsimile: 702.562.8821
9 DKennedy@BaileyKennedy.com
JDickey@BaileyKennedy.com
10 SHarmon@BaileyKennedy.com
KStout@BaileyKennedy.com
11 SGlantz@BaileyKennedy.com

12 *Attorneys for Plaintiff/Petitioner/*
13 *Counter-Defendant D.H. FLAMINGO, INC.*

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16
17 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

22
23
24 **Notice of Entry of Order Granting DH Flamingo, Inc.'s Motion for Voluntary**
25 **Dismissal with Prejudice of First Amended Complaint and Petition for Judicial Review**
and/or Writs of Certiorari, Mandamus, and Prohibition on an Order Shortening Time

26 TO: ALL INTERESTED PARTIES

27 PLEASE TAKE NOTICE that an Order Granting DH Flamingo, Inc.'s Motion for Voluntary
28 Dismissal with Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs

1 of Certiorari, Mandamus, and Prohibition on an Order Shortening Time was entered on the 30th day
2 of March 2020. A true and correct copy of which is attached hereto.

3 DATED this 30th day of March, 2020.

4 BAILEY ♦ KENNEDY

5
6 By: /s/ Kelly B. Stout
7 DENNIS L. KENNEDY
8 JOSHUA M. DICKEY
9 SARAH E. HARMON
10 KELLY B. STOUT
11 STEPHANIE J. GLANTZ

12 *Attorneys for Plaintiff/Petitioner/*
13 *Counter-Defendant D.H. FLAMINGO, INC.*

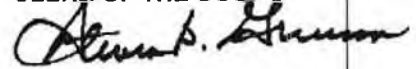
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28
BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 30th day of March, 2020, service of the foregoing **Notice of Entry of Order Granting DH Flamingo, Inc.'s Motion for Voluntary Dismissal with Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition on an Order Shortening Time** was made via the Eighth Judicial District Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2 and this Court's Order dated March 11, 2020, to all parties currently on the electronic service list.

/s/ Karen Rodman

Karen Rodman, an Employee of
BAILEY ♦ KENNEDY



1 **ORDG**

DENNIS L. KENNEDY

2 Nevada Bar No. 1462

JOSHUA M. DICKEY

3 Nevada Bar No. 6621

SARAH E. HARMON

4 Nevada Bar No. 8106

KELLY B. STOUT

5 Nevada Bar No. 12105

STEPHANIE J. GLANTZ

6 Nevada Bar No. 14878

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9 DKennedy@BaileyKennedy.com

JDickey@BaileyKennedy.com

10 SHarmon@BaileyKennedy.com

KStout@BaileyKennedy.com

11 SGlantz@BaileyKennedy.com

12 *Attorneys for Plaintiff/Petitioner/
13 Counter-Defendant D.H. FLAMINGO, INC.*

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 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

22
23 **Order Granting DH Flamingo, Inc.'s Motion for Voluntary Dismissal with Prejudice**
24 **of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari,**
25 **Mandamus, and Prohibition on an Order Shortening Time**

26 This matter came before the Court (the Honorable Elizabeth Gonzalez presiding) on the 19th
27 day of March, 2020, at 9:30 a.m., in Department 11, on DH Flamingo, Inc.'s Motion for Voluntary
28 Dismissal with Prejudice of First Amended Complaint and Petition for Judicial Review and/or

1 Writs of Certiorari, Mandamus, and Prohibition on an Order Shortening Time (the “Motion”).¹
2 Dennis L. Kennedy, Esq. and Kelly B. Stout, Esq. of Bailey ♦ Kennedy, appeared on behalf of D.H.
3 Flamingo, Inc. (“DH Flamingo”).

4 **ORDER**

5 The Court, having considered the pleadings, papers, and memoranda on file, heard argument
6 of counsel, and good cause appearing,

7 **IT IS HEREBY ORDERED** that DH Flamingo’s claims asserted in its First Amended
8 Complaint—judicial review, declaratory judgment, writ of mandamus, writ of certiorari, writ of
9 prohibition (the “Dismissed Claims”)—are hereby dismissed with prejudice.²

10 **IT IS FURTHER ORDERED** that the dismissal of DH Flamingo’s claims asserted in its
11 First Amended Complaint shall have no effect on MM Development, Inc.’s (“MM”) counterclaim
12 against DH Flamingo for tortious interference with prospective economic advantage or DH
13 Flamingo’s counterclaim against MM for abuse of process, which remain pending.

