

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

In Re: D.O.T. Litigation,

WELLNESS CONNECTION OF  
NEVADA, LLC,

Appellant,

vs.

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

Electronically Filed  
Apr 01 2024 11:17 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case No.:  
85314**

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

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

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

Respondents.

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**APPELLANT’S APPENDIX – VOLUME 6 OF 14**

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**HOWARD & HOWARD ATTORNEYS PLLC**

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## **CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX**

<b>Vol.</b>	<b>Date</b>	<b>Document</b>	<b>Pages</b>
1	01/04/2019	Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	APP00001 – APP00017
1	01/04/2019	Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00018 – APP00166
2	01/04/2019	Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00167 – APP00332
3	2/8/2019	Amended Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc.	APP00333 – APP00492

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

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

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

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

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



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

### **ALPHABETICAL INDEX OF APPELLANT'S APPENDIX**

<b>Vol.</b>	<b>Date</b>	<b>Document</b>	<b>Pages</b>
3	2/8/2019	Amended Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00333 – APP00492
4	2/8/2019	Amended Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms	APP00493 – APP00652

		Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	
10	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume I	APP01362 – APP01555
11	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume II	APP01556 – APP01585
11	10/13/2020	Appendix to Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees, Volume III	APP01586 – APP01611
12	10/23/2020	Case Appeal Statement filed by TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC; Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC and Medifarm IV, LLC	APP01768 – APP01780
1	01/04/2019	Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc. dba Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	APP00018 – APP00166
2	01/04/2019	Complaint filed by ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC; Herbal Choice, Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate, Inc. dba	APP00167 – APP00332

		Mother Herb; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC	
1	01/04/2019	Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	APP00001 – APP00017
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12	11/05/2020	Notice of Appeal filed by Red Earth LLC, Nevcan LLC, Green Therapeutics, LLC and Green Leaf Farm Holdings LLC	APP01798 – APP01800

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8	09/22/2020	Notice of Entry of Judgment re September 3, 2020 Findings of Fact, Conclusions of Law and Permanent Injunction	APP01236 – APP01268
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8	07/17/2020	Plaintiffs’ Trial Exhibit 1302 - E-Mail dated 8/21/2019 from Nevada Department of Taxation to District Court, Department 11 re NRS 453D.200(6)	APP01191 – APP01193
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		Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	
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7	02/14/2020	Wellness Connection of Nevada LLC's Answer to Serenity Plaintiffs' Second Amended Complaint	APP01060 – APP01068
9	10/13/2020	Wellness Connection of Nevada, LLC's Motion for Attorneys' Fees	APP01348 – APP01361
13	09/02/2022	Wellness Connection of Nevada, LLC's Notice of Appeal	APP01965 – APP02024

Dated this 1st day of April, 2024.

### **HOWARD & HOWARD ATTORNEYS PLLC**

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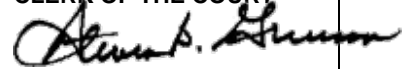
### **CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of April 2024, I caused a true and correct copy of the **APPELLANT'S APPENDIX, VOLUME 6 OF 14** to be electronically filed and served with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system.

/s/ Kelly McGee

\_\_\_\_\_  
An employee of Howard & Howard Attorneys PLLC





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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**

Plaintiffs/Petitioners,

vs.

STATE EX REL. DEPARTMENT OF  
TAXATION; STATE EX REL. NEVADA TAX  
COMMISSION; 3AP INC., a Nevada limited  
liability company; 5SEAT INVESTMENTS  
LLC, a Nevada limited liability company;  
ACRES DISPENSARY LLC, a Nevada limited  
liability company; ACRES MEDICAL LLC, a  
Nevada limited liability company; AGUA  
STREET LLC, a Nevada limited liability  
company; ALTERNATIVE MEDICINE  
ASSOCIATION LC, a Nevada limited liability  
company; BIONEVA INNOVATIONS OF  
CARSON CITY LLC, a Nevada limited liability  
company; BLOSSUM GROUP LLC, a Nevada  
limited liability company; BLUE COYOTE  
RANCH LLC, a Nevada limited liability  
company; CARSON CITY AGENCY  
SOLUTIONS L.L.C., a Nevada limited liability  
company; CHEYENNE MEDICAL, LLC, a  
Nevada limited liability company; CIRCLE S  
FARMS LLC, a Nevada limited liability  
company; CLEAR RIVER, LLC, a Nevada  
limited liability company; CN LICENSECO I,  
Inc., a Nevada corporation; COMMERCE PARK  
MEDICAL L.L.C., a Nevada limited liability  
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.

28     ///



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.

28     ///

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.



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

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

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

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

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

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

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

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

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

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

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

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

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

130. Defendant/Respondent Wendovera LLC is a Nevada limited liability company doing business under the fictitious firm name Wendovera.

131. Defendant/Respondent West Coast Development Nevada, LLC is a Nevada limited 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.

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

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

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

136. On information and belief, the Defendants/Respondents identified in Paragraphs 28-135 are natural persons or entities who are qualified holders of Medical Marijuana Establishment (“MME”) Certificates, who submitted an application to operate a recreational retail marijuana establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the “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.<sup>1</sup>

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).

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<sup>1</sup> 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 Department<sup>2</sup> 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           <sup>2</sup> 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 <sup>3</sup>
Evidence of the amount of taxes paid or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.	25
A financial plan which includes: <ul style="list-style-type: none"> <li>Financial statements showing the resources of the applicant, both liquid and illiquid.</li> <li>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.</li> <li>Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation</li> </ul>	30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <ul style="list-style-type: none"> <li>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.</li> <li>The source of those liquid assets.</li> </ul>	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

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



<ul style="list-style-type: none"> <li>• A plan for testing recreational marijuana.</li> <li>• A transportation plan.</li> <li>• Procedures to ensure adequate security measures for building security.</li> <li>• Procedures to ensure adequate security measures for product security.</li> </ul>	
<p>Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include:</p> <ul style="list-style-type: none"> <li>• A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses.</li> <li>• An operations manual that demonstrates compliance with the regulations of the Department.</li> <li>• An education plan which must include providing educational materials to the staff of the proposed establishment.</li> <li>• A plan to minimize the environmental impact of the proposed establishment</li> </ul>	30
<p>A plan which includes:</p> <ul style="list-style-type: none"> <li>• A description of the operating procedures for the electronic verification system of the proposed marijuana establishment.</li> <li>• A description of the inventory control system of the proposed marijuana establishment.</li> </ul>	20
<p>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:</p> <ul style="list-style-type: none"> <li>• Building plans with supporting details.</li> </ul>	20
<p>A proposal demonstrating:</p> <ul style="list-style-type: none"> <li>• The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located.</li> <li>• The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana.</li> </ul>	15
Application Total	250
<p>Unweighted:</p> <ul style="list-style-type: none"> <li>• Review plan for all names and logos for the establishment and any signage or advertisement.</li> <li>• 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</li> </ul>	

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).

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

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

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

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

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

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

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

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

- a. 2180 East Craig Road in North Las Vegas;
- b. 330 Emery Street in Nye County;
- c. Two locations to be determined in Unincorporated Clark County;
- d. A location to be determined in Las Vegas;
- e. A location to be determined in Henderson;
- 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.

<p>A financial plan which includes:</p> <ul style="list-style-type: none"> <li>Financial statements showing the resources of the applicant, both liquid and illiquid.</li> <li>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.</li> <li>Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation</li> </ul>	30	40
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates:	10	

<ul style="list-style-type: none"> <li>• 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.</li> <li>• The source of those liquid assets.</li> </ul>		
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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.

<p>Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including:</p> <ul style="list-style-type: none"> <li>• A plan for testing recreational marijuana.</li> <li>• A transportation plan.</li> <li>• Procedures to ensure adequate security measures for building security.</li> <li>• Procedures to ensure adequate security measures for product security.</li> </ul>	40	90
<p>Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include:</p> <ul style="list-style-type: none"> <li>• A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses.</li> <li>• An operations manual that demonstrates compliance with the regulations of the Department.</li> <li>• An education plan which must include providing educational materials to the staff of the proposed establishment.</li> <li>• A plan to minimize the environmental impact of the proposed establishment.</li> </ul>	30	
<p>A plan which includes:</p> <ul style="list-style-type: none"> <li>• A description of the operating procedures for the electronic verification system of the proposed marijuana establishment.</li> <li>• A description of the inventory control system of the proposed marijuana establishment.</li> </ul>	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.

<b>Nevada Recreational Marijuana Application Criteria</b>	<b>Total Points Possible</b>	<b>Average Points Awarded</b>
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	
Operating procedures	20	68.39
Adequacy of the size of the proposed marijuana establishment	20	
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.

- a. NuVeda scored above average in 5 of the 6 disclosed categories.
- b. DH Flamingo scored above average in 3 of the 6 disclosed categories.
- c. 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 case<sup>4</sup> 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.<sup>5</sup>

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**

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

<sup>5</sup> 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.  
Jorge has asked many  
15 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.

**3. Scrubbing of Licensee Records**

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

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

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

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

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

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

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

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

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.”<sup>6</sup>

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           <sup>6</sup>       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)<sup>7</sup> 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.

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<sup>7</sup> 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.

**K. The Commission Meetings**

238. On January 14, 2019, the Commission held a properly noticed meeting in Carson City, Nevada and Henderson, Nevada.<sup>8</sup>

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

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

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

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

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

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

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

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<sup>8</sup> An excerpted transcript of this meeting is attached as Exhibit 2.

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 order<sup>9</sup>  
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 <sup>9</sup> 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

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

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

250. Based upon its findings of fact and conclusions of law, the Court “enjoined [the Department] from conducting a final inspection of any of the conditional licenses issued in or about December 2018[, for applicants] 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.”

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

- a. 1 license in Carson City;
- b. 2 licenses in Henderson;
- c. 4 licenses in Las Vegas;
- d. 3 licenses in North Las Vegas;
- e. 4 licenses in Unincorporated Clark County;
- f. 1 license in Douglas County;
- g. 1 license in Esmeralda County;
- h. 1 license in Eureka County;
- i. 1 license in Lander County;
- j. 1 license in Lincoln County;
- k. 1 license in Mineral County;
- l. 1 license in Nye County;
- m. 1 license in White Pines County; and
- n. 3 licenses in Washoe County-Reno.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

Applicants) be transmitted in accordance with NRS 233B.131.<sup>10</sup> 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)

<sup>10</sup> “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

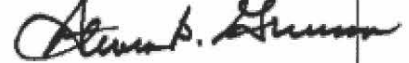
KELLY B. STOUT

*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 1





Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
[n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)  
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Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MM DEVELOPMENT COMPANY, INC., a  
Nevada corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF  
TAXATION; and DOES 1 through 10; and  
ROE CORPORATIONS 1 through 10.

Defendants.

Case No.: A-18-785818-W  
Dept. No.: XVIII

**ORDER GRANTING IN PART AND  
DENYING IN PART EMERGENCY  
MOTION FOR ORDER REQUIRING  
THE SMC TO PRESERVE AND/OR  
IMMEDIATELY TURN OVER  
RELEVANT ELECTRONICALLY  
STORED INFORMATION FROM  
SERVERS, STAND-ALONE  
COMPUTERS, AND CELL PHONES**

Date of Hearing: 12/13/18  
Time of Hearing: 10:00 a.m.

Plaintiff MM Development having filed an Emergency Motion For Preservation Of  
Electronic Data and having given the counsel for Department of Taxation notice of such  
request, the Court conducting a hearing on December 13, 2018 at 10:00 a.m., Plaintiff appearing  
by Will Kemp, Esq., and Nathanael R. Rulis, Esq., of the law firm of Kemp, Jones & Coulthard,  
LLP, the State of Nevada, Department of Taxation (the "State") appearing by Robert Werbicky,  
Esq., and David J. Pope, Esq., and it appearing that the State used employees retained by an  
outside employment agency (i.e. Manpower) to evaluate and rate marijuana dispensary license  
applications (hereinafter referred to as "Manpower"), and good cause appearing for the  
preservation of electronic data of the State and Manpower, the Motion is GRANTED IN PART

1 regarding preservation and DENIED IN PART regarding immediate turnover and it is hereby  
2 ORDERED, ADJUDGED and DECREED as follows:

3       ORDERED that the State shall preserve server or any standalone computers (including  
4 laptops, iPads or thumb drives) in its possession and used in the evaluation and rating of  
5 marijuana dispensary license applications as part of the September 2018 application period (the  
6 “ESI” or “electronically-stored information”). The State shall also preserve communication  
7 made with Manpower related to the hiring of the personnel by Manpower for the September  
8 2018 application period. The State shall make the ESI available for copying by the State in the  
9 presence of a computer expert retained by Plaintiff in the next 10 business days after notice of  
10 entry of this order. The State shall make 3 copies of the hard drive of the ESI with one copy  
11 being preserved by the State as a master copy retained by the State and one additional copy  
12 retained by the State, and one copy provided to the Court under seal. To allow Plaintiff and the  
13 State (i.e., the Nevada Department of Taxation) to determine the most efficient way to allow the  
14 State to make such copies, the State shall make their primary IT persons available for a  
15 conference call with the ESI expert for Plaintiff and counsel for the Plaintiff, counsel for the  
16 State (and counsel and IT manager for Manpower if desired by Manpower) to identify in  
17 general the types of servers (including standalone computers and laptops) that will be subject to  
18 the copying protocol and types and amount of data maintained on such servers (including  
19 standalone computers and laptops). The conference call shall be held no later than 5 business  
20 days after notice of entry of this order.

