

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 11:20 AM
Elizabeth A. Brown
Clerk of Supreme Court

**Supreme Court Case No.:
85314**

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

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

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

Respondents.

APPELLANT’S APPENDIX – VOLUME 8 OF 14

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Attorneys for Appellant Wellness Connection of Nevada, LLC

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

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

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

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

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

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

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

12	08/04/2022	Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b)	APP01862 – APP01879
12	08/04/2022	Notice of Entry of Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b)	APP01880 – APP01900
13	08/09/2022	Memorandum of Costs and Disbursements of Wellness Connection of Nevada, LLC	APP01901 – APP01964
13	09/02/2022	Wellness Connection of Nevada, LLC's Notice of Appeal	APP01965 – APP02024
13	02/04/2023	Order re: TGIG Plaintiffs' Motion to Retax and Settle Costs and Joinders	APP02025 – APP02042
13	02/07/2023	Notice of Entry of Order re: TGIG Plaintiffs' Motion to Retax and Settle Costs and Joinders	APP02043 – APP02064
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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
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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
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14		Register of Actions for Eighth Judicial District Court case In Re: D.O.T. Litigation; Case number: A-19-787004-B	APP02065 – APP02213
6	11/26/2019	Second Amended Complaint filed by Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So. NV, LLC; Tryke Companies	APP00911 – APP00933

		Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC	
12	11/04/2020	THC Nevada, LLC and Herbal Choice, Inc.'s Joint Notice of Appeal	APP01795 – APP01797
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Dated this 1st day of April, 2024.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ L. Christopher Rose
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Connor J. Bodin, Esq., Nevada Bar No. 16205
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Attorneys for Appellant Wellness Connection of Nevada, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April 2024, I caused a true and correct copy of the **APPELLANT'S APPENDIX, VOLUME 8 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



BRIAN SANDOVAL
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

**STATE OF NEVADA
DEPARTMENT OF TAXATION**

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Recreational Marijuana Establishment License Application

Recreational Retail Marijuana Store Only

Release Date: July 6, 2018

Application Period: September 7, 2018 through September 20, 2018

(Business Days M-F, 8:00 A.M. - 5:00 P.M.)

For additional information, please contact:

Marijuana Enforcement Division
State of Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706

marijuana@tax.state.nv.us



BRIAN SANDOVAL
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APPLICANT INFORMATION

Provide all requested information in the space next to each numbered question. The information in Sections V1 through V10 will be used for application questions and updates. Type or print responses. **Include this applicant information sheet in Tab III of the Identified Criteria Response (Page 10).**

V1	Company Name:	
V2	Street Address:	
V3	City, State, ZIP:	
V4	Telephone: () _____ - _____ ext: _____	
V5	Email Address:	
V6	Toll Free Number: () _____ - _____ ext: _____	
Contact person who will provide information, sign, or ensure actions are taken pursuant to R092-17 & NRS 453D		
V7	Name:	
	Title:	
	Street Address:	
	City, State, ZIP:	
V8	Email Address:	
V9	Telephone number for contact person: () _____ - _____ ext: _____	
V10	Signature: _____	Date: _____



BRIAN SANDOVAL
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1. TERMS AND DEFINITIONS

For the purposes of this application, the following acronyms/definitions will be used.

TERMS	DEFINITIONS
<i>Applicant</i>	Organization/individual submitting an application in response to this request for application.
<i>Awarded applicant</i>	The organization/individual that is awarded and has an approved conditional license with the State of Nevada for the establishment type identified in this application.
<i>Confidential information</i>	Any information relating to building or product security submitted in support of a recreational marijuana establishment license.
<i>Department</i>	The State of Nevada Department of Taxation.
<i>Edible marijuana products</i>	Products that contain marijuana or an extract thereof and are intended for human consumption by oral ingestion and are presented in the form of foodstuffs, extracts, oils, tinctures and other similar products.
<i>Enclosed, locked facility</i>	A closet, display case, room, greenhouse, or other enclosed area equipped with locks or other security devices which allow access only by a recreational marijuana establishment agent and the holder of a valid registry identification card.
<i>Establishment license approval to operate date</i>	The date the State Department of Taxation officially gives the approval to operate based on approval of the local jurisdiction and successful fulfillment of all approval-to-operate instructions between the Department and the successful applicant.
<i>Conditional establishment license award date</i>	The date when applicants are notified that a recreational marijuana establishment conditional license has been successfully awarded and is awaiting approval of the local jurisdiction and successful fulfillment of all approval-to-operate instructions.
<i>Evaluation committee</i>	An independent committee comprised of state officers or employees and contracted professionals established to evaluate and score applications submitted in response to this request for applications.
<i>Excluded felony offense</i>	A crime of violence or a violation of a state or federal law pertaining to controlled substances if the law was punishable as a felony in the jurisdiction where the person was convicted. The term does not include a criminal offense for which the sentence, including any term of probation, incarceration or supervised release, was completed more than 10 years before or an offense involving conduct that would be immune from arrest, prosecution or penalty, except that the conduct occurred before April 1, 2014 or was prosecuted by an authority other than the State of Nevada.



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<i>Facility for the production of edible marijuana products or marijuana infused products</i>	A business that is registered/licensed with the Department and acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells edible marijuana products or marijuana-infused products to recreational marijuana retail stores.
<i>Identifiers or Identified Criteria Response</i>	A non-identified response, such as assignment of letters, numbers, job title or generic business type, to assure the identity of a person or business remains unidentifiable. Assignment of identifiers will be application-specific and will be communicated in the application in the identifier legend.
<i>Marijuana Testing Facility</i>	Means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.
<i>Inventory control system</i>	A process, device or other contrivance that may be used to monitor the chain of custody of marijuana used for recreational purposes from the point of cultivation to the end consumer.
<i>Marijuana</i>	All parts of any plant of the genus Cannabis, whether growing or not, and the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted there from), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" does not include industrial hemp as defined in NRS 557.040, and grown or cultivated pursuant to Chapter 557 of NRS.
<i>Marijuana-infused products</i>	Products that are infused with marijuana or an extract thereof and are intended for use or consumption by humans through means other than inhalation or oral ingestion. The term includes topical products, ointments, oils and tinctures.
<i>May</i>	Indicates something that is recommended but not mandatory. If the applicant fails to provide recommended information, the Department may, at its sole discretion, ask the applicant to provide the information or evaluate the application without the information.
<i>Medical use of marijuana</i>	The possession, delivery, production or use of marijuana; the possession, delivery or use of paraphernalia used to administer marijuana, as necessary, for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.