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25 ¹ Wellness Connection of Nevada, LLC’s Limited Opposition to D.H. Flamingo, Inc.’s Motion for Voluntary
26 Dismissal With Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari,
Mandamus, and Prohibition on an Order Shortening Time was filed on March 19, 2020, at 9:23 a.m.

27 ² Although inadvertently included in the caption, Surterra Holdings, Inc. has not asserted any claims in the First
28 Amended Complaint and is not a Plaintiff/Petitioner. Nevertheless, to the extent necessary, it is dismissed as well with
prejudice.

1 **IT IS FURTHER ORDERED** that DH Flamingo shall bear its own costs and fees incurred
2 in the prosecution of its Dismissed Claims.³

3 **IT IS FURTHER ORDERED** that no Party to the Consolidated Action⁴ shall be entitled to
4 reimbursement of any costs or attorneys' fees from DH Flamingo.

5 Dated this 30th day of March, 2020.

7
8 
DISTRICT COURT JUDGE

9 Respectfully submitted by:

10 BAILEY ♦ KENNEDY

11 By: /s/ Kelly B. Stout

12 DENNIS L. KENNEDY
13 JOSHUA M. DICKEY
14 SARAH E. HARMON
KELLY B. STOUT
STEPHANIE J. GLANTZ

15 *Attorneys for Plaintiff/Petitioner/
16 Counter-Defendant D.H. FLAMINGO, INC.*

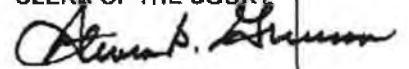
26 ³ This Order does not adjudicate DH Flamingo's right to an award of attorney's fees or costs related to defense of
27 MM's counterclaim for tortious interference with prospective economic advantage or pursuit of its counterclaim against
MM for abuse of process, which remain pending.

28 ⁴ The Consolidated Action includes case numbers A-19-787004-B, A-18-785818-W, A-18-786357-W, A-19-
786962-B, A-19-787035-C, A-19-787540-W, A-19-787726-C, and A-19-801416-B.

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EXHIBIT PAGE ONLY

EXHIBIT 4
Orders Challenged on Appeal

EXHIBIT 4-A



1 **ORDG**

2 DENNIS L. KENNEDY

3 Nevada Bar No. 1462

4 JOSHUA M. DICKEY

5 Nevada Bar No. 6621

6 SARAH E. HARMON

7 Nevada Bar No. 8106

8 KELLY B. STOUT

9 Nevada Bar No. 12105

10 STEPHANIE J. GLANTZ

11 Nevada Bar No. 14878

12 **BAILEY ♦ KENNEDY**

13 8984 Spanish Ridge Avenue

14 Las Vegas, Nevada 89148-1302

15 Telephone: 702.562.8820

16 Facsimile: 702.562.8821

17 DKennedy@BaileyKennedy.com

18 JDickey@BaileyKennedy.com

19 SHarmon@BaileyKennedy.com

20 KStout@BaileyKennedy.com

21 SGlantz@BaileyKennedy.com

22 *Attorneys for Plaintiff/Petitioner/*

23 *Counter-Defendant D.H. FLAMINGO, INC.*

24 DISTRICT COURT
25 CLARK COUNTY, NEVADA

26 IN RE: D.O.T. LITIGATION,

27 Case No. A-19-787004-B

28 Consolidated with: A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept. No. XI

29 Order Granting Motion for
30 (1) Voluntary Dismissal of Certain Defendants/Respondents with Prejudice; and
31 (2) Allowing Service By Electronic Means Only

32 This matter came before the Court (the Honorable Elizabeth Gonzalez presiding) on the
33 28th day of February, 2020 at 9:00 a.m., in Department 11, on Plaintiffs/Petitioners' Motion for
34 Voluntary Dismissal of Certain Defendants/Respondents with Prejudice and for an Order Allowing
35 Service By Electronic Means Only (the "Motion").¹ Kelly B. Stout, Esq. of Bailey ♦ Kennedy,

36 Joinders to the Motion were filed by Rural Remedies, LLC; Nevada Wellness Center, LLC; Solace Enterprises,

1 appeared on behalf of Plaintiff/Petitioner/Counter-Defendant D.H. Flamingo, Inc. and
2 Plaintiff/Petitioner Inyo Fine Cannabis Dispensary L.L.C.²