21       ORDERED that the State shall provide Plaintiffs a list of Department personnel  
22 including Manpower personnel that primarily assisted in the evaluation and rating of all  
23 applications for dispensary licenses and/or evaluated such license applications received in the  
24 September 2018 application period and provide a list of any full or partial cell phone numbers  
25 known to the Department sufficient to allow the identification of the cell phone (including but  
26 not limited to personal cell phone numbers) for each such person within 5 business days of after  
27 notice of entry of this order. At the same time, the State may use reasonable identifiers, e.g.  
28 “Manpower Employee 1,” instead of names if the State so desires. At the same time the State



1 may designate up to 6 persons on a list that the State believes were primarily involved on behalf  
2 of Manpower and/or the State in the processing of all applications for dispensary licenses and/or  
3 the evaluation of such license applications. If the State has a pre-existing organizational chart  
4 of the Manpower employees, it shall provide the same to Plaintiff at such time but the State is  
5 not obligated to create an organizational chart. Again, the State may use reasonable identifiers  
6 instead of names. Within 10 business days after receiving the foregoing list from the State,  
7 Plaintiffs shall be allowed to take the telephonic deposition of the PMK for the State to identify  
8 the names (or reasonable identifiers) and job descriptions of all persons (including temporary  
9 employees, if any) that were involved on behalf of State in assisting in the evaluation and rating  
10 of applications for dispensary licenses and/or evaluating such licenses for the September 2018  
11 application period. The purpose of the PMK deposition is to reasonably identify persons whose  
12 cell phone data may contain relevant discoverable materials to ensure that all such data is  
13 preserved. At its option, the State may provide a written response in lieu of the PMK  
14 deposition.

15 ORDERED that the State shall make all cell phones (personal and/or business) of each  
16 such person that assisted in the processing of applications for dispensary licenses and/or  
17 evaluated such license applications, including but not limited to Steve F. Gilbert and a Northern  
18 Nevada State employee, available for copying in the 10 business days after notice of entry of  
19 this order at a location convenient to State and Manpower, and that the State, in the presence of  
20 Plaintiff's computer expert, shall make 3 copies of the data from each cell phone with one copy  
21 being preserved as a master copy, one copy provided to counsel for the State and one copy  
22 provided to the Court under seal. In the event any such cell phones are not available, the State  
23 shall file a sworn declaration regarding any cell phone that is not available explaining why such  
24 cell phone is not available within 10 business days after notice of entry of this order.

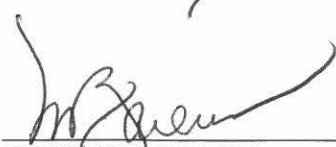
25 ORDERED that neither Plaintiff's counsel nor Plaintiff or their agents or employees  
26 shall access the cell phone data until the State and Plaintiff agrees to a procedure to protect non-  
27 discoverable confidential data or the Court allows such access by subsequent order. The State is  
28 authorized to inform any such persons whose cell phone data is copied that any and all personal

1 information will either be returned or destroyed at a later date. Plaintiff's counsel and Plaintiff  
2 and their agents or employees are restricted from accessing ESI data except as authorized by a  
3 confidentiality order or other order of the Court.

4 ORDERED that the State is directed to maintain any and all documents in its possession  
5 regarding the processing of applications for dispensary licenses and/or evaluation of such  
6 license applications, for the September 2018 application period including but not limited to the  
7 following: (1) any and all communications between Manpower and the State; (2) any and all  
8 directions provided by the State to Manpower regarding the processing of applications or the  
9 evaluation of the applications and any requests for information from Manpower; (3) any and all  
10 communications between Manpower or State employees and any applicant (or with the  
11 attorneys or consultants for an applicant) regarding any subject matter; (4) the contract, if any,  
12 between Manpower and the State and all invoices, if any, sent by Manpower to the State; (5)  
13 any and all preliminary rankings of applicants by jurisdiction or otherwise by Manpower or the  
14 State that pre-date the final ranking; (6) any and all work papers (including notes) used by  
15 Manpower or the State in the processing of applications for dispensary licenses and/or  
16 evaluation of such license applications; (7) any and all spread sheets created by Manpower or  
17 the State regarding the applications for dispensary licenses; and (8) any and all notes of formal  
18 or informal meetings among Manpower or the State personnel regarding the processing of  
19 applications for dispensary licenses and/or evaluation of such license applications. The State  
20 shall not be required to produce the documents set forth in categories 1 through 8 at an  
21 expedited pace but shall be required to identify the same with specificity at the Rule 16.1  
22 conference subject to all privileges and objections by the State to such production.

23 ORDERED that the State shall serve a copy of this Order upon Manpower within one  
24 business day of notice of entry of this Order.

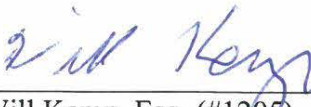
25 DATED this 13<sup>th</sup> day of December, 2018

26  
27   
28 DISTRICT JUDGE

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kic@kempjones.com

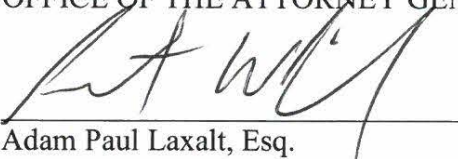
1 Respectfully Submitted by:

2 KEMP, JONES & COULTHARD, LLP

3  
4   
5 Will Kemp, Esq. (#1205)  
6 Nathanael R. Rulis, Esq. (#11259)  
7 3800 Howard Hughes Parkway, 17th Floor  
8 Las Vegas, Nevada 89169  
9 *Attorneys for Plaintiff*

10 Approved as to content and form

11 OFFICE OF THE ATTORNEY GENERAL

12   
13 Adam Paul Laxalt, Esq.  
14 Robert Werbicky, Esq.  
15 David J. Pope, Esq.  
16 555 East Washington Ave., Suite 3900  
17 Las Vegas, Nevada 89101  
18 *Attorneys for Defendant*  
19 *State of Nevada, Department of Taxation*

# EXHIBIT 2



STATE OF NEVADA  
TAX COMMISSION  
VIDEO CONFERENCE OPEN MEETING  
MONDAY, JANUARY 14, 2019  
CARSON CITY, NEVADA

THE BOARD:

MELANIE YOUNG, Executive  
Director  
JIM DEVOLLD, Chairman  
CRAIG WITT, Member  
RANDY BROWN, Member  
TONY WREN, Member  
GEORGE KELESIS, Member  
ANN BERSI, Member  
FRANCINE LIPMAN, Member

FOR THE DEPARTMENT:

SHELLIE HUGHES,  
Chief Deputy Executive  
Director

TINA PADOVANO,  
Executive Assistant

ATTORNEY GENERAL'S  
OFFICE:

JENNIFER CRANDELL,  
Special Counsel

REPORTED BY:

NICOLE J. HANSEN, CCR #446

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II. Meeting Minutes

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Consideration for Approval of the December 3, 2018  
Nevada Tax Commission Meeting Minutes  
(for possible action.)

III. CONSENT CALENDAR:

A. Matters of General Concern:

9

1) Bonds Administratively Waived (dates as  
indicated) (Sales/Use Tax) (for possible action):

- a) B&D Healthy Homes LLC
- b) Desert Footwear LLC
- c) Diversified Capital Inc.
- d) DQ Grill N Chill of Carson City LLC
- e) DW Quality Tools LLC
- f) Echo & Rig Las Vegas 1 LLC
- g) JMM/RKG Ltd.
- h) Nevada Steam Inc.
- i) Oscar L. Carrescia
- j) Parkway Flamingo LLC
- k) PBR Rock LLC
- l) Sharmark-Las Vegas Inc.
- m) Thiel & Thiel Inc.
- n) WBF McDonalds Management LLC
- o) Zhuliang Investment LLC

B. Waiver of Penalty and Interest Pursuant

to a Request on a Voluntary Disclosure (Sales/Use  
Tax):

- 1) Insitu Inc. (for possible action)
- 2) International Systems of America, LLC  
(ISA Fire & Security (for possible action)
- 3) MDK Ventures LLC (Medical Department Stores)  
(for possible action)
- 4) Miller Rentals Inc. (for possible action)
- 5) OCuSOFT Inc. (for possible action)
- 6) Parkway Recovery Care Center LLC  
(for possible action)
- 7) Quad Graphics Inc. (for possible action)
- 8) Russell Bay Fee Owner LLC (for possible action)
- 9) Silver Ticket Products (for possible action)



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C. Waiver of Penalty and/or Interest Pursuant to NRS 360.419 that exceeds \$10,000:

1) Oscars Auto Sales LLC (for possible action)

D. Consideration for Approval of the Recommended Settlement Agreement and Stipulations (sales/use/and/pr modified business tax)

(for possible action)

1. Westgate Las Vegas Resort & Casino dba LVH Las Vegas Hotel & Casino

2. Benos Flooring Services

3. AG Production Services, Inc.

4. AG Light and Sound, Inc.

5. Goldland Capital, Inc. dba Lee's Sandwiches

6. Executive Housewares

E. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (request for refund of Net Proceeds of Minerals Tax)

**7**

1) University of Nevada, Reno (for possible action)

F. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (excise tax)

**14**

1) Vegas Bros Ltd. dba Boulder City Cigarette Factory (for possible action)

2) Vegas Bros. Ltd. dba Pahrump Valley Smokes (For possible action)

3) Vegas Bros. Ltd. dba Sin City Cigarette Factory (For possible action)

4) Vegas Bros. Ltd. dba Laughlin Cigarette Factory (For possible action)

5) RYO Cigarettes of Nevada Inc. dba Double D's Tobacco Emporium (for possible action)

6) RYO Cigarettes of Nevada Inc. dba Smokes 4 Less (For possible action)

7) SCCF Craig dba Sin City Cigarette Factory 2 (For possible action)

8) SCS Nellis LLC dba Sin City Smokes (For possible action)

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G. Consideration for the Approval of the Administrative Law Judge's Recommended Decision regarding an Appeal of the Department's Denial of Waiver of Penalty and/or Interest pursuant to NRS 360.419:

- 1) J&R Flooring, Inc. (For possible action)
- 2) NTNDQ dba Dairy Queen 19561  
(For possible action)

DIVISION OF LOCAL GOVERNMENT SERVICES:

A. Local Government Services

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1. REGULATION

a) Consideration for Approval of Adoption of Permanent Regulation - LCB File No. R021-17 relating to property taxes; revising the methods for determining the applicability and amount of the partial abatement of property taxes for remainder parcels of property; and providing other matters properly relating thereto. (For possible action)

V. COMPLIANCE DIVISION:

24

A. Status of Commission's July 9, 2018, Decision and Department's Request for the Commission to affirm Administrative Law Judge's Findings of Fact and Conclusions of Law dated December 27, 2017.

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(For possible action)

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- 1) Jeremy and Heidi Duncan (for possible action) 29
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- 2) The Casino Chip & Gaming Token Collectors Club (for possible action) 35

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XI.     Adjourn.	<b>66</b>

1 Governor's recommended budget. And we'll be able to  
2 present that at the next meeting. Thank you.

3 CHAIR DEVOLLD: Okay. Thanks so much.

4 Our next meeting is March 4th, 2019.

5 I would ask for any public comment in Las  
6 Vegas. Is there any public comment?

7 COMMISSIONER BERSI: There is public comment,  
8 Mr. Chairman.

9 CHAIR DEVOLLD: Thank you.

10 DR. SPIRTOS: Good morning. My name is Nick  
11 Spirtos, and I'd like to comment about the marijuana  
12 retail application process. I have three, maybe four  
13 comments regarding that process.