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<i>Must</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<i>NAC</i>	Nevada Administrative Code. All applicable NAC documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NAC/CHAPTERS.HTML
<i>Non-Identified Criteria Response</i>	A response to the application in which no information is included pertaining to identifiable information for any and all owners, officers, board members or employees and business details (proposed business name(s), D/B/A, current or previous business names or employers). Identifiers that must be removed from the application include all names; specific geographic details including street address, city, county, precinct, ZIP code, and their equivalent geocodes; telephone numbers; fax numbers; email addresses; social security numbers; financial account numbers; certificate/license numbers; vehicle identifiers and serial numbers including license plate numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) addresses; biometric identifiers including finger and voice prints, full-face photographs and any comparable images; previous or proposed company logos, images or graphics; and, any other unique identifying information, images, logos, details, numbers, characteristics, or codes.
<i>NRS</i>	Nevada Revised Statutes. All applicable NRS documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NRS/ .
<i>Pacific Time (PT)</i>	Unless otherwise stated, all references to time in this request for applications and any subsequent award of license are understood to be Pacific Time.
<i>Recreational marijuana retail store</i>	Means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.
<i>Recreational marijuana establishment</i>	Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.
<i>Recreational marijuana establishment agent</i>	Means an owner, officer, board member, employee or volunteer of a marijuana establishment, an independent contractor who provides labor relating to the cultivation, processing or distribution of marijuana or the production of marijuana or marijuana products for a marijuana establishment or an employee of such an independent contractor. The term does not include a consultant who performs professional services for a recreational marijuana establishment.



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<i>Recreational marijuana establishment agent registration card</i>	A registration card that is issued by the Department pursuant to R092-17, Sec. 94 to authorize a person to volunteer or work at a recreational marijuana establishment.
<i>Recreational marijuana establishment license</i>	A license that is issued by the Department pursuant to NRS 453D and R092-17 to authorize the operation of a recreational marijuana establishment.
<i>Shall</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<i>Should</i>	Indicates something that is recommended but not mandatory. If the applicant fails to provide recommended information the Department may, at its sole discretion, ask the applicant to provide the information or evaluate the application without the information.
<i>State</i>	The State of Nevada and any agency identified herein.
<i>Will</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.



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2. APPLICATION OVERVIEW

The Nevada State Legislature passed a number of bills during the 2017 session which affect the licensing, regulation and operation of recreational marijuana establishments in the state. In addition, the Department of Taxation has approved regulations effective February of 2018. Legislation changes relevant to this application include but are not limited to the following:

Assembly Bill 422 (AB422):

- Transfers responsibility for registration/licensing and regulation of marijuana establishments from the State of Nevada's Division of Public and Behavioral Health (DPBH) to the Department of Taxation.
- Adds diversity of race, ethnicity, or gender of applicants (owners, officers, board members) to the existing merit criteria for the evaluation of marijuana establishment registration certificates.

LCB File No. Regulation R092-17:

- On or before November 15, 2018, a person who holds a medical marijuana establishment registration certificate may apply for one or more licenses, in addition to a license issued pursuant to section 77 of the regulation, for a marijuana establishment of the same type or for one or more licenses for a marijuana establishment of a different type.

No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.

The Department is seeking applications from qualified applicants in conjunction with this application process for recreational marijuana retail store license. If a marijuana establishment has not received a final inspection within 12 months after the date on which the Department issued a license, the establishment must surrender the license to the Department. The Department may extend the period specified in R092-17, Sec. 87 if the Department, in its discretion, determines that extenuating circumstances prevented the marijuana establishment from receiving a final inspection within the period.

3. APPLICATION TIMELINE

The following represents the timeline for this project. All times stated are in Pacific Time (PT).

Task	Date/Time
Request for application date	July 6, 2018
Opening of 10-day window for receipt of applications	September 7, 2018
Deadline for submission of applications	September 20, 2018 – 5:00 p.m.
Application evaluation period	September 7, 2018 – December 5, 2018
Conditional licenses award notification	Not later than December 5, 2018
Anticipated approximate fully operational deadline	12 months after notification date of conditional license



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4. APPLICATION INSTRUCTIONS

The State of Nevada Department of Taxation is seeking applications from qualified applicants to award recreational marijuana retail store licenses.

The Department anticipates awarding a recreational marijuana retail store license in conjunction with this application as determined by the applicant's establishment type, geographic location and the best interest of the State. Therefore, applicants are encouraged to be as specific as possible regarding services provided, geographic location, and information submitted for each application merit criteria category.

Pursuant to section 78 subsection 12 of R092-17, the application must include the signature of a natural person for the proposed marijuana establishment as described in subsection 1 of section 74 of R092-17.

5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

5.1. General Submission Requirements

- 5.1.1. Applications must be packaged and submitted in counterparts; therefore, applicants must pay close attention to the submission requirements. Applications will have an Identified Criteria Response and a Non-Identified Criteria Response. Applicants must submit their application separated into the two (2) required sections, Identified Criteria Responses and Non-Identified Criteria Responses, recorded to separate electronic media (CD-Rs or USB thumb drives).
- 5.1.2. The required electronic media must contain information as specified in Section 5.4, and must be packaged and submitted in accordance with the requirements listed at Section 5.5.
- 5.1.3. Detailed instructions on application submission and packaging are provided below. Applicants must submit their applications as identified in the following sections.
- 5.1.4. All information is to be completed as requested.
- 5.1.5. Each section within the Identified Criteria Response and the Non-Identified Criteria Response must be saved as separate PDF files, one for each required "Tab". The filename will include the tab number and title (e.g., 5.2.1 Tab I – Title Page.pdf).
- 5.1.6. For ease of evaluation, the application must be presented in a format that corresponds to and references the sections outlined within the submission requirements section and must be presented in the same order. Written responses must be typed and placed immediately following the applicable criteria question, statement and/or section.
- 5.1.7. Applications are to be prepared in such a way as to provide a straightforward, concise delineation of information to satisfy the requirements of this application.
- 5.1.8. In a Non-Identified Criteria Response, when a specific person or company is referenced the identity must remain confidential. A person may be addressed through their position, discipline or job title, or assigned an identifier. Identifiers assigned to people or companies must be detailed in a legend (Attachment H) to be submitted in the Identified Criteria Response section.
- 5.1.9. Materials not requested in the application process will not be reviewed.



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5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password protect electronic media or individual files.
- The response must contain separate PDF files for each of the tabbed sections as described below.

5.2.1. Tab I – Title Page

The title page must include the following:

Part I – Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

5.2.2. Tab II – Table of Contents

An accurate table of contents must be provided in this tab.

5.2.3. Tab III – Applicant Information Sheet (Page 2)

The completed Applicant Information Sheet signed by the contact person who is responsible for providing information, signing documents, or ensuring actions are taken pursuant to R092-17, Sec. 94 must be included in this tab.