3 **ORDER**

4 The Court, having considered the pleadings, papers and memoranda on file, heard argument
5 of counsel, and good cause appearing,

6 **IT IS HEREBY ORDERED** that the following Defendants/Respondents that have
7 expressed a desire not to participate in this action are hereby dismissed with prejudice:

- 8 • Alternative Medicine Associates, L.C.;
- 9 • Blossom Group, LLC;
- 10 • CN Licenseco I, Inc.;
- 11 • D Lux, LLC;
- 12 • GB Sciences Nevada, LLC;
- 13 • Gravitas Henderson, LLC;
- 14 • Greenpoint Nevada, Inc.;
- 15 • Greenway Health Community, L.L.C.;
- 16 • Greenway Medical LLC;
- 17 • FSWFL, LLC;
- 18 • International Service and Rebuilding, Inc.;
- 19 • LNP LLC;
- 20 • Matrix NV, LLC;
- 21 • NV 3480 Partners, LLC;
- 22 • NV Green Inc.;
- 23 • Nevada Group Wellness LLC;
- 24 • Releaf Cultivation, LLC;
- 25 • Releaf Wellness, LLC;
- 26 • Silver Sage Wellness, LLC;
- 27 • Wendovera LLC;
- 28 • Wellness & Caregivers of Nevada LLV, LLC;
- WSCC, Inc.; and
- YMY Ventures LLC.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26
27 LLLP; Franklin Bioscience NV LLC; and Harvest of Nevada LLC.

28 ² On March 4, 2020, Craig D. Slater, of the law firm Luh & Associates, substituted as counsel for Inyo Fine Cannabis Dispensary L.L.C.

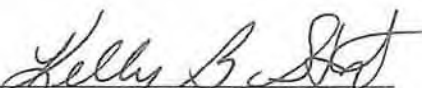
1 IT IS FURTHER ORDERED that, all parties in this consolidated action shall register for
2 the E-Filing System and all documents shall be served using the E-Filing System only.

3 Dated this 11 day of March, 2020.


DISTRICT COURT JUDGE

6 Respectfully submitted by:

7 BAILEY ♦ KENNEDY

8 By: 
9 DENNIS L. KENNEDY
10 JOSHUA M. DICKEY
11 SARAH E. HARMON
12 KELLY B. STOUT
13 STEPHANIE J. GLANTZ

14 *Attorneys for Plaintiff/Petitioner/
15 Counter-Defendant D.H. FLAMINGO, INC.*

16 Approved as to form and content:

17 PARKER, NELSON & ASSOCIATES CHTD.

18 By: 
19 THEODORE PARKER, III

20 *Attorneys for Defendant/Respondent
21 Nevada Wellness Center LLC*

22 HI LAW GROUP

23 By: 
24 ERIC D. HONE
25 JAMIE L. ZIMMERMAN
26 MOOREA L. KATZ

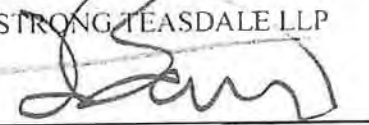
27 *Attorneys for Defendant/Respondent
28 Lone Mountain Partners, LLC*

RAMOS LAW

By: 
CLARENCE E. GAMBLE

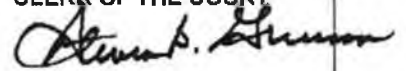
*Attorney for Defendant/Respondent
Rural Remedies LLC*

ARMSTRONG TEASDALE LLP

By: 
ALICIA R. ASHCRAFT
JEFFREY F. BARR

*Attorneys for Defendants/Respondents
Franklin Bioscience Nevada LLC; Harvest
of Nevada LLC; and Solace Enterprises,
LLLP*

EXHIBIT 4-B



1 **ORDG**

2 DENNIS L. KENNEDY

3 Nevada Bar No. 1462

4 JOSHUA M. DICKEY

5 Nevada Bar No. 6621

6 SARAH E. HARMON

7 Nevada Bar No. 8106

8 KELLY B. STOUT

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10 STEPHANIE J. GLANTZ

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12 **BAILEY ♦ KENNEDY**

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14 Las Vegas, Nevada 89148-1302