14 In my opinion, it was manipulated by an  
15 individual or individuals who were either allowed to make  
16 changes to the language in the regulations or made them  
17 unilaterally, and thus calling into serious question any  
18 of the results of that process.

19 In my opinion, in an effort approaching the  
20 Nixon White House, this person or group of people are  
21 going to great lengths to deny applicants information  
22 that is rightfully theirs regarding their conduct.

23 Most egregious and recent example of this is  
24 the refusal to provide us scores, as required by Section  
25 93 or R097-012, where it specifically states: If an

1 applicant who receives an application score from the  
2 Department -- pursuant to Subsection 1 -- wishes to  
3 review the scores assigned to each criterion in the  
4 application to generate that application score, the  
5 applicant may submit to the Department a request to  
6 review scoring information. Such a request must include  
7 the name of the owner, operator, board member of the  
8 applicant who reviews scoring information on behalf of  
9 applicant.

10           Upon receipt of the request to review the  
11 scoring information pursuant to Subsection 2, the  
12 Department will designate an employee of the Department  
13 to respond to the request and schedule and conduct the  
14 review of scoring information.

15           Before conducting the review, the employee  
16 designated by the Department shall confirm that the  
17 identity of the person attending the review matches the  
18 person named in the request and make a copy of a  
19 document.

20           We were denied this. We were flat-out told  
21 we are not going to receive the individual scores  
22 associated with these sections in the application. We  
23 were given an aggregate score. And when I asked one that  
24 was supposed to be one person assigned by the Department  
25 when, in fact, three people showed up: Two in person and

1 Steve Gilbert on the phone. Not an individual. And  
2 frankly, I think, the one individual was there to  
3 continue the pattern of intimidation that's been ongoing  
4 with the marijuana program.

5 If you make a complaint, all of a sudden, you  
6 get an audit. If you make a second complaint, you get  
7 two audits. It's insanity, but we were denied our  
8 scores. I scheduled time out of my surgical schedule. I  
9 appeared. I made all of the proper requests, and I was  
10 told, "We're just not going to do this." And the basis  
11 of that was: Well, then, you'll then be able to discover  
12 the tools of how we come up with these scores.

13 I wasn't asking for any of their tools. I'll  
14 speak to that in a moment. I just wanted our scores by  
15 the category. And again, denied. And that's consistent  
16 with this whole process.

17 I'd also like to comment that in receiving  
18 scores related to the identical applications but with  
19 different locations with different levels of public  
20 access, different size spaces, we received scores that  
21 were identical, identical to the second decimal place.

22 And being aware of other similar results, I  
23 would tell you that I have a significant mathematical and  
24 statistical background. And this kind of result, in and  
25 of themselves, speak to data manipulation and nothing

1       else.  If I got that kind of data in a medical journal  
2       article that I were to review, I would send it  
3       immediately back to investigate fraud.

4               There is no way these applications could be  
5       identically scored in a fair-and-unbiased manner when  
6       you've got identical scores to the second decimal place.

7               I would also like to comment that in  
8       receiving -- the last comment I'd like to make is our  
9       group of five physicians has published the absolute only  
10      work regarding the successful use of a cannabis product  
11      made in Nevada to reduce the chronic opiate injections in  
12      patients with chronic pain.  We demonstrated a 75 percent  
13      reduction in opiate use, presented it at the American  
14      Society of Clinical Oncology in June of this last year in  
15      Chicago.

16              And so you understand how bizarre -- I'll use  
17      the word "bizarre" the scoring was, we scored less than  
18      the average for our impact on this community.  That, in  
19      and of itself, should give you some idea the extent that  
20      the application process was not fair, just and unbiased.

21              I'll leave those comments at this point, and  
22      hopefully, others will add to it.  Thank you.

23              CHAIR DEVOLLD:  Could you please restate your  
24      name and spell it for the record, please?

25              MR. SPIRTOS:  Nicola:  N-I-C-O-L-A, middle

1       initial M.   Last name:   S-P-I-R-T-O-S.   Forgive my cold.

2                   CHAIR DEVOLLD:   Thank you, Mr. Spirtos.

3                   Is there any other public comment in Las  
4 Vegas?

5                   DR. BADY:   Yes.   My name is Page Bady:

6 B-A-D-Y.   2700 Las Vegas Boulevard, Unit 2709.

7                   I want to agree with Dr. Spirtos's comments.  
8 We applied, in 2014, scored highest amount amongst any  
9 applicants that were not publicly traded.

10                   We possess seven current licenses.   We also  
11 had the largest number of applications:   28 applications  
12 from anybody else in the state.   Our scoring from 20 of  
13 the 28 were identical to the second decimal point.

14                   The way that criteria for the applications --  
15 as we were informed -- would give more weight for people  
16 who have dispensary experience because this application  
17 was for dispensaries.

18                   Our eight applications from our dispensaries  
19 applications scored lower than our 20 other applications  
20 that were just from our cultivation and productions,  
21 which is -- and they're all identical -- statistically  
22 impossible.   Since then, we have formed the Nevada  
23 Cannabis Medical Association.

24                   I'm a local physician of 20 years.   I was a  
25 medical director for Davita Health Care Partners, a



1 publicly-traded \$18 billion-dollar company. We have  
2 Harvard-trained physicians in our group, and we sit on  
3 the Governor's Task Force for Opiates. We scored lower  
4 than average on impact on the community. I don't know  
5 what's going on in there. I don't want to accuse anyone  
6 of anything, but it's difficult to maneuver.

7 And it had a quality that we used to  
8 experience in a publicly-traded company, and I wanted to  
9 bring that quality and sophistication into this industry  
10 when we have to fight these kind of obstacles.

11 I just wanted to thank the Commission for  
12 hopefully taking the time to investigate this. Look. I  
13 might be absolutely wrong. Everybody's baby seems to be  
14 the prettiest baby in the world, right? All we ask is to  
15 have a thorough investigation on how these were applied.  
16 Thank you.

17 CHAIR DEVOLLD: Thank you.

18 DR. THANOS: Good morning. I'm Dr. Nicholas  
19 Thanos.

20 CHAIR DEVOLLD: Could you spell your last  
21 name for me, please?

22 DR. THANOS: I'm sorry. Thanos. T, as in  
23 Tom, H-A-N-O-S. And I'm also concerned about how it is  
24 that we're denied the information regarding why our  
25 applications were turned down when the regulation

1 specifically allow us access.

2 Subparagraph four states: If the Department  
3 denies an application for issuance or renewal of the  
4 license for marijuana establishment or revokes such a  
5 license, the Department will provide notice to applicant  
6 or marijuana establishment that includes, without  
7 limitation, the specific reasons for the denial or  
8 revocation.

9 Not only didn't we get the specific reasons,  
10 but we've been denied access to the breakdown of our  
11 scores. It doesn't make any sense.

12 I'd also like to inquire of the Commissioners  
13 if they were apprised of any of the changes that were  
14 made to the retail marijuana applications that differ  
15 from the regulations in R097-012.

16 If they were, if there were changes, were  
17 they formally approved, and when did this happen? If  
18 they weren't, under whose authority were they made?  
19 Because the scoring system includes stuff that was not --  
20 there were changes made between the time that we got  
21 applications and the time the scoring system was done.  
22 There's some discrepancies here and, you know, someone  
23 needs to look into this, please. Thank you.

24 CHAIR DEVOLLD: Thank you.

25 Are there any other public comments in Las

1 Vegas?

2 COMMISSIONER BERSI: One is coming,  
3 Mr. Chairman.

4 CHAIR DEVOLLD: Thank you. Is there new  
5 public comment on the telephone?

6 Is there any public comment in Carson City?  
7 Okay.

8 Are there any items for future agendas?

9 COMMISSIONER KELESIS: Mr. Chairman, this is  
10 George.

11 CHAIR DEVOLLD: Commissioner Kelesis?

12 COMMISSIONER KELESIS: Yes, I do have couple  
13 of questions. If the Commission could be patient with  
14 me, I want to give a little bit of background why I'm  
15 making those requests. I know you are familiar with it,  
16 Mr. Chairman, as well as I know Ms. Crandall is familiar  
17 with it. So, for my fellow Commissioners, I'm making  
18 these requests, but let me give you a little context of  
19 how it happened.

20 In December, when these licenses began to be  
21 issued or notified, at least in Southern Nevada, there  
22 was quite an uproar among a number of the companies,  
23 individuals, whatever you want to call it, that owned the  
24 marijuana establishments.

25 I placed a call to our Chairman. I asked him

1 if he was aware of what was happening. Our Chairman at  
2 the time was not aware. And Mr. DeVolld started looking  
3 into it. He spoke with Mr. Anderson, spoke with  
4 Mr. Pupa.

5 At one point, it was my understanding we were  
6 going to have an informational item set at this meeting  
7 so at least the public can have an understanding of why  
8 and what, in fact, happened in the course of all of this.  
9 That was taken off, unbeknownst to me.

10 I found out after the fact -- which I  
11 personally found distressing, because when I looked at  
12 these items -- and there's an e-mail I sent to the  
13 Chairman that I want to make part of the record so that  
14 way, it's accessible to all of the Commissioners. That  
15 way, if anybody wants to add something, add something,  
16 don't add something. It's completely up to you, but it's  
17 available to the public that way as well.

18 I found things that, you know, quite  
19 honestly, smacked me in the face immediately:  
20 Regulations that were applied beyond the scope of the  
21 regulation, things that were changed that I know we did  
22 not rule on as a Commission. This is public knowledge.  
23 There's public information. Two companies were  
24 announcing mergers in October and November with companies  
25 that had applied. They received an inordinate amount of

1 licenses.

2 And my question is: On September 5th, when  
3 the grading was closed, did they all put everybody on  
4 notice that they were going to do this merger in mid  
5 October-November?

6 They were Canadian companies. How did we  
7 take into account the fact that in Canada, you can bank  
8 marijuana and you can go to a banking institution. Was  
9 that taken into account? Whereas the folks down here  
10 can't bank it. They work off cash completely. Not just  
11 what Dr. Spirtos said. I've heard that from other  
12 people, people who I know have contributed to the  
13 community, scored lower than a publicly-traded Canadian  
14 company. It makes no sense to me what has been  
15 happening.

16 I found probably one of the most distressing  
17 parts -- and I don't know if the Commission is aware of  
18 this or not, if you are aware of it. But our graders  
19 were hired through Manpower.

20 Now, I checked the Manpower drop-down box.  
21 And I'm telling you guys, nowhere in there does it say:  
22 "Hire marijuana graders." It doesn't say it. So why are  
23 we even going to Manpower? I know we budgeted so we  
24 could have this Department handle these items. So who  
25 trained these people in Manpower? Who oversaw these

1 people in Manpower?

2 In fact, were these scores aggregated? They  
3 weren't supposed to be aggregated. The one regulation  
4 clearly states County. That's it. That's the monopoly  
5 provision. It doesn't say Las Vegas, North Las Vegas,  
6 City of Henderson. Who made those changes? So I'm  
7 troubled across the board with this whole thing.

8 So my request is this, Mr. Chairman: That we  
9 have a special meeting as soon as possible, have this as  
10 an action item so we can address these problems. And I  
11 will give Paulina the e-mail so it can be distributed  
12 among the Commissioners.

13 And just one last thing in closing. I've  
14 been on this Commission probably the longest of  
15 everybody. And I'll say this. We have successfully  
16 prevailed in numerous, numerous court battles. I've  
17 always believed the reason why we have been successful is  
18 because the matter is brought to the Commission, and I'll  
19 give you the example. Live entertainment tax. Cal  
20 Anderson. I could go through them.

21 We have had extensive, detailed hearings, and  
22 then we've gone -- and then if they wanted to appeal it,  
23 they appeal it to the Court. Somewhere here though,  
24 what's happening is people are denied licenses. And it's  
25 just not these two people I heard it from. I've heard it

1 from the countless people down here. They're not being  
2 provided their scores. They're not making these things  
3 available to them. So how can they even exercise their  
4 procedure or their substantive due process rights when we  
5 don't even give them the information?

6 And we're going to go from the issuance of  
7 the license directly to the court. It's like they're  
8 skipping us. Somebody is under the distinct impression  
9 that we, as a Commission, do not have jurisdiction over  
10 this. I suggest they read 360 real close. We are the  
11 head of the Department, and we are the head of the  
12 Division, and it comes to us.

13 So that's why I'm asking for the action item  
14 as soon as possible, not to wait, because it seems like  
15 anytime -- and I am frustrated and disappointed. I'm  
16 told we're going to have something. I don't even get the  
17 courtesy of a phone call told we're taking it off. I got  
18 to go find out myself. Well, you know, that's an insult.