5.2.4. Tab IV – Recreational Marijuana Establishment License Application (Attachment A)

The completed and signed Recreational Marijuana Establishment License Application must be included in this tab.

5.2.5. Tab V – Multi-Establishment Limitations Form (Attachment F)

If applicable, a copy of the Multi-Establishment Limitations Form must be included in this tab. If not applicable, please insert a plain page with the words “**Not applicable.**”

5.2.6. Tab VI – Identifier Legend (Attachment H)

If applicable, a copy of the Identifier Legend must be included in this tab. If not applicable, please insert a page with the words “**Not Applicable.**”



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5.2.7. Tab VII – Confirmation that the applicant has registered with the Secretary of State

Documentation that the applicant has registered as the appropriate type of business and the Articles of Incorporation, Articles of Organization, Operating Agreements, or partnership or joint venture documents of the applicant must be included in this tab.

5.2.8. Tab VIII– Documentation of liquid assets

Documentation demonstrating the liquid assets and the source of those liquid assets from a financial institution in this state or in any other state or the District of Columbia must be included in this tab and demonstrate the following criteria :

5.2.8.1. 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; and

5.2.8.2. The source of those liquid assets.

Note: If applying for more than one recreational marijuana establishment license, available funds must be shown for each establishment application.

5.2.9. Tab IX – Evidence of taxes paid; other beneficial financial contributions

Evidence of the amount of taxes paid and/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 establishment must be included in this tab.

5.2.10. Tab X – Organizational structure and owner, officer or board member information

The description of the proposed organizational structure of the proposed recreational marijuana establishment and information concerning each owner, officer and board member of the proposed recreational marijuana establishment must be included in this tab and demonstrate the following criteria:

5.2.10.1. An organizational chart showing all owners, officers and board members of the recreational marijuana establishment including percentage of ownership for each individual.

5.2.10.2. An Owner, Officer and Board Member Attestation Form must be completed for each individual named in this application (Attachment B).

5.2.10.3. The supplemental Owner, Officer and Board Member Information Form should be completed for each individual named in this application. This attachment must also include the diversity information required by R092-17, Sec. 80.1(b) (Attachment C).

5.2.10.4. A resume, including educational level and achievements for each owner, officer and board member must be completed for each individual named in this application.

5.2.10.5. A narrative description not to exceed 750 words demonstrating the following:

5.2.10.5.1. Past experience working with government agencies and highlighting past community involvement.



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- 5.2.10.5.2. Any previous experience at operating other businesses or non-profit organizations, including marijuana industry experience.
- 5.2.10.6. A Request and Consent to Release Application Form for Recreational Marijuana Establishment License(s) for each owner, officer and board member should be completed for each individual named in this application (Attachment D).
- 5.2.10.7. A copy of each individual's completed fingerprint submission form demonstrating he or she has submitted fingerprints to the Nevada Department of Public Safety.
- 5.2.11. **Tab XI— Financial plan**
A financial plan must be included in this tab which includes:
- 5.2.11.1. Financial statements showing the resources of the applicant, both liquid and illiquid.
- 5.2.11.2. If the applicant is relying on funds from an owner, officer, board member or any other source, evidence that such person 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.
- 5.2.11.3. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation.
- 5.2.12. **Tab XII – Name, signage and advertising plan**
A proposal of the applicant's name, signage and advertising plan which will be used in the daily operations of the recreational marijuana establishment on the form supplied by the Department (Attachment G) must be included in this tab.
Please note: This section will require approval, but will not be scored.
- 5.2.13. **Application Fee**
- 5.2.13.1. Include with this packet the \$5,000.00 non-refundable application fee per NRS 453D.230(1).

Please note: Only cash, cashier's checks and money orders made out to the "Nevada Department of Taxation" will be accepted for payment of the nonrefundable application fee.

5.3. Part II – Non-identified Criteria Response

The NON-IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password-protect electronic media or individual files.



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- The response must contain separate PDF files for each of the tabbed sections as described below:

5.3.1. **Tab I – Title Page**

Please note: Title page will not be viewed by Non-Identified Criteria evaluators.

The title page must include the following:

Part II –Non-Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

5.3.2. **Tab II – Table of Contents**

An accurate table of contents must be provided in this tab.

5.3.3. **Tab III – Building/Establishment information**

Documentation concerning the adequacy of the size of the proposed recreational marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana must be included in this tab. The content of this response must be in a **non-identified** format and include building and general floor plans with all supporting details

Please note: The size or square footage of the proposed establishment should include the maximum size of the proposed operation per the lease and property ownership. The start-up plans and potential expansion should be clearly stated to prevent needless misunderstandings and surrendering of certification.

5.3.4. **Tab IV – Care, quality and safekeeping of marijuana from seed to sale plan**

Documentation concerning the integrated plan of the proposed recreational marijuana establishment for the care, quality and safekeeping of recreational marijuana from seed to sale must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.4.1. A plan for verifying and testing recreational marijuana
- 5.3.4.2. A transportation or delivery plan
- 5.3.4.3. Procedures to ensure adequate security measures for building security
- 5.3.4.4. Procedures to ensure adequate security measures for product security

5.3.5. **Tab V – System and Inventory Procedures plan**



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A plan for the operating procedures for verification system and inventory control system must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.5.1. A description of the operating procedures for the verification system of the proposed marijuana establishment for verifying age.
- 5.3.5.2. A description of the inventory control system of the proposed recreational marijuana establishment.

Please note: Applicants should demonstrate a system to include thorough tracking of product movement and sales. The applicant shall demonstrate capabilities for an external interface via a secure API to allow third party software systems to report all required data into the State database to allow seamless maintenance of records and to enable a quick and accurate update on demand. The system shall account for all inventory held by an establishment in any stage of cultivation, production, display or sale as applicable for the type of establishment, and demonstrate an internal reporting system to provide the Department with comprehensive information about an establishment's inventory.

5.3.6. **Tab VI— Operations and resources plan**

Evidence that the applicant has a plan to staff and manage the proposed marijuana establishment on a daily basis must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.6.1. A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses.
- 5.3.6.2. An operations manual that demonstrates compliance with the regulations of the Department.
- 5.3.6.3. An education plan which must include providing training and educational materials to the staff of the proposed establishment.
- 5.3.6.4. A plan to minimize the environmental impact of the proposed establishment.

5.3.7. **Tab VII – Community impact and serving authorized persons in need**

A proposal demonstrating the likely impact on the community and convenience to serve the needs of persons authorized to use marijuana must be included in this tab. The content of this response must be in a **non-identified format** and include:

- 5.3.7.1. The likely impact of the proposed recreational marijuana establishment in the community in which it is proposed to be located.
- 5.3.7.2. The manner in which the proposed recreational marijuana establishment will meet the needs of the persons who are authorized to use marijuana.