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20 KStout@BaileyKennedy.com

21 SGlantz@BaileyKennedy.com

22 *Attorneys for Plaintiff/Petitioner/*

23 *Counter-Defendant D.H. FLAMINGO, INC.*

24 DISTRICT COURT

25 CLARK COUNTY, NEVADA

26 IN RE: D.O.T. LITIGATION,

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

28 **Consolidated with: A-785818**

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept. No. XI

23 **Order Granting DH Flamingo, Inc.'s Motion for Voluntary Dismissal with Prejudice**
24 **of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari,**
25 **Mandamus, and Prohibition on an Order Shortening Time**

26 This matter came before the Court (the Honorable Elizabeth Gonzalez presiding) on the 19th
27 day of March, 2020, at 9:30 a.m., in Department 11, on DH Flamingo, Inc.'s Motion for Voluntary
28 Dismissal with Prejudice of First Amended Complaint and Petition for Judicial Review and/or

1 Writs of Certiorari, Mandamus, and Prohibition on an Order Shortening Time (the “Motion”).¹
2 Dennis L. Kennedy, Esq. and Kelly B. Stout, Esq. of Bailey ♦ Kennedy, appeared on behalf of D.H.
3 Flamingo, Inc. (“DH Flamingo”).

4 **ORDER**

5 The Court, having considered the pleadings, papers, and memoranda on file, heard argument
6 of counsel, and good cause appearing,

7 **IT IS HEREBY ORDERED** that DH Flamingo’s claims asserted in its First Amended
8 Complaint—judicial review, declaratory judgment, writ of mandamus, writ of certiorari, writ of
9 prohibition (the “Dismissed Claims”)—are hereby dismissed with prejudice.²

10 **IT IS FURTHER ORDERED** that the dismissal of DH Flamingo’s claims asserted in its
11 First Amended Complaint shall have no effect on MM Development, Inc.’s (“MM”) counterclaim
12 against DH Flamingo for tortious interference with prospective economic advantage or DH
13 Flamingo’s counterclaim against MM for abuse of process, which remain pending.

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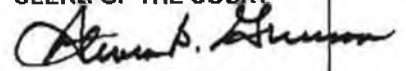
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24 ///

25 ¹ Wellness Connection of Nevada, LLC’s Limited Opposition to D.H. Flamingo, Inc.’s Motion for Voluntary
26 Dismissal With Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari,
Mandamus, and Prohibition on an Order Shortening Time was filed on March 19, 2020, at 9:23 a.m.

27 ² Although inadvertently included in the caption, Surterra Holdings, Inc. has not asserted any claims in the First
28 Amended Complaint and is not a Plaintiff/Petitioner. Nevertheless, to the extent necessary, it is dismissed as well with
prejudice.

EXHIBIT 4-C



AARON FORD
Attorney General
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Akke Levin (Bar No. 9102)
Senior Deputy Attorney General
Kiel B. Ireland (Bar No. 15368C)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3420 (phone)
sshevorski@ag.nv.gov
alevin@ag.nv.gov
kireland@ag.nv.gov

Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE DOT

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

28 . . .

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

3 **C. The Court's findings and order**

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

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

12 Dated this 26th day of October, 2020

13
14
15 
16 DISTRICT COURT JUDGE

17 Submitted by:

18 AARON D. FORD
19 Attorney General

20 By: /s/ Steve Shevorski
21 Steve Shevorski (Bar No. 8256)
22 Chief Litigation Counsel
23 Akke Levin (Bar No. 9102)
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20 *Attorneys for ETW Management Group LLC; et al.*

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

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

24 Case No.: A-19-787004-B

25 Consolidated with: A-785818

26 A-786357

27 A-786962

28 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

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

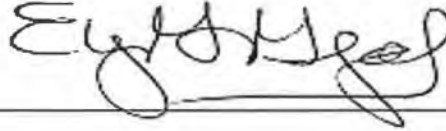
27 And this Court, having considered the relevant briefing and evidence, the relevant legal
28 authorities, the joinders thereto, and good cause appearing, this Court finds as follows:

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

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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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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**

10 This automated certificate of service was generated by the Eighth Judicial District
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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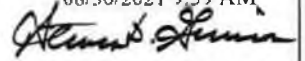
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20 *Attorneys for ETW Management Group LLC; et al.*

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

23 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

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP
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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.