19 So, having said that, that's my request for a  
20 special meeting. And I'll give Ms. Oliver the e-mail.

21 CHAIR DEVOLLD: Thank you, Commissioner  
22 Kelesis. I believe I did call you, so we'll discuss that  
23 later. I'll make sure that it's on a future agenda.  
24 Thank you.

25 Is there any other items for future agendas?

1 Very good. The meeting is adjourned. We have a  
2 non-meeting afterwards. So after both rooms have been  
3 cleared, can you please let me know? Thank you.

4 MS. HUGHES: And just so the public is aware,  
5 a non-meeting is an opportunity for attorneys to meet  
6 with the Commission about ongoing litigation, and that's  
7 what this meeting is about.

8 (The meeting concluded at 10:36 a.m.)

9 -o0o-



1 STATE OF NEVADA )

2 )

3 CARSON TOWNSHIP)

4  
5  
6 I, NICOLE J. HANSEN, Official Court Reporter for the  
7 State of Nevada, Nevada Tax Commission Meeting, do hereby  
8 Certify:

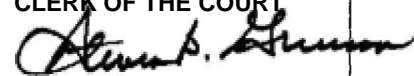
9  
10 That on the 14th day of January, 2019, I was  
11 present at said meeting for the purpose of reporting in  
12 verbatim stenotype notes the within-entitled public  
13 meeting;

14 That the foregoing transcript, consisting of pages 1  
15 through 66, inclusive, includes a full, true and correct  
16 transcription of my stenotype notes of said public  
17 meeting.

18  
19 Dated at Reno, Nevada, this 14th day of  
20 January, 2019.

21  
22  
23 \_\_\_\_\_  
NICOLE J. HANSEN, NV CCR #446

# EXHIBIT 3



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant(s).

and

NEVADA ORGANIC REMEDIES, LLC; INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS DISPENSARIES, a Nevada limited liability company; ESSENCE TROPICANA, LLC, a Nevada limited liability company; ESSENCE HENDERSON, LLC, a Nevada limited liability company; CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL, LLC, a Nevada limited liability company; and CHEYENNE MEDICAL, LLC, a Nevada limited liability company; LONE MOUNTAIN PARTNERS, LLC, a Nevada

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

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW GRANTING  
PRELIMINARY INJUNCTION

CLERK OF THE COURT

RECEIVED  
AUG 23 2019

1 limited liability partnership; HELPING HANDS  
2 WELLNESS CENTER, INC., a Nevada  
3 corporation; GREENMART OF NEVADA  
4 NLV LLC, a Nevada limited liability company;  
5 and CLEAR RIVER, LLC,

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Intervenors.

5 This matter having come before the Court for an evidentiary hearing on Plaintiffs' Motion for  
6 Preliminary Injunction beginning on May 24, 2019, and occurring day to day thereafter until its  
7 completion on August 16, 2019;<sup>1</sup> Dominic P. Gentile, Esq., Vincent Savarese III, Esq., Michael V.  
8 Cristalli, Esq., and Ross J. Miller, Esq., of the law firm Gentile Cristalli Miller Armeni Savarese,  
9 appeared on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,  
10 Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC,  
11 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,  
12 LLC, Nevada Pure, LLC, Medifarm, LLC (Case No. A786962-B) (the "Serenity Plaintiffs"); Adam K.  
13 Bult, Esq. and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP,  
14 appeared on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf  
15 Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice INC., Just Quality, LLC, Libra  
16 Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red Earth LLC,  
17 THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (Case No. A787004-B) ( the  
18 "ETW Plaintiffs"); William S. Kemp, Esq. and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones  
19 & Coulthard LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness LLC  
20 (Case No. A785818-W) (the "MM Plaintiffs"); Theodore Parker III, Esq., of the law firm Parker  
21 Nelson & Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W)  
22 (collectively the "Plaintiffs"); Steven G. Shevorski, Esq., Ketan D. Bhirud, Esq., and Theresa M. Haar,  
23 Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada,  
24 Department of Taxation; David R. Koch, Esq., of the law firm Koch & Scow LLC, appeared on behalf

25  
26  
27  
28  
<sup>1</sup> Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done  
prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on  
disclosure of certain information modified by SB 32 just a few days before the commencement of the hearing. As a result,  
the hearing was much longer than anticipated by any of the participating counsel. In compliance with SB 32, the State  
produced previously confidential information on May 21, 2019. These documents were reviewed for confidentiality by the  
Defendants in Intervention and certain redactions were made prior to production consistent with the protective order entered  
on May 24, 2019.

1 of Nevada Organic Remedies, LLC; Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm  
2 Black & Lobello, appeared on behalf of Clear River, LLC; Eric D. Hone, Esq., of the law firm H1 Law  
3 Group, appeared on behalf of Lone Mountain Partners, LLC; Alina M. Shell, Esq., of the law firm  
4 McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC; Jared Kahn, Esq., of the law  
5 firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc.; and  
6 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Philip M. Hymanson,  
7 Esq., of the law firm Hymanson & Hymanson; Todd Bice, Esq. and Jordan T. Smith, Esq. of the law  
8 firm Pisanelli Bice; and Dennis Prince, Esq. of the Prince Law Group appeared on behalf of Integral  
9 Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson,  
10 LLC, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and  
11 Cheyenne Medical, LLC (the “Essence/Thrive Entities”). The Court, having read and considered the  
12 pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;  
13 and having heard and carefully considered the testimony of the witnesses called to testify; having  
14 considered the oral and written arguments of counsel, and with the intent of deciding the Motion for a  
15 Preliminary Injunction,<sup>2</sup> makes the following preliminary findings of fact and conclusions of law:

16 ***PROCEDURAL POSTURE***

17 Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive,  
18 licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout  
19 the state. Defendant is Nevada’s Department of Taxation (“DoT”), which is the administrative agency  
20 responsible for issuing the licenses. Some successful applicants for licensure intervened as Defendants.

21 The Serenity Plaintiffs filed a Motion for Preliminary Injunction on March 19, 2019, asking for  
22 a preliminary injunction to:

- 23 a. Enjoin the denial of Plaintiffs applications;  
24 b. Enjoin the enforcement of the licenses granted;  
25 c. Enjoin the enforcement and implementation of NAC 453D;

26  
27 <sup>2</sup> The findings made in this Order are preliminary in nature based upon the limited evidence presented after very  
28 limited discovery permitted on an expedited basis and may be modified based upon additional evidence presented to the  
Court at the ultimate trial of the business court matters.

- 1 d. An order restoring the *status quo ante* prior to the DoT's adoption of NAC 453D;  
2 and  
3 e. Several orders compelling discovery.

4 This Court reviewed the Serenity Plaintiffs' Motion for Preliminary Injunction and at a hearing on  
5 April 22, 2019, invited Plaintiffs in related cases, not assigned to Business Court, to participate in the  
6 evidentiary hearing on the Motion for Preliminary Injunction being heard in Department 11 for the  
7 purposes of hearing and deciding the Motions for Preliminary Injunction.<sup>3</sup>

8 ***PRELIMINARY STATEMENT***

9 The Attorney General's Office was forced to deal with a significant impediment at the early  
10 stages of the litigation. This inability to disclose certain information was outside of its control because  
11 of confidentiality requirements that have now been slightly modified by SB 32. Although the parties  
12 stipulated to a protective order on May 24, 2019, many documents produced in preparation for the  
13 hearing and for discovery purposes were heavily redacted because of the highly competitive nature of  
14 the industry and sensitive financial and commercial information being produced.

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

19  
20  
21 <sup>3</sup> The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of  
22 mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in  
conjunction with this hearing include:

23 A786962-B Serenity: Serenity Plaintiffs' Motion for Preliminary Injunction filed 3/19/19 (Joinder to Motion by  
24 Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada  
25 Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23);  
26 Opposition by Nevada Organic Remedies: 5/9 (Joinder by Lone Mountain: 5/13; Joinder by Helping Hands: 5/21; and  
Joinder by Essence/Thrive Entities: 5/23). Application for TRO on OST filed 5/9/19 (Joinder by Compassionate Team:  
5/17; and Joinder by ETW: 5/10 (filed in A787004)); Opposition by Nevada Organic Remedies: 5/9 (Joinder by Clear River:  
5/9); Opposition by Essence/Thrive Entities: 5/10 (Joinder by GreenMart: 5/10; Joinder by Lone Mountain: 5/11; and  
Joinder by helping Hands: 5/12).

27 A785818-W MM Development: MM Plaintiffs' Motion for Preliminary Injunction or Writ of Mandamus filed 5/9/19  
28 (Joinder by Serenity: 5/20 (filed in A786962); Joinder by ETW: 5/6 (filed in A787004 and A785818); and Joinder by  
Nevada Wellness: 5/10 (filed in A787540)).

1 The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters  
2 in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The  
3 Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to  
4 modify);<sup>4</sup> those provisions with which the DoT was granted some discretion in implementation;<sup>5</sup> and  
5 the inherent discretion of an administrative agency to implement regulations to carry out its statutory  
6 duties. The Court must give great deference to those activities that fall within the discretionary  
7 functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2  
8 or were arbitrary and capricious.

### 9 FINDINGS OF FACT

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

12 <sup>4</sup> Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

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

15 <sup>5</sup> NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana  
16 cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those  
17 regulations would include.

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

- 21 (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana  
22 establishment;
- 23 (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana  
24 establishment;
- 25 (c) Requirements for the security of marijuana establishments;
- 26 (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21  
27 years of age;
- 28 (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-  
resistant packaging;
- (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana  
establishments including a numerical indication of potency based on the ratio of THC to the weight of a product  
intended for oral consumption;
- (g) Requirements for record keeping by marijuana establishments;
- (h) Reasonable restrictions on signage, marketing, display, and advertising;
- (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
- (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another  
qualified person and to enable a licensee to move the location of its establishment to another suitable location;
- (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and  
marijuana establishments at the same location;
- (l) Procedures to establish the fair market value at wholesale of marijuana; and
- (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any  
violation of the provisions of NRS 453D.300.

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

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

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

12           5.     The materials circulated to voters in 2016 for BQ2 described its purpose as the  
13 amendment of the Nevada Revised Statutes as follows:  
14

15                 Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to  
16 purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated  
17 marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana  
18 paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the  
19 regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and  
20 retailers; and provide for certain criminal penalties?

21           6.     BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.<sup>6</sup>

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

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

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

27                   (b) Business owners are subject to a review by the State of Nevada to confirm that the  
28 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;

<sup>6</sup> As the provisions of BQ2 and the sections NRS 453D currently in effect (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature in NRS 453D.



- 1 (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;  
2 (e) Individuals will have to be 21 years of age or older to purchase marijuana;  
3 (f) Driving under the influence of marijuana will remain illegal; and  
4 (g) Marijuana sold in the State will be tested and labeled.

5 NRS 453D.020(3).

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

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

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

16 11. Some of the Task Force’s recommendations appear to conflict with BQ2.<sup>7</sup>

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19 <sup>7</sup> The Final Task Force report (Exhibit 2009) contained the following statements:

20 The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the  
21 medical marijuana program. . . .  
22 at 2510.

23 The requirement identified by the Task Force at the time was contained in NAC 453A.302(1) which states:

24 Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of medical  
25 marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a  
26 medical marijuana establishment.

27 The second recommendation of concern is:

28 The Task Force recommends that NRS 453A be changed to address companies that own marijuana establishment  
licenses in which there are owners with less than 5% ownership interest in the company. The statute should be  
amended to:

\*Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with  
5% or less cumulatively of the company to once every five years;

\*Only require owners officers and board members with 5% or more cumulatively and employees of the company to  
obtain agent registration cards; and

1           12.     During the 2017 legislative session Assembly Bill 422 transferred responsibility for the  
2 registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of  
3 Public and Behavioral Health to the DoT.<sup>8</sup>

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

7           14.     The Regulations for licensing were to be "directly and demonstrably related to the  
8 operation of a marijuana establishment." NRS 453D.200(1)(b). The phrase "directly and demonstrably  
9 related to the operation of a marijuana establishment" is subject to more than one interpretation.  
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18           \*Use the marijuana establishments governing documents to determine who has approval rights and signatory  
19 authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory  
20 documents.

21           There was Task Force dissent on the recommendation. The concern with this recommendation was that by  
22 changing the requirements on fingerprinting and background checks, the state would have less knowledge of when  
23 an owner, officer, and board member commits an offense not allowed under current marijuana law, potentially  
24 creating a less safe environment in the state.  
25 at 2515-2516.