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5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

- 5.4.1. A separate CD-R or thumb drive which contains only the Identified Criteria Response.
- 5.4.2. A separate CD-R or thumb drive which contains only the Non-Identified Criteria Response.
 - 5.4.2.1. The electronic files must follow the format and content section for the Identified Criteria Response and Non-Identified Criteria Response.
 - 5.4.2.2. All electronic files must be saved in "PDF" format with separate files for each required "Tab". Individual filenames must comply with the naming requirements specified in 5.1.5 of the General Submission Requirements.
 - 5.4.2.3. CD-Rs or thumb drives will be labeled as either Identified or Non-Identified Criteria Response. Identified Criteria Responses and Non-Identified Criteria Responses must not be saved to the same CD-R or thumb drive.
 - 5.4.2.3.1. Part I – Identified Criteria Response
 - 5.4.2.3.2. Part II – Non-Identified Criteria Response
 - 5.4.2.4. Seal the Identified Criteria Response and Non-Identified Criteria Response electronic media in separate envelopes and affix labels to the envelopes per the example below:

CDs or Thumb Drives	
Application	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Contents:	Part I – Identified Criteria Response OR Part II – Non-Identified Criteria Response



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5.5. Application Packaging and Instructions

- 5.5.1. Recreational Marijuana Establishment License Applications may be mailed or dropped off in person at:

**Department of Taxation
Marijuana Enforcement Division
1550 College Parkway
Carson City, NV 89706**

- OR -

**Department of Taxation
Marijuana Enforcement Division
555 E. Washington Ave. Ste 1300
Las Vegas, NV 89101**

- 5.5.2. Applications dropped off in person at one of the two Taxation office's must be received no later than **5:00 p.m. on September 20, 2018.**
- 5.5.3. Applications mailed in to one of the two Taxation office's must be postmarked by the United States Postal Service not later than **September 20, 2018.**
- 5.5.4. If an application is sent via a different delivery service (i.e. UPS, FedEx, etc.) and does not arrive at one of the two Taxation offices by **5:00 p.m. on September 20, 2018**, the application will not be considered.
- 5.5.5. If mailing the application, combine the separately sealed Identified and Non-Identified Criteria Response envelopes into a single package suitable for mailing.
- 5.5.6. The Department will not be held responsible for application envelopes mishandled as a result of the envelope not being properly prepared.
- 5.5.7. Email, facsimile, or telephone applications will **NOT** be considered.



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6. APPLICATION EVALUATION AND AWARD PROCESS

The information in this section does not need to be returned with the applicant's application.

- 6.1. Applications shall be consistently evaluated and scored in accordance with NRS 453D, NAC 453D and R092-17 based upon the following criteria and point values.

Grey boxes are the Identified Criteria Response. White boxes are Non-Identified Criteria Response.

Nevada Recreational Marijuana Application Criteria		Points
The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member of the proposed marijuana establishment including the information provided pursuant to R092-17.		60
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"> Financial statements showing the resources of the applicant, both liquid and illiquid. If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 		30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <ul style="list-style-type: none"> That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. The source of those liquid assets. 		10
Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: <ul style="list-style-type: none"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. 		40
<i>Please note: The content of this response must be in a non-identified format.</i>		
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 		30



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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified format.</i>	20
Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: <ul style="list-style-type: none"> Building and construction plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. Review results of background check(s). Applicant has until the end of the 90-day application period to resolve background check information which may cause the application to be rejected. 	

6.2. If the Department receives more than one application for a license for a retail marijuana store in response to a request for applications made pursuant to R092-17, Sec. 76 and the Department determines that more than one of the applications is complete and in compliance with R092-17, Sec. 78 and Chapter 453D of the NRS, the Department will rank the applications within each applicable locality for any applicants which are in a jurisdiction that limits the number of retail marijuana stores in order from first to last. Ranking will be based on compliance with the provisions of R092-17 Sec. 80, Chapter 453D of NRS and on the content of the applications relating to:

- 6.2.1. 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.
- 6.2.2. Diversity of the owners, officers or board members.
- 6.2.3. Evidence of the amount of taxes paid and other beneficial financial contributions.
- 6.2.4. Educational achievements of the owners, officers or board members.
- 6.2.5. The applicant's plan for care, quality and safekeeping of marijuana from seed to sale.
- 6.2.6. The financial plan and resources of the applicant, both liquid and illiquid.
- 6.2.7. The experience of key personnel that the applicant intends to employ.
- 6.2.8. Direct experience of the owners, officers or board members of a medical marijuana establishment or marijuana establishment in this State.



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- 6.3. Applications that have not demonstrated a sufficient response related to the criteria set forth above will not have additional criteria considered in determining whether to issue a license and will not move forward in the application process.
- 6.4. Any findings from a report concerning the criminal history of an applicant or person who is proposed to be an owner, officer or board member of a proposed recreational marijuana establishment that disqualify that individual from serving in that capacity will also result in the disqualification of the application. The applicant will have the opportunity to resolve such an issue within the 90-day application period.
- 6.5. The Department and evaluation committee may also contact anyone referenced in any information provided for the owners, officers and board members of the proposed establishment; contact any applicant to clarify any response; solicit information from any available source concerning any aspect of an application; and, seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept any application, but shall make an award in the best interests of the State of Nevada per Regulation R092-17 and Chapter 453D of the NRS.
- 6.6. Clarification discussions may, at the Department's sole discretion, be conducted with applicants who submit applications determined to be acceptable and competitive per R092-17, Sec. 77-80 and NRS 453D.210. Applicants shall be afforded fair and equal treatment with respect to any opportunity for discussion and/or written clarifications of applications. Such clarifications may be permitted after submissions and prior to award for the purpose of obtaining best and final ranking of applications. In conducting discussions, there shall be no disclosure of any information derived from applications submitted by competing applicants. Any clarification given for the original application during the clarification discussions will be included as part of the application.
- 6.7. The Department will issue conditional recreational marijuana establishment licenses subject to final inspection in accordance with R092-17, Sec. 87 and subject to local jurisdiction to the highest ranked applicants up to the designated number of licenses the Department plans to issue.
- 6.8. If two or more applicants have the same total number of points for the last application being awarded a conditional license, the Department shall select the applicant which has scored the highest number of points as it is related to the proposed organizational structure of the proposed marijuana establishment and the information concerning each owner, officer and board member of the proposed marijuana establishment.
- 6.9. If the Department receives only one response within a specific jurisdiction; and, if the jurisdiction limits the number of a type of establishment to one; and, statewide, if there is not a limit on the number of a type of establishments to a request for applications for recreational marijuana establishments issued pursuant to R092-17, Sec. 76 (3) within 10 business days after the Department begins accepting responses to the request for applications; and, the



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Department determines that the response is complete and in compliance with the regulations, the Department will issue a conditional license to that applicant to operate a recreational marijuana establishment in accordance with R092-17.