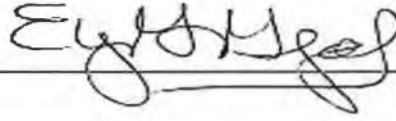
5 2. Final judgment will be issued following completion of Phase 3 scheduled for a jury
6 trial on June 28, 2021.

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
SHECK, LLP

HOWARD & HOWARD ATTORNEYS
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Cosby, Wendy C.

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

You may use mine as well.

Joel Schwarz

Attorney

H1 Law Group

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

Max

You may use my electronic signature for this order.

Howard & Howard
law for business

L. Christopher Rose
Attorney

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

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

CAUTION: EXTERNAL EMAIL

Chris/Joel,

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

Maximilien D. Fetaz

Brownstein Hyatt Farber Schreck, LLP

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Las Vegas, NV 89106

702.464.7083 tel

MFetaz@BHFS.com

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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
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:

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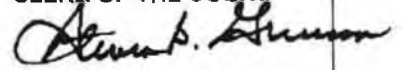
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EXHIBIT PAGE ONLY

EXHIBIT 5
Notices of Entry of Orders Challenged on Appeal

EXHIBIT 5-A



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13 *Counter-Defendant D.H. FLAMINGO, INC.*

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16
17 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

23
24 **Notice of Entry of Order Granting Motion for**
25 **(1) Voluntary Dismissal of Certain Defendants/Respondents with**
26 **Prejudice; and (2) Allowing Service By Electronic Means Only**

27 TO: ALL INTERESTED PARTIES

28 PLEASE TAKE NOTICE that an Order Granting Motion for (1) Voluntary Dismissal of
Certain Defendants/Respondents with Prejudice; and (2) Allowing Service By Electronic Means

1 Only was entered on the 11th day of March 2020. A true and correct copy of which is attached
2 hereto.

3 DATED this 11th day of March, 2020.

4 BAILEY ♦ KENNEDY

5

6

By: /s/ Kelly B. Stout

7

DENNIS L. KENNEDY

8

JOSHUA M. DICKEY

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SARAH E. HARMON

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KELLY B. STOUT

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STEPHANIE J. GLANTZ

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Attorneys for Plaintiff/Petitioner/

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Counter-Defendant D.H. FLAMINGO, INC.

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 11th day of March, 2020, service of the foregoing **Notice of Entry of Order Granting Motion for (1) Voluntary Dismissal of Certain Defendants/Respondents with Prejudice; and (2) Allowing Service By Electronic Means Only** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

Specifically, the following parties were served via the Eighth Judicial District Court's electronic filing system:

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8	Eric D. Hone Jamie L. Zimmerman Moorea L. Katz H1 LAW GROUP 701 North Green Valley Parkway, #200 Henderson, Nevada 89074	<i>Attorneys for Defendant/Respondent</i> Lone Mountain Partners, LLC
12	Margaret A. McLetchie MCLETCHIE LAW 701 East Bridger Avenue, Suite 520 Las Vegas, Nevada 89101	<i>Attorneys for Defendant/Respondent</i> GreenMart of Nevada NLV, LLC
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21	Brett J. Scolari 3400 Western Avenue Las Vegas, Nevada 89109	<i>Attorney for Defendants/Respondents</i> Tryke Companies Reno, LLC; Tryke Companies SO NV, LLC; and Nuleaf Incline Dispensary LLC
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Catherine A. Reichenberg John R. Funk GUNDERSON LAW FIRM 3895 Warren Way Reno, Nevada 89509	<i>Attorneys for Defendant/Respondent</i> D Lux LLC