26           <sup>8</sup>       Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

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

          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 Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its  
report.

15. A person holding a medical marijuana establishment registration certificate could apply for one or more recreational marijuana establishment licenses within the time set forth by the DoT in the manner described in the application. NAC 453D.268.<sup>9</sup>

<sup>9</sup> Relevant portions of that provision require that application be made

...by submitting an application in response to a request for applications issued pursuant to NAC 453D.260 which must include:

\*\*\*

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

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

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

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

- (a) An organizational chart showing all owners, officers and board members of the proposed marijuana establishment;
- (b) A list of all owners, officers and board members of the proposed marijuana establishment that contains the following information for each person:
  - (1) The title of the person;
  - (2) The race, ethnicity and gender of the person;
  - (3) A short description of the role in which the person will serve for the organization and his or her responsibilities;
  - (4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a marijuana establishment agent at the proposed marijuana establishment;
  - (5) Whether the person has served or is currently serving as an owner, officer or board member for another medical marijuana establishment or marijuana establishment;
  - (6) Whether the person has served as an owner, officer or board member for a medical marijuana establishment or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as applicable, revoked;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 19. The DoT posted the application on its website and released the application for  
20 recreational marijuana establishment licenses on July 6, 2018.<sup>10</sup>

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27 <sup>10</sup> The DoT made a change to the application after circulating the first version of the application to delete the  
28 requirement of a physical location. The modification resulted in a different version of the application bearing the same  
“footer” with the original version remaining available on the DoT’s website.

1           20.   The DoT utilized a question and answer process through a generic email account at  
2 marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers directly from the  
3 Department, which were not consistent with NRS 453D, and that information was not further  
4 disseminated by the DoT to other applicants.

5           21.   In addition to the email question and answer process, the DoT permitted applicants and  
6 their representatives to personally contact the DoT staff about the application process.

7           22.   The application period ran from September 7, 2018 through September 20, 2018.

8           23.   The DoT accepted applications in September 2018 for retail recreational marijuana  
9 licenses and announced the award of conditional licenses in December 2018.

10          24.   The DoT used a listserv to communicate with prospective applicants.

11          25.   The DoT published a revised application on July 30, 2018. This revised application was  
12 sent to all participants in the DoT's listserv directory. The revised application modified a sentence on  
13 attachment A of the application. Prior to this revision, the sentence had read, "Marijuana  
14 Establishment's proposed physical address (this must be a Nevada address and cannot be a P.O. Box)."  
15 The revised application on July 30, 2018, read: "Marijuana Establishment's proposed physical address  
16 if the applicant owns property or has secured a lease or other property agreement (this must be a  
17 Nevada address and not a P.O. Box). Otherwise, the applications are virtually identical.

18          26.   The DoT sent a copy of the revised application through the listserv service used by the  
19 DoT. Not all Plaintiffs' correct emails were included on this listserv service.

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

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

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

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

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

17 32. In order to grade and rank the applications the DoT posted notices that it was seeking to  
18 hire individuals with specified qualifications necessary to evaluate applications. The DoT interviewed  
19 applicants and made decisions on individuals to hire for each position.

20 33. When decisions were made on who to hire, the individuals were notified that they would  
21 need to register with "Manpower" under a pre-existing contract between the DoT and that company.  
22 Individuals would be paid through Manpower, as their application-grading work would be of a  
23 temporary nature.  
24

25 34. The DoT identified, hired, and trained eight individuals to grade the applications,  
26 including three to grade the identified portions of the applications, three to grade the non-identified  
27  
28

1 portions of the applications, and one administrative assistant for each group of graders (collectively the  
2 “Temporary Employees”).

3 35. It is unclear how the DoT trained the Temporary Employees. While portions of the  
4 training materials were introduced into evidence, testimony regarding the oral training based upon  
5 example applications was insufficient for the Court to determine the nature and extent of the training of  
6 the Temporary Employees.<sup>11</sup>

7  
8 36. NAC 453D.272(1) required the DoT to determine that an Application is “complete and  
9 in compliance” with the provisions of NAC 453D in order to properly apply the licensing criteria set  
10 forth therein and the provisions of the Ballot Initiative and the enabling statute.

11 37. When the DoT received applications, it undertook no effort to determine if the  
12 applications were in fact “complete and in compliance.”

13 38. In evaluating whether an application was “complete and in compliance” the DoT made  
14 no effort to verify owners, officers or board members (except for checking whether a transfer request  
15 was made and remained pending before the DoT).  
16

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

23  
24 40. The DoT created a Regulation that modified the mandatory BQ2 provision “[t]he  
25 Department shall conduct a background check of each prospective owner, officer, and board member of  
26 a marijuana establishment license applicant” and determined it would only require information on the  
27

28 <sup>11</sup> Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional  
evidentiary proceedings in the assigned department.



1 application from persons “with an aggregate ownership interest of 5 percent or more in a marijuana  
2 establishment.” NAC 453D.255(1).

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

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

13 43. The limitation of “unreasonably impracticable” in BQ2<sup>12</sup> does not apply to the  
14 mandatory language of BQ2, but to the Regulations which the DoT adopted.

15 44. The adoption of NAC 453D.255(1), as it applies to the application process is an  
16 unconstitutional modification of BQ2.<sup>13</sup> The failure of the DoT to carry out the mandatory provisions  
17 of NRS 453D.200(6) is fatal to the application process.<sup>14</sup> The DoT’s decision to adopt regulations in  
18 direct violation of BQ2’s mandatory application requirements is violative of Article 19, Section 2(3) of  
19 the Nevada Constitution.

20  
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22 <sup>12</sup> NRS 453D.200(1) provides in part:

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

25 <sup>13</sup> For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership  
26 appears within the DoT’s discretion.

27 <sup>14</sup> That provision states:

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

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

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

8           47.     The DoT did not comply with BQ2 by requiring applicants to provide information for  
9 each prospective owner, officer and board member or verify the ownership of applicants applying for  
10 retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who  
11 did not identify each prospective owner, officer and board member.<sup>15</sup>

12           48.     The DoT's late decision to delete the physical address requirement on some application  
13 forms while not modifying those portions of the application that were dependent on a physical location  
14 (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated  
15 communications by an applicant's agent; not effectively communicating the revision; and, leaving the  
16 original version of the application on the website, is evidence of conduct that is a serious issue.

17           49.     Pursuant to NAC 453D.295, the winning applicants received a conditional license that  
18 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final  
19 inspection of their marijuana establishment.  
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25 <sup>15</sup>     Some applicants apparently provided the required information for each prospective owner, officer and board  
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were  
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS  
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots  
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and  
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and  
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

50. The few instances of clear mistakes made by the Temporary Employees admitted in evidence do not, in and of themselves, result in an unfair process as human error occurs in every process.

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

52. There are an extremely limited number of licenses available for the sale of recreational marijuana.

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

54. Since the Court does not have authority to order additional licenses in particular jurisdictions, and because there are a limited number of licenses that are available in certain jurisdictions, injunctive relief is necessary to permit the Plaintiffs, if successful in the NRS 453D.210(6) process, to actually obtaining a license, if ultimately successful in this litigation.

55. The secondary market for the transfer of licenses is limited.<sup>16</sup>

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

## CONCLUSIONS OF LAW

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

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

<sup>16</sup> The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BQ2.

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

5           60.     Plaintiffs have the burden to demonstrate that the DoT's conduct, if allowed to continue,  
6 will result in irreparable harm for which compensatory damages is an inadequate remedy.

7           61.     The purpose of a preliminary injunction is to preserve the *status quo* until the matter can  
8 be litigated on the merits.

9           62.     In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a  
10 constitutional violation may be difficult or impossible to remedy through money damages, such a  
11 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d  
12 1118, 1124 (2013).

13           63.     Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent  
14 part:  
15

16           "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the  
17 limitations of section 6 of this article, **the people reserve to themselves the power to propose,**  
18 **by initiative petition, statutes and amendments to statutes and amendments to this**  
19 **constitution, and to enact or reject them at the polls.**

20           ...

21           3. If the initiative petition proposes a statute or an amendment to a statute, the person who  
22 intends to circulate it shall file a copy with the secretary of state before beginning circulation  
23 and not earlier than January 1 of the year preceding the year in which a regular session of the  
24 legislature is held. After its circulation, it shall be filed with the secretary of state not less than  
25 30 days prior to any regular session of the legislature. The circulation of the petition shall cease  
26 on the day the petition is filed with the secretary of state or such other date as may be prescribed  
27 for the verification of the number of signatures affixed to the petition, whichever is earliest. The  
28 secretary of state shall transmit such petition to the legislature as soon as the legislature  
convenes and organizes. The petition shall take precedence over all other measures except  
appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted  
or rejected by the legislature without change or amendment within 40 days. If the proposed  
statute or amendment to a statute is enacted by the legislature and approved by the governor in  
the same manner as other statutes are enacted, such statute or amendment to a statute shall  
become law, but shall be subject to referendum petition as provided in section 1 of this article.

1 If the statute or amendment to a statute is rejected by the legislature, or if no action is taken  
2 thereon within 40 days, the secretary of state shall submit the question of approval or  
3 disapproval of such statute or amendment to a statute to a vote of the voters at the next  
4 succeeding general election. If a majority of the voters voting on such question at such election  
5 votes approval of such statute or amendment to a statute, it shall become law and take effect  
6 upon completion of the canvass of votes by the supreme court. **An initiative measure so  
approved by the voters shall not be amended, annulled, repealed, set aside or suspended  
by the legislature within 3 years from the date it takes effect.**

7 (Emphasis added.)

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

14 65. BQ2 provides, “the Department shall adopt all regulations necessary or convenient to  
15 carry out the provisions of this chapter.” NRS 453D.200(1). This language does not confer upon the  
16 DoT unfettered or unbridled authority to do whatever it wishes without constraint. The DoT was not  
17 delegated the power to legislate amendments because this is initiative legislation. The Legislature itself  
18 has no such authority with regard to NRS 453D until three years after its enactment under the  
19 prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.

20 66. Where, as here, amendment of a voter-initiated law is temporally precluded from  
21 amendment for three years, the administrative agency may not modify the law.

22 67. NRS 453D.200(1) provides that “the Department shall adopt all regulations necessary or  
23 convenient to carry out the provisions of this chapter.” The Court finds that the words “necessary or  
24 convenient” are susceptible to at least two reasonable interpretations. This limitation applies only to  
25 Regulations adopted by the DoT.  
26  
27  
28

1           68.     While the category of diversity is not specifically included in the language of BQ2, the  
2 evidence presented in the hearing demonstrates that a rational basis existed for the inclusion of this  
3 category in the Factors and the application.

4           69.     The DoT's inclusion of the diversity category was implemented in a way that created a  
5 process which was partial and subject to manipulation by applicants.

6           70.     The DoT staff provided various applicants with different information as to what would  
7 be utilized from this category and whether it would be used merely as a tiebreaker or as a substantive  
8 category.  
9

10          71.     Based upon the evidence adduced, the Court finds that the DoT selectively discussed  
11 with applicants or their agents the modification of the application related to physical address  
12 information.

13          72.     The process was impacted by personal relationships in decisions related to the  
14 requirements of the application and the ownership structures of competing applicants. This in and of  
15 itself is insufficient to void the process as urged by some of the Plaintiffs.  
16

17          73.     The DoT disseminated various versions of the 2018 Retail Marijuana Application, one  
18 of which was published on the DoT's website and required the applicant to provide an actual physical  
19 Nevada address for the proposed marijuana establishment, and not a P.O. Box, (*see* Exhibit 5), whereas  
20 an alternative version of the DoT's application form, which was not made publicly available and was  
21 distributed to some, but not all, of the applicants via a DoT listserv service, deleted the requirement that  
22 applicants disclose an actual physical address for their proposed marijuana establishment. *See* Exhibit  
23 5A.  
24

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

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

3 75. The DoT has only awarded conditional licenses which are subject to local government  
4 approval related to zoning and planning and may approve a location change of an existing license, the  
5 public safety aspects of the failure to require an actual physical address can be cured prior to the award  
6 of a final license.

7  
8 76. By selectively eliminating the requirement to disclose an actual physical address for  
9 each and every proposed retail recreational marijuana establishment, the DoT limited the ability of the  
10 Temporary Employees to adequately assess graded criteria such as (i) prohibited proximity to schools  
11 and certain other public facilities, (ii) impact on the community, (iii) security, (iv) building plans, and  
12 (v) other material considerations prescribed by the Regulations.

13 77. The hiring of Temporary Employees was well within the DoT's discretionary power.