- 6.10. The issuance by the Department of a recreational marijuana establishment license is conditional and not an approval to begin business operations until such time as:
 - 6.10.1. The marijuana establishment is in compliance with all applicable local government ordinances and rules; and
 - 6.10.2. The local government has issued a business license or otherwise approved the applicant for the operation of the establishment.
- 6.11. If the local government does not issue business licenses and does not approve or disapprove marijuana establishments in its jurisdiction, a recreational marijuana establishment license becomes an approval to begin business operations when the marijuana establishment is in compliance with all applicable local government ordinances and rules and has fulfilled all the requirements of the approval to operate by the Department.
- 6.12. Any license resulting from this application shall not be effective until approved by the Department.



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ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

GENERAL INFORMATION

Type of Marijuana Establishment: <input type="checkbox"/> Recreational Retail Marijuana Store			
Marijuana Establishment's Proposed Physical Address (this must be a Nevada address and cannot be a P.O. Box)			
City:	County:	State:	Zip Code:
Proposed Hours of Operation :			
Sunday	Monday	Tuesday	Wednesday
Thursday	Friday	Saturday	

APPLYING ENTITY INFORMATION

Applying Entity's Name:		
Business Organization:	<input type="checkbox"/> Individual <input type="checkbox"/> LLC	<input type="checkbox"/> Corp. <input type="checkbox"/> Assoc. /Coop.
	<input type="checkbox"/> Partnership <input type="checkbox"/> Other specify:	
Telephone #:	E-Mail Address:	
State Business License #:	Expiration Date:	
Mailing Address:		
City:	State:	Zip Code:

DESIGNEE INFORMATION

Name of individual designated to manage agent registration card applications on behalf of the establishment.

Last Name:	First Name:	MI:
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SUPPLEMENTAL REQUESTS

Does the applicant agree to allow the Nevada Department of Taxation (Department) to submit supplemental requests for information? <input type="checkbox"/> Yes <input type="checkbox"/> No
--



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ATTACHMENT A (continued)

Recreational Marijuana Establishment Owner (OR), Officer (OF), Board Member (BM) Names

For each owner, officer and board member listed below, please fill out a corresponding Establishment Principal Officers and Board Members Information Form (Attachment C).

Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
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ATTACHMENT A (continued)

A marijuana agent identification card or recreational marijuana establishment license issued by the Nevada Department of Taxation (Department) pursuant to R092-17, Sec. 95 does not protect the applicant from legal action by federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana.

The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of "recreational" marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical & Recreational Marijuana Act(s) & Regulations (NAC- 453, NRS-453D, R092-17). Any failure to comply with these requirements may result in revocation of the marijuana agent identification card or Recreational Marijuana Establishment License issued by the Department.

The issuance of a license pursuant to section 80 of R092-17 of this regulation is conditional and not an approval to begin operations as a marijuana establishment until such time as all requirements in section 83 of R092-17 are completed and approved by the Department by means of a final inspection.

The State of Nevada, including but not limited to the employees of the Department, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of marijuana.

I attest that the information provided to the Department for this Recreational Marijuana Establishment License application is true and correct.

_____ Print Name	_____ Title
_____ Signature	_____ Date Signed
_____ Print Name	_____ Title
_____ Signature	_____ Date Signed



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ATTACHMENT B OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, _____ (PRINT NAME)

Attest that:

I have not been convicted of an excluded felony offense as defined in NRS 453D; and

I agree that the Department may investigate my background information by any means feasible to the Department; and

I will not divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to R092-17, Sec. 94 and 453D of the NRS; and

All information provided is true and correct.

Signature of Owner, Officer or Board Member

Date Signed

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	
	Signature of notarial officer



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ATTACHMENT C OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

Provide the following information for each owner, officer and board member listed on the Recreational Marijuana Establishment Application. Use as many sheets as needed.			
Last Name:	First Name:	MI:	<input type="checkbox"/> OR <input type="checkbox"/> OF <input type="checkbox"/> BM
Date of Birth:	Race:	Ethnicity:	
Gender:			
Residence Address:			
City:	County:	State:	Zip:
Describe the individual's title, role in the organization and the responsibilities of the position of the individual:			
Has this individual served as a principal officer or board member for a marijuana establishment that has had their establishment license or certificate revoked? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has this individual previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual employed by or a contractor of the Department? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's signed and dated Recreational Retail Marijuana Store Principal Officer or Board Member Attestation Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual a law enforcement officer? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's fingerprints on a fingerprint card been submitted to the Nevada Department of Public Safety? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of the Request and Consent to Release Application Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			



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Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
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Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

[illegible]



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For each owner (OR), officer (OF) and board member (BM) that is currently serving as an owner, officer or board member for another medical marijuana establishment or marijuana establishment, please fill out the information below.

[illegible]



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Governor
JAMES DEVOLLO
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

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ATTACHMENT D REQUEST AND CONSENT TO RELEASE APPLICATION FORM RECREATIONAL MARIJUANA ESTABLISHMENT LICENSE

I, _____, am the duly authorized representative of

_____ to represent and interact with the Department of Taxation (Department) on all matters and questions in relation to the Nevada Recreational Marijuana Establishment License(s) Application. I understand that R092-17, Sec. 242 makes all applications submitted to the Department confidential but that local government authorities, including but not limited to the licensing or zoning departments of cities, towns or counties, may need to review this application in order to authorize the operation of an establishment under local requirements. Therefore, I consent to the release of this application to any local governmental authority in the jurisdiction where the address listed on this application is located.

By signing this Request and Consent to Release Application Form, I hereby acknowledge and agree that the State of Nevada, its sub-departments including the Department of Taxation and its employees are not responsible for any consequences related to the release of the information identified in this consent. I further acknowledge and agree that the State and its sub-departments and its employees cannot make any guarantees or be held liable related to the confidentiality and safe keeping of this information once it is released.

_____ Date: _____

Signature of Requestor/Applicant or Designee

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	Signature of notarial officer



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ATTACHMENT E
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

<i>To be completed by the applicant for the physical address of the proposed marijuana establishment.</i>			
Name of Individual or Entity Applying for a Marijuana Establishment License:			
Physical Address of Proposed Marijuana Establishment (must be a Nevada address, not a P.O. Box):			
City:	County:	State:	Zip Code:
Legal Description of the Property:			



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ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

NRS 453D.210 places a limitation on the total number of Recreational Retail Marijuana Store licenses that can be issued within each county, and R092-17, Sec. 80 (5) places limitations on the number of recreational marijuana retail stores located in any one governmental jurisdiction and a limitation on the number of licenses issued to any one person, group or entity. Due to these limitations, please list below all applications submitted from this business organization and/or persons as identified in the recreational marijuana establishment owner, officer and board member names section of Attachment A in the 10-day window of **September 7, 2018 – September 20, 2018**.