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Adam Fulton JENNINGS & FULTON LTD. 2580 Sorrel Street Las Vegas, Nevada 89146	<i>Attorney for Defendant/Respondent</i> GB Sciences Nevada LLC
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4	Service was made on the following parties by depositing a true and correct copy in the U.S.	
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8	5Seat Investments LLC PO Box 12187 Zephyr Cove, Nevada 89448	<i>Last Known Address</i> 5Seat Investments LLC
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12	John Mueller 2325 Western Avenue, Suite 12 Las Vegas, Nevada 89102	<i>Registered Agent for Defendant/Respondent</i> Acres Dispensary
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16	Hamid Rowshan 2000 Fashion Show Drive, #1919 Las Vegas, Nevada 89109	<i>Registered Agent/Manager for Defendant/ Respondent Blossum Group LLC</i>
18	Carson City Agency Solutions c/o Lucinda House-Mahoney 3420 Southbluff Circle Anchorage, Alaska 99515	<i>Last Known Address</i> Carson City Agency Solutions
20	KAEMPFER CROWELL, LTD. 1980 Festival Plaza Drive, #650 Las Vegas, Nevada 89135	<i>Registered Agent for Defendants/Respondents</i> CN Licenseco I, Inc.; Healthcare Options for Patients Enterprises, LLC; Helios NV LLC LNP, LLC
22	Diversified Modalities Marketing Ltd. Attn: Dr. Vu Luu 5172 West Patrick Lane, Suite 100 Las Vegas, Nevada 89118	<i>Registered Agent for Defendant/Respondent</i> Diversified Modalities Marketing Ltd