14 78. The evidence establishes that the DoT failed to properly train the Temporary  
15 Employees. This is not an appropriate basis for the requested injunctive relief unless it makes the  
16 grading process unfair.

17 [REDACTED]  
18 79. The DoT failed to establish any quality assurance or quality control of the grading done  
19 [REDACTED]  
20 by Temporary Employees.<sup>17</sup> This is not an appropriate basis for the requested injunctive relief unless it  
21 makes the grading process unfair.

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

26  
27  
28 <sup>17</sup> The Court makes no determination as to the extent which the grading errors alleged by MM and Live Free may be  
subject to other appropriate writ practice related to those individualized issues by the assigned department.

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

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

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

14          84.     Under the circumstances presented here, the Court concludes that certain of the  
15 Regulations created by the DoT are unreasonable, inconsistent with BQ2 and outside of any discretion  
16 permitted to the DoT.  
17

18          85.     The DoT acted beyond its scope of authority when it arbitrarily and capriciously  
19 replaced the mandatory requirement of BQ2, for the background check of each prospective owner,  
20 officer and board member with the 5% or greater standard in NAC 453.255(1). This decision by the  
21 DoT was not one they were permitted to make as it resulted in a modification of BQ2 in violation of  
22 Article 19, Section 2(3) of the Nevada Constitution.  
23

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

27          87.     The balance of equities weighs in favor of Plaintiffs.  
28



1           88.    “[N]o restraining order or preliminary injunction shall issue except upon the giving of  
2 adequate security by the applicant, in such sum as the court deems proper, for the payment of such  
3 costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined  
4 or restrained.” NRCP 65(d).

5           89.    The DoT stands to suffer no appreciable losses and will suffer only minimal harm as a  
6 result of an injunction.

7           90.    Therefore, a security bond already ordered in the amount of \$400,000 is sufficient for  
8 the issuance of this injunctive relief.<sup>18</sup>

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

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26  
27 <sup>18</sup> As discussed during the preliminary injunction hearing, the Court sets a separate evidentiary hearing on whether to  
28 increase the amount of this bond. That hearing is set for August 29, 2019, at 9:00 a.m.

**ORDER**

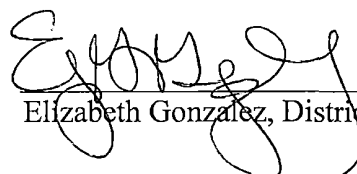
**IT IS HEREBY ADJUDGED ORDERED AND DECREED** that Plaintiffs' Motions for Preliminary Injunction are granted in part.

The State is enjoined 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.<sup>19</sup>

The issue of whether to increase the existing bond is set for hearing on August 29, 2019, at 9:00 am.

The parties in A786962 and A787004 are to appear for a Rule 16 conference September 9, 2019, at 9:00 am and submit their respective plans for discovery on an expedited schedule by noon on September 6, 2019.

DATED this 23<sup>rd</sup> day of August 2019.

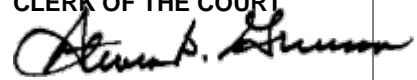
  
Elizabeth Gonzalez, District Court Judge

**Certificate of Service**

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

  
Dan Kutinac

<sup>19</sup> As Court Exhibit 3 is a post-hearing submission by the DoT, the parties may file objections and/or briefs related to this issue. Any issues related to the inclusion or exclusion from this group will be heard August 29, 2019, at 9:00 am.



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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  
licenses *pursuant to NRS 453D.210*” (emphasis added).

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

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

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

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

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

28 6. When competing applications are submitted for a proposed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 19 III.

#### 20 CLAIMS FOR RELIEF

#### 21 FIRST CLAIM FOR RELIEF

#### 22 (Violation of Civil Rights)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25     ...

26     ...

27     ...

28     ...

**SECOND CLAIM FOR RELIEF**  
**(Violation of Civil Rights)**

**(Due Process: Deprivation of Liberty)**

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

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

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

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

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

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

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

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

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

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

12 **THIRD CLAIM FOR RELIEF**

13 **(Violation of Civil Rights)**

14 **(Equal Protection)**

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

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

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

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

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

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

#### **FOURTH CLAIM FOR RELIEF**

**(Petition for Judicial Review)**

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

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

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

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

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

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

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

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.

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DATED this 26th day of November, 2019.

CLARK HILL PLC

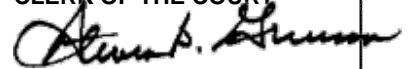
/s/ Dominic P. Gentile  


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11 *Nevada Wellness Center, LLC*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

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

15 **Case No.: A-19-787004-B**

16 **Consolidated with:**

17 A-18-785818-W  
18 A-18-786357-W  
19 A-19-786962-B  
20 A-19-787035-C  
21 A-19-787540-W  
22 A-19-787726-C  
23 A-19-801416-B

24 **Dept. No.: XI**

25 **ORDER GRANTING PLAINTIFFS LEAVE TO FILE AMENDED COMPLAINTS**

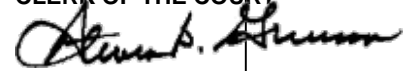
26 Plaintiff, NEVADA WELLNESS CENTER, LLC ("NWC"), moved for Motion for Summary  
27 Judgment on November 5, 2019. The motion came on for hearing on November 18, 2019.  
28 Discussions regarding that instead of the motion for summary judgment going forward NWC will  
file a motion to amend the complaint to name the purported winners in their complaint. Good cause  
appearing the Court orders as follows:

All present Plaintiffs Motions to File a Amended Complaint are GRANTED.

**IT IS SO ORDERED.**

Dated this 30 day of December, 2019.

  
ELIZABETH GONZALEZ, DISTRICT COURT JUDGE



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*Attorney for Defendant/Respondent*  
**RURAL REMEDIES, LLC**

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

Department No. XI

DEFENDANT RURAL REMEDIES, LLC'S  
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

Plaintiff, RURAL REMEDIES, LLC, a Nevada limited liability company, by and  
through its attorney of record, CLARENCE E. GAMBLE, ESQ., of RAMOS LAW, LLC, hereby

1 complains and alleges against Defendant STATE OF NEVADA DEPARTMENT OF  
2 TAXATION; DOES I through X; and ROE BUSINESS ENTITIES I through X, in their official  
3 and personal capacities, as follows:

4  
5 **I. PARTIES**

- 6 1. Plaintiff RURAL REMEDIES, LLC, was and is a Nevada limited liability company and  
7 does business throughout the State of Nevada. Plaintiff RURAL REMEDIES, LLC's  
8 members and managers are of Latino descent and are a member of a protected class.
- 9 2. Defendant STATE OF NEVADA DEPARTMENT OF TAXATION ("DOT") is an  
10 agency of the State of Nevada. DOT is responsible for licensing and regulating retail  
11 marijuana business in Nevada through its Marijuana Enforcement Division.
- 12 3. Defendant JORGE PUPO, at all material times mentioned herein, was the Deputy  
13 Executive Director, Department of Taxation, Marijuana Enforcement Division and it was  
14 his responsibility to implement Nevada law in the award of recreational licenses as more  
15 fully described below.
- 16 4. The following Defendants all applied for recreational marijuana licenses and are being  
17 named in accordance with the Nevada Administrative Procedure Act: D.H. FLAMINGO,  
18 INC., d/b/a THE APOTHECARY SHOPPE, a Nevada corporation; CLARK NATURAL  
19 MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA, a Nevada limited liability company; NYE  
20 NATURAL MEDICINAL SOLUTIONS LLC, d/b/a. NUVEDA, a Nevada limited liability  
21 company; CLARK NMSD LLC, d/b/a NuVEDA, a Nevada limited liability company; INYO  
22 FINE CANNABIS DISPENSARY L.L.C., d/b/a INYO FINE CANNABIS DISPENSARY, a  
23 Nevada limited liability company; and. SURTERRA HOLDINGS. INC., a Delaware  
24 corporation; STATE EX REL. DEPARTMENT OF TAXATION; STATE EX REL.

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

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

company; LUFF ENTERPRISES NV, INC., a Nevada corporation; LVMC C&P LLC, a Nevada limited liability company; MALANA LV L.L.C., a Nevada limited liability company; MATRIX NV, LLC, a Nevada limited liability company; MEDIFARM IV, LLC, a Nevada limited liability company; MILLER FARMS, LLC, a Nevada limited liability company; MM DEVELOPMENT COMPANY, INC., a Nevada corporation; MM R & D, LLC, a Nevada limited liability company; MMNV2 HOLDINGS I, LLC, a Nevada limited liability company; MM OF VEGAS RETAIL, INC. a Nevada corporation; NATURAL MEDICINE L.L.C., a Nevada limited liability company; NCMM, LLC, a Nevada limited liability company; NEVADA BOTANICAL SCIENCE, INC., a Nevada corporation; NEVADA GROUP WELLNESS 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 liability company; PHYSIS ONE LLC, a Nevada limited liability company; POLARIS WELLNESS CENTER L.L.C., a Nevada limited liability company; PURE TONIC CONCENTRATES LLC, a Nevada limited liability company; QUALCAN L.L.C., a Nevada limited liability company; RED EARTH, LLC, a Nevada limited liability company; RELEAF CULTIVATION, LLC, a Nevada limited liability company, RG HIGHLAND

ENTERPRISES INC., a Nevada corporation; ROMBOUGH REAL ESTATE INC., a Nevada corporation; RURAL REMEDIES LLC, a Nevada limited liability company; SERENITY WELLNESS CENTER LLC, a Nevada limited liability company; SILVER SAGE WELLNESS LLC, a Nevada limited liability company; SOLACE ENTERPRISES, LLP, a Nevada limited-liability limited partnership; SOUTHERN NEVADA GROWERS, LLC, a Nevada limited liability company; STRIVE WELLNESS OF NEVADA, LLC, a Nevada limited liability company; SWEET GOLDDY LLC, a Nevada limited liability company; TGIG, LLC, a Nevada limited liability company; THC NEVADA LLC, a Nevada limited liability company; THE HARVEST FOUNDATION LLC, a Nevada 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.

5. The true names of DOES I and X and ROE BUSINESS ENTITIES I through X, their citizenship and capacities, where individual, corporate, associate, partnership or otherwise, are unknown to Plaintiff, who therefore alleges that each of the unknown DOE and ROE Defendants are legally responsible for the events referred in this action,



1 and caused 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 Defendants when  
3 the same has been ascertained.

## 4 **II. JURISDICTION AND VENUE**

- 5
- 6 6. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,  
7 Section 6, NEA 4.370(2), NRS 30, and because the acts and omissions complained of  
8 herein occurred and caused harm throughout the State of Nevada, specifically in Clark  
9 County, Nevada. Further, the amount in controversy exceeds \$15,000.00.
- 10
- 11 7. Venue is proper pursuant to NRS 13.020.

## 12 **III. GENERAL ALLEGATIONS**

### 13 **A. The Marijuana Legislation and Regulations**

- 14 8. NRS Chapter 453D and NAC 453D are the statutory guidelines for legalized recreational  
15 marijuana in the State of Nevada. These statutes are incorporated herein by reference.
- 16
- 17 9. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to amend Nevada's  
18 Constitution or enact legislation through the initiative process and precludes amendment  
19 or modification of a voter-initiated law for three years.
- 20 10. 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  
22 Taxation of Marijuana Act", which proposed an amendment of the Nevada Revised  
23 Statutes as follows:
- 24

25 Shall the Nevada Revised Statutes be amended to allow a person, 21 years  
26 old or older, to purchase, cultivate, possess, or consume a certain amount of  
27 marijuana or concentrated marijuana, as well as manufacture, possess, use,  
28 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.

11. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.

12. 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.

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;
  - (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
  - (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;
  - (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;
  - (l) Procedures to establish the fair market value at wholesale of marijuana; and
  - (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of NRS 453D.300.
2. The Department ***shall approve or deny*** applications for licenses pursuant to NRS 453D.210. (emphasis added).

1 14. NRS 453D.200(6) *mandates* the DOT to "conduct a background check of each  
2 prospective owner, officer, and board member of a marijuana establishment license  
3 applicant."

4  
5 15. NRS 453D.205 provides as follows:

6 1. When conducting a background check pursuant to subsection 6 of NRS  
7 453D.200, the Department may require each prospective owner, officer and board  
8 member of a marijuana establishment license applicant to submit a complete set of  
9 fingerprints and written permission authorizing the Department to forward the  
10 fingerprints to the Central Repository for Nevada Records of Criminal History for  
11 submission to the Federal Bureau of Investigation for its report.