If this business organization were to not receive approval on all applications submitted, would the applicant still want approval on the applications determined by the ranking below? ☐ Yes ☐ No

Please list in order of preference for approval (use as many sheets as needed).

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:



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**ATTACHMENT G
NAME, SIGNAGE, AND ADVERTISING PLAN FORM**

A recreational marijuana establishment must have all advertising plans approved by the Department as a requirement for approval to operate a recreational marijuana establishment. A recreational marijuana establishment shall not use:

- A name or logo unless the name or logo has been approved by the Department; or
- Any sign of advertisement unless the sign or advertisement has been approved by the Department.

Please demonstrate the Name, Signage and Advertising Plans for the proposed marijuana establishment. Additional pages and documents can be included to demonstrate the full advertising plans of the proposed establishment.



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ATTACHMENT H
IDENTIFIER LEGEND FORM

In a Non-Identified Criteria Response, when a specific person or company is referenced, the identity must remain confidential. A person may be addressed through their position, discipline or job title, or be assigned an identifier. Identifiers assigned to people or companies must be detailed in a legend (Attachment H) to be submitted in the Identified Criteria Response section (use as many sheets as needed).

Criteria Response Identifier	Actual Person or Company (for Department verification outside the evaluation process)
Example: Owner A	John Smith
Example: Owner B	John Doe
Example: Construction Company A	Acme Construction



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ATTACHMENT I FACILITY JURISDICTION FORM

Mark the jurisdiction(s) and number of stores in each jurisdiction for which you are applying. Only one application is necessary for multiple jurisdictions and licenses, however, you must submit attachments “A” & “E” for each jurisdiction, location and the appropriate application fee for each of the jurisdictions/locality and number of licenses requested.

No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Clark County	
City of Henderson	
City of Las Vegas	
City of Mesquite	
City of North Las Vegas	
Carson City	
Churchill County	
Douglas County	
Elko County	
Esmeralda County	
Eureka County	
Humboldt County	

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Washoe County	
City of Reno	
City of Sparks	
Lander County	
Lincoln County	
Lyon County	
Mineral County	
Nye County	
Pershing County	
Storey County	
White Pine County	



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ATTACHMENT J

FEDERAL LAWS AND AUTHORITIES

(Apply outside of NAC 453, NAC 453A, NRS 453A, NRS 453D, R092-17)

The information in this section does not need to be returned with the applicant's application. The following is a list of federal laws and authorities with which the awarded Applicant will be required to comply.

ENVIRONMENTAL:

- Archeological and Historic Preservation Act of 1974, PL 93-291
- Clean Air Act, 42 U.S.C. 7506(c)
- Endangered Species Act 16 U.S.C. 1531, ET seq.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands Farmland Protection Policy Act, 7 U.S.C. 4201 ET seq.
- Fish and Wildlife Coordination Act, PL 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended

ECONOMIC:

- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans

SOCIAL LEGISLATION:

- Age Discrimination Act, PL 94-135 Civil Rights Act of 1964, PL 88-352
- Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
- Executive Order 11246, Equal Employment Opportunity
- Executive Orders 11625 and 12138, Women's and Minority Business Enterprise Rehabilitation Act of 1973, PL 93, 112

MISCELLANEOUS AUTHORITY:

- Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646 Executive Order 12549 – Debarment and Suspension

From: Steven G. Shevorski <SShevorski@ag.nv.gov>

Sent: Wednesday, August 21, 2019 3:23 PM

To: 'Meriwether, Danielle LC'; Michael Cristalli; Vincent Savarese; Ross Miller; Ketan D. Bhurud; Robert E. Werbicky; David J. Pope; Theresa M. Haar; 'jag@mgalaw.com'; 'rgraf@blacklobello.law'; 'bhiggins@blacklobello.law'; 'alina@nvlitigation.com'; 'Work'; 'Eric Hone, Esq. (eric@h1lawgroup.com)'; 'jamie@h1lawgroup.com'; 'moorea@h1lawgroup.com'; 'jkahn@jk-legalconsulting.com'; 'dkoch@kochscow.com'; 'sscow@kochscow.com'; 'Bult, Adam K.'; 'tchance@bhfs.com'; 'a.hayslett@kempjones.com'; 'Nathanael Rulis, Esq. (n.rulis@kempjones.com)'; 'tparker@pnalaw.net'; 'Fetaz, Maximilien'; 'phil@hymansonlawnv.com'; 'shane@lasvegaslegalvideo.com'; 'joe@lasvegaslegalvideo.com'; 'Pat Stoppard (p.stoppard@kempjones.com)'; 'jdelcarmen@pnalaw.net'; Kutinac, Daniel; ShaLinda Creer; Tanya Bain; 'Karen Wiehl (Karen@HymansonLawNV.com)'; 'Kay, Paula'; 'Dennis Prince (dprince@thedplg.com)'; 'tlb@pisanellibice.com'; 'JTS@pisanellibice.com'

Cc: Kutinac, Daniel

Subject: RE: A786962 Serenity - Response to Judge's Question on NRS 453D.200(6)

Case : A-19-786962-B

Dept. 11

Danielle,

The Department of Taxation answers the Court's question as follows:

Court's Question: Which successful applicants completed the application in compliance with NRS 453D.200(6) at the time the application was filed in September 2018?

Answer: The Department of Taxation answers the Court's question in three parts.

First, there were seven successful applicants who are not parties to the coordinated preliminary injunction proceeding. 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. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were at the time of the application, these applications were complete at the time they were filed with reference to NRS 453D.200(6).

Second, there were five successful applicants who are parties to this coordinated preliminary injunction proceeding whose applications were complete with reference to NRS 453D.200(6) if the Department of Taxation accepts as truthful their attestations regarding who their owners, officers, and board members were. These applicants were Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC.

Third, there were four successful applicants who are parties to this proceeding regarding whom the Department of Taxation could not eliminate a question as to the

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APP01191

completeness of their applications with reference to NRS 453D.200(6). These applicants were Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC.