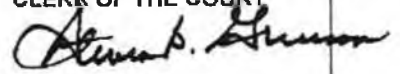
1	KOLESAR & LEATHAM, CHTD. 400 South Rampart Boulevard, Suite 400 Las Vegas, Nevada 89145	<i>Registered Agent for Defendants/Respondents</i> EcoNevada LLC; Phenofarm NV LLC
2		
3	Incorp Services, Inc. 3773 Howard Hughes Parkway, Suite 500S Las Vegas, Nevada 89169-6014	<i>Registered Agent for Defendants/Respondents</i> Forever Green, LLC
4		
5	Larry D. Smith 3170 Polaris Avenue, Suite 25 Las Vegas, Nevada 89102	<i>Manager for Defendant/Respondent</i> GFive Cultivation LLC
6		
7	MJardin Management 3461 Ringsby Court, Suite 350 Denver, Colorado 80216	<i>Registered Agent for Defendant/Respondent</i> Gravitas Henderson L.L.C.
8		
9	Daniel Caravette c/o Keith Harrington 77 West Washington Street, Suite 1020 Chicago, Illinois 60602	<i>Manager for Defendant/Respondent</i> Greenway Health Community L.L.C.
10		
11		
12	Christopher A. Fresquez 223 Sunset Shower Drive Henderson, Nevada 89012	<i>Registered Agent for Defendant/Respondent</i> Greenway Medical LLC
13		
14	CT Corporation System 701 South Carson Street, Suite 200 Carson City, Nevada 89701	<i>Registered Agent for Defendant/Respondent</i> GTI Nevada, LLC
15		
16	Marvel Law 217 Idaho Street Elko, Nevada 89801	<i>Registered Agent for Defendant/Respondent</i> H & K Growers Corp.
17		
18	Robert C. Maddox Eva G. Segerblom Ardea G. Canepa-Rotoli MADDOX SEGERBLOM CANEPA 10403 Double R Boulevard Reno, Nevada 89521	<i>Attorneys for Defendant/Respondent</i> International Service and Rebuilding, Inc.; and NV Green Inc.
19		
20		
21	George Marnell 303 Orville Wright Court Las Vegas, Nevada 89119	<i>Registered Agent for Defendant/Respondent</i> Las Vegas Wellness and Compassion LLC
22		
23	Daniel R. Williams 1630 SE Rhine Street Portland, Oregon 97202	<i>Secretary and Director for</i> <i>Defendant/Respondent</i> Luff Enterprises NV, Inc.
24		
25	CT Corporation System 701 South Carson Street, Suite 200 Carson City, Nevada 89701	<i>Registered Agent for Defendant/Respondent</i> Malana LV L.L.C.
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27		
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1	Kenneth A. Woloson, Esq. KENNETH A. WOLOSON LAW OFFICE, PLLC 1980 Festival Plaza Drive, Suite 300 Las Vegas, Nevada 89135	<i>Attorney for Defendant/Respondent</i> Matrix NV, LLC
2		
3		
4	CT Corporation System 701 South Carson Street, Suite 200 Carson City, Nevada 89701	<i>Registered Agent for Defendant/Respondent</i> MMNV2 Holdings I, LLC
5		
6	Steve McNeal PO Box 69 Blue Diamond, Nevada 89004	<i>Registered Agent/Manager for</i> <i>Defendant/Respondent</i> MM R & D, LLC
7		
8	Nevada Botanical Science, Inc. 7770 Security Circle Reno, Nevada 89506	<i>Last Known Address</i> Nevada Botanical Science, Inc.
9		
10	Jay H. Brown BROWN, BROWN & PREMSRIRUT 520 South 4th Street Las Vegas, Nevada 89101	<i>Registered Agent for Defendants/Respondents</i> Nevada Group Wellness LLC
11		
12	Judith Woodward 8200 Omni Court Las Vegas, Nevada 89149	<i>Registered Agent for Defendant/Respondent</i> NLVG, LLC
13		
14	Conrad Kupferman 11 Soundview Drive Port Jefferson, New York 11777 – 7928	<i>Manager for Defendant/Respondent</i> NLV Wellness LLC
15		
16	Michael McNerny, Esq. McNERNY LAW GROUP 7995 West Sahara Avenue, #101 Las Vegas, Nevada 89117	<i>Attorneys for Defendant/Respondent</i> NV 3480 Partners LLC
17		
18	Nye Farm Tech Ltd PO Box 337 Amargosa Valley, Nevada 89020	<i>Last Known Address</i> Nye Farm Tech Ltd
19		
20	Ross C. Goodman, Esq. 520 South Fourth Street, 2nd Floor Las Vegas, Nevada 89101	<i>Attorney for Defendant/Respondent</i> Paradise Wellness Center LLC
21		
22	GOODSELL LAW GROUP 10155 West Twain Avenue, Suite 100 Las Vegas, Nevada 89147	<i>Registered Agent for Defendant/Respondent</i> Physis One LLC
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24	SMITH & SHAPIRO, PLLC 3333 Serene Avenue, Suite 130 Henderson, Nevada 89074	<i>Registered Agent for Defendant/Respondent</i> Releaf Cultivation, LLC
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1	Amy L. Sugden SUGDEN LAW 9728 Gilespe Street Las Vegas, Nevada 89183	<i>Attorneys for Defendant/Respondent</i> RG Highland Enterprises Inc.
2		
3	Kristina Wildeveld LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES 550 East Charleston Boulevard, Suite A Las Vegas, Nevada 89104	<i>Registered Agent for Defendant/Respondent</i> Silver Sage Wellness LLC
4		
5	John Spilotro, Esq. 626 South 3rd Street Las Vegas, Nevada 89101	<i>Attorneys for Defendant/Respondent</i> Southern Nevada Growers, LLC
6		
7	West Coast Development Nevada, as Manager of Sweet Goldy LLC c/o CT Corporation System 701 South Carson Street, Suite 200 Carson City, Nevada 89701	<i>Manager for Defendant/Respondent</i> Sweet Goldy LLC
8		
9	The Harvest Foundation LLC 3395 Pinks Place Las Vegas, Nevada 89102	<i>Last Known Address</i> The Harvest Foundation LLC
10		
11	The Harvest Foundation LLC 10407 East Mayberry Heights Drive Cypress, Texas 77433	
12		
13	Kristine Torosyan 9518 Gainey Ranch Avenue Las Vegas, Nevada 89147	<i>Registered Agent for Defendant/Respondent</i> Thompson Farm One LLC
14		
15	Shane Terry 1930 Village Center Circle, #3-1747 Las Vegas, Nevada 89134	<i>Last Known Address</i> TRNVP098 LLC
16		
17	Vegas Valley Growers LLC 4616 West Sahara Avenue, Suite 326 Las Vegas, Nevada 89102	<i>Last Known Address</i> Vegas Valley Growers LLC
18		
19	Rebecca Gasca PISTIL + STIGMA, INC. 3500 Lakeside Court, Suite 205 Reno, Nevada 89509	<i>Registered Agent for Defendant/Respondent</i> Wendovera LLC
20		
21	COOK & KELESIS, LTD. 517 South 9th Street Las Vegas, Nevada 89101	<i>Registered Agent for Defendant/Respondent</i> YMY Ventures LLC
22		
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/s/ Karen Rodman
Karen Rodman, an Employee of
BAILEY ♦ KENNEDY