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

18  
19 16. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;  
20 conditions for approval of application; limitations on issuance of licenses to retail  
21 marijuana stores; competing applications), provides in pertinent part:

22 4. Upon receipt of a *complete marijuana establishment license*  
23 *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  
28 and the application fee required pursuant to NRS 453D.230;

(b) The physical address where the proposed marijuana establishment  
will operate is owned by the applicant or the applicant has the written  
permission of the property owner to operate the proposed marijuana  
establishment on that property;

(c) The property is not located within:

(1) One thousand feet of a public or private school that provides  
formal education traditionally associated with preschool or  
kindergarten through grade 12 and that existed on the date on which

1 the application for the proposed marijuana establishment was  
2 submitted to the Department;

3 (2) Three hundred feet of a community facility that existed on the  
4 date on which the application for the proposed marijuana  
5 establishment was submitted to the Department; or

6 (3) If the proposed marijuana establishment will be located in a  
7 county whose population is 100,000 or more, 1,500 feet of an  
8 establishment that holds a nonrestricted gaming license described in  
9 subsection 1 or 2 of [NRS 463.0177](#) and that existed on the date on  
10 which the application for the proposed marijuana establishment was  
11 submitted to the Department;

12 (d) The proposed marijuana establishment is a proposed retail  
13 marijuana store and there are not more than:

14 (1) Eighty licenses already issued in a county with a population  
15 greater than 700,000;

16 (2) Twenty licenses already issued in a county with a population  
17 that is less than 700,000 but more than 100,000;

18 (3) Four licenses already issued in a county with a population that  
19 is less than 100,000 but more than 55,000;

20 (4) Two licenses already issued in a county with a population that  
21 is less than 55,000;

22 (5) Upon request of a county government, the Department may  
23 issue retail marijuana store licenses in that county in addition to the  
24 number otherwise allowed pursuant to this paragraph;

25 (e) The locality in which the proposed marijuana establishment will  
26 be located does not affirm to the Department that the proposed  
27 marijuana establishment will be in violation of zoning or land use rules  
28 adopted by the locality; and

(f) The persons who are proposed to be owners, officers, or board  
members of the proposed marijuana establishment:

(1) Have not been convicted of an excluded felony offense; and

(2) Have not served as an owner, officer, or board member for a  
medical marijuana establishment or a marijuana establishment that has  
had its registration certificate or license revoked.

6. 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 suggestions and proposals for legislative, regulatory, and executive actions to be taken in implementing BQ2.
18. The Task Force recommended that "the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations."
19. During the 2017 legislative session, Assembly Bill 422 transferred responsibility for the registration, licensing and regulation of marijuana establishments to the DOT.
20. On February 27, 2018, the DOT adopted regulations governing the issuance, suspension, or revocation of retail recreational marijuana licenses, which were codified in NAC 453D (the "Regulations").
21. The Regulations for licensing were to be "directly and demonstrably related to the operation of a marijuana establishment." NRS 453D.200(1)(b).
22. NRS 453D.200(1) provides, in part, "[t]he regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable."
23. The limitation of "unreasonably impracticable" in NRS 453D.200(1) applies to the Regulations adopted by the DOT, not the mandatory language of BQ2.
24. According to an August 16, 2018 letter from the DOT, pursuant to Section 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17 ("R092-17"), the DOT was responsible for allocating the licenses of recreational marijuana stores "to jurisdictions within each county and to the unincorporated area of the county

proportionally based on the population of each jurisdiction and of the unincorporated area of the county."

**B. The Licensing Applications**

25. The DOT issued a notice for an application period wherein the DOT sought applications from qualified applicants to award sixty-four (64) recreational marijuana retail store licenses throughout various jurisdictions in Nevada.
26. The DOT posted the license application on its website and released the application for recreational marijuana establishment licenses on July 6, 2018, which required disclosure of an actual physical address for each establishment.
27. The DOT published a revised license application on July 30, 2018 eliminating the physical address requirement, which was not publicly available and was only disseminated to some but not all of the applicants via a DOT listserv.
28. The application period for retail recreational marijuana licenses ran from September 7, 2018 through September 20, 2018.
29. As of September 20, 2018, the DOT received a total of 462 applications.
30. When competing applications for licenses were submitted, the DOT was required to use "an impartial and numerically scored competitive bidding process" to determine successful license applicants. NRS 453D.210(6).
31. Under NAC 453D.272(1), when the DOT received more than one "*complete*" application *in compliance with the Regulations and NRS 453D*, the DOT was required to "rank the applications... in order from first to last based on the compliance with the provisions of [NAC 453D] and [NRS 453D] and on the content of the applications relating to..." several enumerated factors.

1 32. 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 experience  
4 operating another kind of business that has given them experience which is  
5 applicable to the operation of a marijuana establishment;

6 b. The diversity of the owners, officers or board members of the proposed  
7 marijuana establishment;

8 c. The educational achievements of the owners, officers or board members  
9 of the proposed marijuana establishment;

10 d. The financial plan and resources of the applicant, both liquid and  
11 illiquid;

12 e. Whether the applicant has an adequate integrated plan for the care,  
13 quality and safekeeping of marijuana from seed to sale;

14 f. The amount of taxes paid and other beneficial financial contributions,  
15 including, without limitation, civic or philanthropic involvement with this State  
16 or its political subdivisions, by the applicant or the owners, officers or board  
17 members of the proposed marijuana establishment;

18 g. Whether the owners, officers or board members of the proposed  
19 marijuana establishment have direct experience with the operation of a medical  
20 marijuana establishment or marijuana establishment in this State and have  
21 demonstrated a record of operating such an establishment in compliance with  
22 the laws and regulations of this State for an adequate period of time to  
23 demonstrate success;

24 h. The experience of key personnel that the applicant intends to employ in  
25 operating the type of marijuana establishment for which the applicant seeks a  
26 license; and

27 i. Any other criteria that the Department determines to be relevant.

28 33. NAC 453D.255, enacted by Defendant DOT in contravention of NRS Chapter 453D and  
implemented by Defendant PUPO and his subordinates, provides as follows:

1. Except as otherwise required in subsection 2, the requirements of this



chapter concerning owners of marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a marijuana establishment.

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 Department will notify that owner 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 codes enforced by Defendant PUPO and his subordinates established the procedures for recreational application process, fees to be charged for applying, fees to be charged for applying if the applicant holds a medical marijuana establishment registration certificate, and the ranking of applications if the Defendant D.O.T. received more than one application for a retail marijuana license.
35. The application published by the DOT described how applications were to be scored, dividing scoring criteria into identified criteria and non-identified criteria.
36. The application provided that "*applications 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).
37. 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.
38. 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

1 awarded one of the allocated licenses in accordance with the impartial bidding process  
2 mandated by NRS 453D.210.

- 3 39. The DOT identified, hired, and trained eight individuals as temporary employees to grade  
4 the applications in accordance with the provisions of BQ2 and NRS 453D.  
5

6 **C. Plaintiff's Application**

- 7 41. Plaintiff submitted applications to the DOT for a conditional licenses to own and operate  
8 recreational marijuana retail stores in compliance with the specified, published  
9 requirements of DOT regulations together with the required application fee in accordance  
10 with NRS 453D.210.  
11

- 12 42. Plaintiff's applications identified each prospective owner, officer, and board member for  
13 background check pursuant to NRS 453D.200(6).

- 14 43. Plaintiff secured and identified in its application addresses for each and every proposed  
15 recreational marijuana establishment it intended to operate.  
16

- 17 44. Plaintiff was informed by letter from the DOT that its applications to operate recreational  
18 marijuana retail stores was denied "because it did not achieve a score high enough to  
19 receive an available license."  
20

- 21 45. On May 24, 2019, the Honorable Elizabeth Gonzales conducted an evidentiary hearing  
22 concerning a motion for preliminary injunction sought by a group of unsuccessful  
23 applicants for retail marijuana licenses in Nevada against Defendant D.O.T. The hearing  
24 concluded on August 16, 2019. Thereafter, Judge Gonzales issued her findings of fact,  
25 conclusions of law granting preliminary injunction. See Findings of Fact and  
26 Conclusions of Law Granting Preliminary Injunction, filed August 23, 2019, Clark  
27 County District Court Case No. A-19-786962-B. Among her findings, Judge Gonzales  
28

1 found that the DOT undertook no effort to determine if the applications were in fact  
2 “complete and in compliance.” Id., par. 37.

3 46. Judge Gonzales also found that the DOT departed from the mandatory language of NRS  
4 453D.200(6) requiring “a background check of each prospective owner, officer, and  
5 board member of a marijuana establishment license applicant” and made no attempt in  
6 the application process to verify that the applicant’s complied with the mandatory  
7 language of the BQ2 or even the impermissibly modified language.” Id., par. 41.

8 47. The DOT improperly issued conditional licenses to applicants who did not disclose in their  
9 application an actual physical address for proposed retail recreational marijuana  
10 establishment.

11 48. Upon information and belief, the DOT’s denial of Plaintiff’s licenses applications was not  
12 properly based upon actual implementation of the impartial and objective bidding process  
13 mandated by NRS 453D.210, but was based upon arbitrary and capricious exercise of  
14 administrative partiality and favoritism that was the policy and routine of the DOT as  
15 promulgated by Defendant PUPO and others in the DOT hierarchy.

16 49. Upon information and belief, the temporary employees hired by the DOT were  
17 inadequately and improperly trained regarding the scoring process, leading to an arbitrary  
18 scoring process in contravention of Nevada law.

19 50. Upon information and belief, the DOT undertook no effort to determine whether  
20 applications were in fact “complete and in compliance.”

21 51. By revising the application on July 30, 2018 and selectively eliminating the requirement  
22 to disclose an actual physical address for each proposed retail recreational marijuana  
23 establishment, the DOT limited the ability of the temporary employees to adequately  
24

1 assess graded criteria such as (i) prohibited proximity to schools and certain other public  
2 facilities, (ii) impact on the community, (iii) security, (iv) building plans and (v) other  
3 material considerations prescribed by the regulations.

4  
5 52. The DOT's scoring process was impacted by its selective elimination of the requirement  
6 to disclose an actual physical address for each proposed retail recreational marijuana  
7 establishment, resulting in incomplete applications being considered and awarding of  
8 conditional licenses.

9  
10 53. Upon information and belief, the DOT selectively discussed with applicants or their  
11 agents the modification of the application related to physical address information,

12 54. Upon information and belief, the DOT undertook no effort to verify owners, officers or  
13 board members in evaluating whether an application was "complete and in compliance."

14 55. Upon information and belief, if an applicant's disclosure in its application of its owners,  
15 officers, and board members did not match the DOT's records, the DOT permitted the  
16 grading, and in some cases, awarded a conditional license.

17  
18 56. 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  
20 each prospective owner, officer, and board member of a marijuana establishment license  
21 application," by adopting NAC 453D.255(1), which only required information on the  
22 application from persons "with an aggregate ownership interest of 5 percent or more in a  
23 marijuana establishment."

24  
25 57. The DOT's determination that only owners of a 5% or greater interest in the business  
26 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.

- 1 58. The adoption of NAC 453D.255(1) as it applied to the marijuana establishment license  
2 application process was an unconstitutional modification of BQ2.
- 3 59. The failure of the DOT to carry out the mandatory provisions of NRS 53D.200(6), which  
4 required the DOT to conduct a background check of each prospective owner, officer, and  
5 board member of a marijuana establishment license applicant, is fatal to the application  
6 process and impedes an important public safety goal in BQ2.
- 7 60. By adopting regulations in violation of BQ2's mandatory application requirements, the  
8 DOT violated Article 19, Section 2(3) of the Nevada Constitution.
- 9 61. The DOT disregarded the voters' mandate in BQ2 when it decided the requirement that  
10 each prospective owner be subject to a background check was too difficult for  
11 implementation by industry. This decision was a violation of the Nevada Constitution,  
12 arbitrary and capricious.
- 13 62. The DOT did not comply with BQ2 by requiring applicants to provide information for  
14 each prospective owner, officer and board member or verify ownership of applicants who  
15 applying for retail recreational marijuana licenses.
- 16 63. The DOT's inclusion of the diversity category in the factors was implemented in a way  
17 that created a process which was subject to manipulation by applicants.
- 18 64. The DOT's scoring process was impacted by personal relationships in decisions related  
19 to the requirements of the application and the ownership structures of competing  
20 applicants.
- 21 65. Due to the DOT's violations of BQ2, Plaintiff was unconstitutionally denied recreational  
22 marijuana licenses.
- 23  
24  
25  
26  
27  
28

1 66. The DOT's constitutional violations and refusal to issue conditional licenses to Plaintiff  
2 resulted in irreparable harm to Plaintiff.