With respect to the third group, the Department of Taxation could not eliminate a question as the completeness of the applications due to the following:

1. **Helping Hands Wellness Center, Inc.** – The Department of Taxation could not eliminate a question a question regarding the completeness of the applicant's identification of all of its officers on Attachment A in light of Mr. Terteryan's testimony that he is the Chief Operating Officer and was not listed on Attachment A. The Department of Taxation does note, however, that Mr. Terteryan has been the subject of a completed background check.
2. **Lone Mountain Partners, LLC** – The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners because the Department could not determine whether Lone Mountain Partners, LLC was a subsidiary of an entity styled "Verona" or was owned by the individual members listed on Attachment A.
3. **Nevada Organic Remedies, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners because the Department could not determine whether there were shareholders who owned a membership interest in the applicant at the time the application was submitted, but who were not listed on Attachment A, as the applicant was acquired by a publicly traded company on or around September 4, 2018.
4. **Greenmart of Nevada NLV, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners. The Department could not determine whether the applicant listed all its owners on Attachment A because a subsidiary of a publicly traded company owned a membership interest in the applicant at the time the applicant submitted its application.

In creating this answer, the Department of Taxation sought to answer the Court's question in a neutral fashion based on the information available to it from the applications themselves, testimony given at the hearing (without reference to issues of admissibility, which an affected party may raise), and information publicly available from a government website (the Canadian Securities Exchange website), which was submitted by the applicant or information submitted about the applicant by an entity claiming an affiliation to the applicant. The Department of Taxation expects that Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC may explain why they believe they submitted complete applications in compliance with the provisions of NRS 453D.200(6).

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APP01192

Best regards,

Steve Shevorski

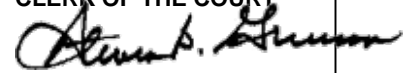
Steve Shevorski
Head of Complex Litigation
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702-486-3783

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APP01193



1 **FFCL**

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

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

Case No. A-19-787004-B
Consolidated with:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19-787540-W
A-19-787726-C
A-19-801416-B

12 **Dept. No.** XI

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

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

19 *The Plaintiffs*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22
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⁴ Although Rural Remedies, LLC claims were severed for this phase, Clarence E. Gamble, Esq., of the law firm
28 Ramos Law participated on its behalf by phone.

The State

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

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

The Industry Defendants

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

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

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

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

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

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

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

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

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

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

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

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

17 Having read and considered the pleadings filed by the parties, having reviewed the evidence
18 admitted during this phase of the trial⁶, and having heard and carefully considered the testimony of the
19 witnesses called to testify, having considered the oral and written arguments of counsel, and with the
20 intent of deciding the remaining issues⁷ related to Legality of the 2018 recreational marijuana
21 application process only⁸, the Court makes the following findings of fact and conclusions of law:
22
23
24

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

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

PROCEDURAL POSTURE

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

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

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

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

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

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

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

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

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

4 PRELIMINARY STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Requirements for record keeping by marijuana establishments;

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

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

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

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

5 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 NRS 453D.020(3).

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

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

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

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

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

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

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

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

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

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

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

28 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.

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

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

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

7 ***

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

9 (a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation
10 facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail
marijuana store;

11 (b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment
12 registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed
with the Secretary of State;

13 (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;

14 (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;

15 (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;

16 (f) The mailing address of the applicant;

17 (g) The telephone number of the applicant;

18 (h) The electronic mail address of the applicant;

19 (i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License
prescribed by the Department;

20 (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;

21 (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

22 (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.

23 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.

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

25 (a) An organizational chart showing all owners, officers and board members of the proposed marijuana
establishment;

26 (b) A list of all owners, officers and board members of the proposed marijuana establishment that contains the
following information for each person:

27 (1) The title of the person;

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 25. The DoT elected to utilize a bright line standard for evaluating the factor “operating
11 such an establishment in compliance” of whether the applicant was suspended or revoked.¹⁷ If an
12 applicant was suspended or revoked they were not qualified to apply. This information was
13 communicated in the cover letter with the application.¹⁸ This decision was within the discretion of the
14 DoT.
15
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18

19 ¹⁵ The DoT made a change to the application after circulating the first version of the application to delete the
20 requirement of a physical location. The modification resulted in a different version of the application bearing the same
“footer” with the original version remaining available on the DoT’s website.

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

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

24 ¹⁸ The cover letter reads in part:

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

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

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

28 No citations for illegal activity or criminal conduct; and

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

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

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

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

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

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

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

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

16 30. Some applicants abided by this procedure.

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

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

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

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

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

1 Transfers of ownership

2
3 Exhibit 1588-052.

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

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

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

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

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

25
26
27 ²⁰ Exhibit 1809-054.

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

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

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

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

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

21 43. An applicant was permitted to submit a single application for all jurisdictions in which it
22 was applying, and the application would be scored at the same time.
23
24
25
26

27 ²² About two weeks into the grading process the Independent Contractors were advised by certain DoT employees
28 that if an identifier was included in the nonidentified section points should be deducted. It is unclear from the testimony
whether adjustments were made to the scores of those applications graded prior to this change in procedure being
established.

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

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

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

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

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

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

18 ²⁴ The email thread reads:

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

20 Jorge –

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

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

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

28 On Aug 22 at 8:24 pm Amanda Connor wrote

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

On Aug 22 at 8:27 pm Pupo wrote:

Nope. LOCATION IS NOT SCORED DAMN IT!

Exhibit 2064.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25
26
27
28 ²⁷ The DoT has agreed to extend this deadline due to these proceedings and the public health emergency. Some of
the conditional licenses not enjoined under the preliminary injunction have now received final approval.

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

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

5 69. The CCB was formed by the legislature and is now the government entity that oversees
6 and regulates the cannabis industry in the State of Nevada. By statute, the CCB now determines if the
7 “person is qualified to receive a license...” NRS 678B.200(1).
8

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ³³ The order concludes:

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

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

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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

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

The claim for equal protection is granted in part:

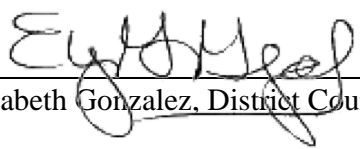
With respect to the decision by the DoT to arbitrarily and capriciously replace the mandatory requirement of BQ2, for the background check of each prospective owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1), the DoT created an unfair process. No monetary damages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

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

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

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

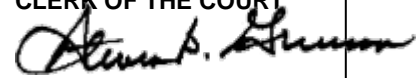
DATED this 3rd day of September 2020.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

/s/ Dan Kutinac
Dan Kutinac, JEA Dept XI



FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation

Case No. A-19-787004-B

Consolidated with:

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787035-C

A-19-787540-W

A-19-787726-C

A-19-801416-B

Dept. No. XI

FINDINGS OF FACT, CONCLUSION OF LAW AND PERMANENT INJUNCTION

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

The Plaintiffs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 *The State*

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

6 *The Industry Defendants*

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

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

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

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

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

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

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

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

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

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

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

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

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

14 15 **PROCEDURAL POSTURE**

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

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

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

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

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

10 PRELIMINARY STATEMENT

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

19 FINDINGS OF FACT

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

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

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

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

1 2. BQ2 specifically identified regulatory and public safety concerns:

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

- 4 (a) Marijuana may only be purchased from a business that is licensed by the State of
5 Nevada;
6 (b) Business owners are subject to a review by the State of Nevada to confirm that the
7 business owners and the business location are suitable to produce or sell marijuana;
8 (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly
9 controlled through State licensing and regulation;
10 (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
11 (e) Individuals will have to be 21 years of age or older to purchase marijuana;
12 (f) Driving under the influence of marijuana will remain illegal; and
13 (g) Marijuana sold in the State will be tested and labeled.