EXHIBIT 5-B



1 **NEOJ**

2 DENNIS L. KENNEDY

3 Nevada Bar No. 1462

4 JOSHUA M. DICKEY

5 Nevada Bar No. 6621

6 SARAH E. HARMON

7 Nevada Bar No. 8106

8 KELLY B. STOUT

9 Nevada Bar No. 12105

10 STEPHANIE J. GLANTZ

11 Nevada Bar No. 14878

12 **BAILEY ♦ KENNEDY**

13 8984 Spanish Ridge Avenue

14 Las Vegas, Nevada 89148-1302

15 Telephone: 702.562.8820

16 Facsimile: 702.562.8821

17 DKennedy@BaileyKennedy.com

18 JDickey@BaileyKennedy.com

19 SHarmon@BaileyKennedy.com

20 KStout@BaileyKennedy.com

21 SGlantz@BaileyKennedy.com

22 *Attorneys for Plaintiff/Petitioner/*

23 *Counter-Defendant D.H. FLAMINGO, INC.*

24 DISTRICT COURT

25 CLARK COUNTY, NEVADA

26 IN RE: D.O.T. LITIGATION,

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

28 **Consolidated with:** A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept. No. XI

23 **Notice of Entry of Order Granting DH Flamingo, Inc.'s Motion for Voluntary**
24 **Dismissal with Prejudice of First Amended Complaint and Petition for Judicial Review**
25 **and/or Writs of Certiorari, Mandamus, and Prohibition on an Order Shortening Time**

26 TO: ALL INTERESTED PARTIES

27 PLEASE TAKE NOTICE that an Order Granting DH Flamingo, Inc.'s Motion for Voluntary

28 Dismissal with Prejudice of First Amended Complaint and Petition for Judicial Review and/or Writs

1 of Certiorari, Mandamus, and Prohibition on an Order Shortening Time was entered on the 30th day
2 of March 2020. A true and correct copy of which is attached hereto.

3 DATED this 30th day of March, 2020.

4 BAILEY ♦ KENNEDY

5
6 By: /s/ Kelly B. Stout

DENNIS L. KENNEDY

JOSHUA M. DICKEY

SARAH E. HARMON

KELLY B. STOUT

8 STEPHANIE J. GLANTZ

9 *Attorneys for Plaintiff/Petitioner/
10 Counter-Defendant D.H. FLAMINGO, INC.*

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BAILEY ♦ KENNEDY
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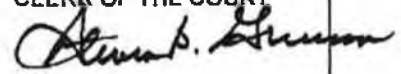
1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 30th day of
3 March, 2020, service of the foregoing **Notice of Entry of Order Granting DH Flamingo, Inc.'s**
4 **Motion for Voluntary Dismissal with Prejudice of First Amended Complaint and Petition for**
5 **Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition on an Order**
6 **Shortening Time** was made via the Eighth Judicial District Court's electronic filing system only,
7 pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2 and
8 this Court's Order dated March 11, 2020, to all parties currently on the electronic service list.

9
10 /s/ Karen Rodman
11 Karen Rodman, an Employee of
12 BAILEY ♦ KENNEDY
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BAILEY ♦ KENNEDY
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702.562.8820

EXHIBIT 5-C



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

DISTRICT COURT
CLARK COUNTY, NEVADA

In re DOT Litigation,

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

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

NOTICE OF ENTRY OF ORDER

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

DATED this 27th day of October, 2020.

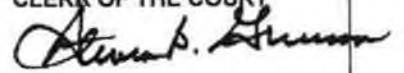
AARON D. FORD
Attorney General

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

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

EXHIBIT 5-D



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Las Vegas, NV 89146
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Facsimile: 702.362.2060

Attorneys for ETW Management Group LLC; et al.

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B
Consolidated with: A-785818
A-786357
A-786962
A-787035
A-787540
A-787726
A-801416

Dept No.: XI

**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

1 copy of said Order is attached hereto.

2 DATED this 30th day of August, 2021.

3 BROWNSTEIN HYATT FARBER SCHRECK, LLP

4 /s/ Adam K. Bult

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

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

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

8 JENNINGS & FULTON, LTD.

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

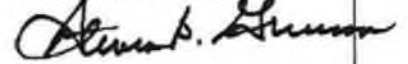
10 *Attorneys for Plaintiffs*

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

EXHIBIT 5-E



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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
GRANTING MOTIONS TO RETAX**

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

1 DATED this 30th day of August, 2021.

2 BROWNSTEIN HYATT FARBER SCHRECK, LLP

3 /s/ Adam K. Bult

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

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

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

7 JENNINGS & FULTON, LTD.

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

9 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

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

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