3 **IV. CLAIMS FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF**  
5 **(Declaratory Relief)**

6  
7 67. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

8 68. A justiciable controversy exists that warrants a declaratory judgment pursuant to  
9 Nevada's Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.

10 69. Plaintiff and Defendant have adverse and/or competing interests as the DOT, through its  
11 Marijuana Enforcement Division, has denied the application that violates Plaintiff's  
12 Constitutional Rights, Nevada law, and State policy.

13  
14 70. The DOT's refusal to issue Plaintiff a conditional license affects Plaintiff's rights afforded  
15 by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

16 71. The DOT's improper ranking of other applicants for a recreational marijuana  
17 establishment license and the DOT's subsequent, improper issuance to each of a  
18 conditional license also affects the rights of Plaintiff afforded to it by NRS 453D, NAC  
19 453D, R092-17, and other Nevada laws and regulations.

20  
21 72. The DOT's actions and/or inactions also have created an actual justiciable controversy  
22 ripe for judicial determination between Plaintiff and the DOT with respect to the  
23 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-  
24 17 as to Plaintiff. Plaintiff has been harmed, and will continue to be harmed, by  
25 Defendants' actions.  
26  
27  
28

1 73. The DOT's actions and/or inactions failed to appropriately address the necessary  
2 considerations and intent of BQ2 and NRS 453D.210, designed to restrict monopolies.

3 74. On August 23, 2019, Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case  
4 No. A-19-786962-B, issued an Order Granting Preliminary Injunction enjoining the DOT  
5 "from conducting a final inspection of any of the conditional licenses issued in or about  
6 December 2018 who did not provide the identification of each prospective owner, officer  
7 and board member as required by NRS 453D.200(6) pending a trial on the merits."  
8

9 75. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:  
10

- 11 a. The Department improperly denied Plaintiff conditional licenses for the  
12 operation for a recreational marijuana establishments;
- 13 b. The denial of conditional licenses to Plaintiff is void ab initio;
- 14 c. The procedures employed in the denial violated Plaintiff's procedural,  
15 substantive due process rights and equal protection rights under the  
16 Nevada and United States Constitutions and therefore, the denial is void  
17 and unenforceable;
- 18 d. The denial violates Plaintiff's substantive due process rights and equal  
19 protection rights under the Nevada and United States Constitutions and,  
20 therefore, the denial is void and unenforceable;
- 21 e. The denial is void for vagueness and therefore unenforceable;
- 22 f. Defendant acted arbitrarily and capriciously or in contravention of a  
23 legal duty and Plaintiff is therefore entitled to a writ of mandamus;
- 24 g. Plaintiff is entitled to judicial review; and
- 25 h. The DOT's denial lacked substantial evidence.

26 76. Plaintiff also seeks a declaration from this Court that the DOT must revoke the  
27 conditional licenses of those applicants whose applications are not in compliance with  
28 Nevada law.

1 77. Plaintiff also seeks a declaration from this Court that the DOT must issue Plaintiff  
2 conditional licenses for the operation of a recreational marijuana establishments applied  
3 for.

4  
5 78. Plaintiff asserts and contends that a declaratory judgment is both necessary and proper at  
6 this time for the Court to determine the respective rights, duties, responsibilities and  
7 liabilities of the Plaintiff afforded to it by NRS 453D, NAC 453D, R092-17, and other  
8 Nevada laws and regulations.

9 79. Plaintiff is entitled to reasonable attorney's fees and costs.  
10

11 **SECOND CLAIM FOR RELIEF**  
12 **(Permanent Injunction)**

13 80. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

14 81. The DOT's refusal to issue conditional licenses in violation of the mandatory provisions  
15 of Nevada law set forth above causes and continues to cause Plaintiff irreparable harm  
16 with no adequate remedy at law.

17  
18 82. The purpose of the DOT's refusal was and is to unreasonably interfere with Plaintiff's  
19 business and is causing Plaintiff to suffer irreparable harm.

20 83. The DOT will suffer no harm by following the law with respect to issuing conditional  
21 licenses.

22  
23 84. The DOT has violated the mandatory provisions of NRS 453D, NAC 453D and RO292-  
24 17, and Plaintiff is likely to succeed on the merits of this litigation.

25 85. The public interest favors Plaintiff because in the absence of injunctive relief, the  
26 consumers who would have benefitted will have less available options from which they  
27 can purchase recreational marijuana.  
28



1 86. Therefore, Plaintiff is entitled to a permanent injunction ordering the DOT to issue  
2 conditional licenses to Plaintiff in accordance with Nevada law.

3 **THIRD CLAIM FOR RELIEF**  
4 **(Violation of 42 USC 1983 by Defendants Jorge Pupo and Department of Taxation)**

5 87. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

6 88. 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  
8 shall any State...deny to any person within its jurisdictions the equal protection of the  
9 laws."

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

12 90. Plaintiff is a person within the meaning of the Nevada Constitution and the United States  
13 Constitution guarantees of due process. Plaintiff's managers and members are also of  
14 Latino descent warranting strict scrutiny of Plaintiff's claim for a violation of 42 USC  
15 1983.  
16

17 91. Plaintiff and those similarly situated have a protected property interest in the recreational  
18 license application process deriving from the mandatory statutory language in NRS 453D,  
19 NAC453D and R092-17 as set forth above. See *Board of Regents v. Roth*, 408 U.S., 577  
20 (1972) and *Goodisman v. Lytle*, 724 F.2d 818, 820 (9<sup>th</sup> Cir. 1984).  
21

22 92. The arbitrary and illegal conduct of the DOT and Defendant JORGE PUPO have  
23 deprived Plaintiff of the guarantees afforded by the Nevada Constitution and the United  
24 States Constitution as set forth in paragraphs 83 and 84 above.  
25  
26  
27  
28

1 93. Plaintiff was not given a meaningful opportunity to be heard at a consequential time  
2 which was fundamentally unfair and violated procedural and substantive due process as  
3 afforded by the Nevada and United States Constitution.  
4

5 94. Plaintiff's injury as described above by the failure of the DOT and Defendant PUPO to  
6 follow the mandate of Nevada law explicitly set forth above is a result of Defendants'  
7 official policy and/or custom to deprive Plaintiff and those similarly situated of the rights  
8 and entitlements afforded to them under the Nevada and United States Constitution.  
9

10 95. Defendants the DOT and PUPO conducted illegal and unconstitutional actions described  
11 above under color of state Law.

12 96. While acting under color of state law, Defendants' actions described above where the  
13 official policy and/or custom of Defendants to deprive Plaintiff and those similarly  
14 situated of their constitutional rights afforded to them under the Nevada and United States  
15 Constitution, specifically the 14<sup>th</sup> Amendment to the United States Constitution and  
16 Article 1, Section 8 of the Nevada Constitution. Specifically, Defendants through  
17 Defendant PUPO and his subordinates, directed the unconstitutional and illegal conduct  
18 in violation of the Nevada and United States Constitution. Moreover, Defendants had  
19 direct and actual knowledge of the violations and/or were deliberately indifferent to the  
20 constitutional violations that harmed Plaintiff.  
21

22 97. The harm occasioned upon Plaintiff resulting from Defendants' illegal and  
23 unconstitutional conduct, in addition, resulted from inadequate supervision, training, and  
24 screening of agents/employees of the DOT.  
25

26 98. As a direct and proximate result of Defendants' violations of Plaintiff's rights afforded  
27 to him under the Nevada and United States Constitution, Defendants are liable to Plaintiff  
28

1 for damages pursuant to 42 USC 1983. Moreover, because Defendant PUPO's conduct  
2 was reckless and/or showed callous indifference to the federally protected rights of  
3 Plaintiff, punitive damages should be awarded.

4  
5 99. Moreover, pursuant 42 USC 1988, Plaintiff is entitled to its reasonable attorney's fees  
6 and costs.

7 **FOURTH CLAIM FOR RELIEF**  
8 **(Petition for Judicial Review)**

9  
10 100. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

11 101. The DOT, in failing to comply with the mandatory directive in issuing recreational  
12 licenses as set for under Nevada law more fully described above, has exceeded its  
13 jurisdiction by issuing conditional licenses to applicants that do not merit them.

14 102. Plaintiff is aggrieved by the decision of the DOT to deny Plaintiffs' application without  
15 proper notice, substantial evidence, or in compliance with Nevada law more fully  
16 described above.

17  
18 103. Nevada law does not allow for an administrative appeal of the DOT's decision, and apart  
19 from injunction relief, no plain, speedy and adequate remedy for the DOT's violations.

20 104. Accordingly, Plaintiff petitions this Court for judicial review of the record on which the  
21 DOT's denial was based, including but not limited to

- 22  
23 a. A determination that the decision lacked substantial evidence;  
24 b. A determination that the denial is void ab initio for non-compliance with NRS 453D,  
25 NAC 453D, R092-17 and other Nevada state laws or regulations; and  
26 c. Other relief consistent with those determinations.  
27

1 105. Plaintiff has found it necessary to retain the legal services of Ramos Law, LLC to bring  
2 this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs  
3 therefor.  
4

5 **FIFTH CLAIM FOR RELIEF**  
6 **(Petition for Writ of Mandamus)**

7 106. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

8 107. When a governmental body fails to perform an act "that the law requires" or acts in an  
9 arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. NRS  
10 34.160.

11 108. The DOT failed to perform acts that the law requires including, but not limited to:

- 12 a. Providing proper pre-hearing notice of the denial;  
13 b. Arbitrarily, capriciously and illegally denying Plaintiffs' applications for  
14 recreational licenses for no legitimate reasons.  
15

16 109. The DOT acted arbitrarily, capriciously and illegally in the denial by performing or failing  
17 to perform the acts enumerated above and because, *inter alia*:

- 18 a. Lack of substantial evidence to deny the application; and  
19 b. The denial was made solely to approve other competing applications without  
20 regard to Nevada law as more specifically described above.  
21

22 110. These violations of the DOT's legal duties were arbitrary and capricious actions  
23 that compel this Court to issue a Writ of Mandamus directing the department to approve  
24 Plaintiffs' license applications and issue Plaintiff conditional licenses.  
25

26 **SIXTH CLAIM FOR RELIEF PLED IN THE ALTERNATIVE**  
27 **(Unjust Enrichment)**

28 111. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

1 112. Plaintiff applied for recreational marijuana licenses in accordance with NRS Chapter  
2 453D and the regulations and rules promulgated by the DOT.

3 113. Plaintiff applied for these licenses because NRS Chapter 453's mandate that did not  
4 allow the DOT to "pick and choose" winners and losers at their whim, but provided  
5 specific, mandatory criterion that the DOT was obligated to comply with in awarding the  
6 recreational marijuana licenses.  
7

8 114. Plaintiff paid to the DOT in excess of \$300,000 to apply for the recreational marijuana  
9 licenses that as of the date of the filing of this complaint, the DOT has not returned.  
10

11 115. In the event that this Court finds that Plaintiff is not entitled to the relief requested in the  
12 first through fifth claims for relief, under the circumstances as alleged in this Complaint,  
13 it would be unjust for the DOT to retain the benefit of Plaintiff's expenditures to apply  
14 for the recreational marijuana licenses.

15 116. As a direct and proximate result of the DOT being unjustly enriched, Plaintiff has  
16 incurred damages in excess of \$15,000.00.  
17

## 18 **V. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment as follows:

- 20 1. For declaratory relief set forth above;
- 21 2. For a preliminary and permanent injunction enjoining the enforcement of the denial;
- 22 3. For judicial review of the record and history on which the denial was based;
- 23 4. For issuance of a writ of mandamus;
- 24 5. For compensatory, special, consequential and punitive damages in excess of \$15,000 on  
25 those causes of action that damages are available.  
26
- 27 6. For attorney's fees and costs of suit; and  
28

1 7. For all other and further relief as the Court deems proper and just.

2 **VI. JURY DEMAND**

3 Comes now Plaintiff RURAL REMEDIES, LLC and pursuant to NRCP 38, demands a  
4 jury trial on all the issues so triable above, including Plaintiff's cause of action for violation of  
5 42 USC 1983.  
6

7 DATED this 28th day of January, 2020.

8 RAMOS LAW

9  
10  
11 /s/ Clarence Gamble  
12 Clarence Gamble, Esq.  
13 Nevada Bar No. 4268  
14 3000 Youngfield Street, Suite 200  
15 Wheat Ridge, CO 80215

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18 Attorney for Plaintiff Rural Remedies, LLC  
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/s/ Gail L. May

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