14 NRS 453D.020(3).

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

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

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

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

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

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

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

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

5 10. The DoT published a revised application on July 30, 2018. This revised application was
6 sent to all participants via the DoT's Listserv. The revised application modified physical address
7 requirements. For example, a sentence on Attachment A of the application, prior to this revision, the
8 sentence had read, "Marijuana Establishment's proposed physical address (this must be a Nevada
9 address and cannot be a P.O. Box)." The revised application on July 30, 2018, read: "Marijuana
10 Establishment's proposed physical address if the applicant owns property or has secured a lease or
11 other property agreement (this must be a Nevada address and not a P.O. Box)." Otherwise, the
12 applications are virtually identical.
13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

NRS 233B.121(7).

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

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

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

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

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

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

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

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

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

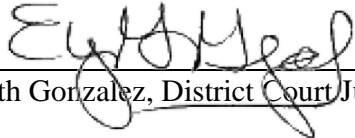
3 **ORDER**

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

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

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

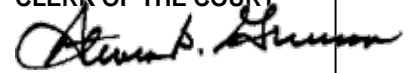
7 DATED this 16th day of September 2020.

8
9 
10 _____
11 Elizabeth Gonzalez, District Court Judge

12
13 **Certificate of Service**

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

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



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State of Nevada ex rel. its
Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

In re DOT Litigation,

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

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

NOTICE OF ENTRY OF JUDGMENT

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

DATED this 22nd day of September, 2020.

AARON D. FORD
Attorney General

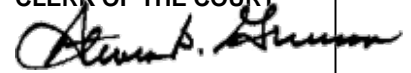
By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel

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

EXHIBIT A

EXHIBIT A



1 **FFCL**

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

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

Case No. A-19-787004-B
Consolidated with:
A-18-785818-W
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A-19-786962-B
A-19-787035-C
A-19-787540-W
A-19-787726-C
A-19-801416-B

10
11
12 **Dept. No.** XI

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

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

19 *The Plaintiffs*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22
23
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27 ⁴ Although Rural Remedies, LLC claims were severed for this phase, Clarence E. Gamble, Esq., of the law firm
28 Ramos Law participated on its behalf by phone.

The State

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

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

The Industry Defendants

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

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

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

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

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

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

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

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

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

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

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

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

17 Having read and considered the pleadings filed by the parties, having reviewed the evidence
18 admitted during this phase of the trial⁶, and having heard and carefully considered the testimony of the
19 witnesses called to testify, having considered the oral and written arguments of counsel, and with the
20 intent of deciding the remaining issues⁷ related to Legality of the 2018 recreational marijuana
21 application process only⁸, the Court makes the following findings of fact and conclusions of law:
22
23
24

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

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

PROCEDURAL POSTURE

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

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

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

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

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

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

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

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

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

4 PRELIMINARY STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Requirements for record keeping by marijuana establishments;

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

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

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

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

5 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 NRS 453D.020(3).

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

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

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

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

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

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

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

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

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

22 ¹³ Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:
23

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

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

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

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

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

8 ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 25. The DoT elected to utilize a bright line standard for evaluating the factor “operating
11 such an establishment in compliance” of whether the applicant was suspended or revoked.¹⁷ If an
12 applicant was suspended or revoked they were not qualified to apply. This information was
13 communicated in the cover letter with the application.¹⁸ This decision was within the discretion of the
14 DoT.
15
16
17
18

19 ¹⁵ The DoT made a change to the application after circulating the first version of the application to delete the
20 requirement of a physical location. The modification resulted in a different version of the application bearing the same
“footer” with the original version remaining available on the DoT’s website.

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

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

24 ¹⁸ The cover letter reads in part:

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

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

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

28 No citations for illegal activity or criminal conduct; and

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

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

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

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

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

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

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

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

16 30. Some applicants abided by this procedure.

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

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

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

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

23 Attachment E

24 Attachment I

25 Requirement for a location or physical address

26 Attachment F

 Requirement for initial licensing fee

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

1 Transfers of ownership

2
3 Exhibit 1588-052.

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

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

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

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

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

25
26
27 ²⁰ Exhibit 1809-054.

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

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

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

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

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

21 43. An applicant was permitted to submit a single application for all jurisdictions in which it
22 was applying, and the application would be scored at the same time.
23
24
25
26

27 ²² About two weeks into the grading process the Independent Contractors were advised by certain DoT employees
28 that if an identifier was included in the nonidentified section points should be deducted. It is unclear from the testimony
whether adjustments were made to the scores of those applications graded prior to this change in procedure being
established.

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

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

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

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

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

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

19 ²⁴ The email thread reads:

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

21 Jorge –

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

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

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

On Aug 22 at 8:24 pm Amanda Connor wrote

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

On Aug 22 at 8:27 pm Pupo wrote:

Nope. LOCATION IS NOT SCORED DAMN IT!

Exhibit 2064.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25
26
27
28 ²⁷ The DoT has agreed to extend this deadline due to these proceedings and the public health emergency. Some of
the conditional licenses not enjoined under the preliminary injunction have now received final approval.

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

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

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

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

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

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

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

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

27 _____
28 ²⁸ 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.

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24 105. The DoT's decision to not require disclosure on the application and to not conduct
25 background checks of persons owning less than 5 percent prior to award of a conditional license is an
26

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

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

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

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

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

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

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

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

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

25 ³³ The order concludes:

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

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

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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

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

The claim for equal protection is granted in part:

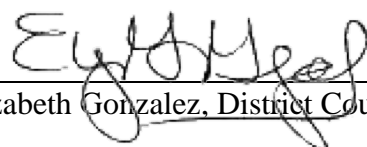
With respect to the decision by the DoT to arbitrarily and capriciously replace the mandatory requirement of BQ2, for the background check of each prospective owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1), the DoT created an unfair process. No monetary damages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

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

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

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

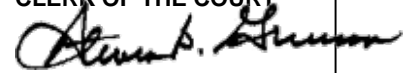
DATED this 3rd day of September 2020.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

/s/ Dan Kutinac
Dan Kutinac, JEA Dept XI



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Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

In re DOT Litigation,

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

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

NOTICE OF ENTRY OF JUDGMENT

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

DATED this 22nd day of September, 2020.

AARON D. FORD
Attorney General

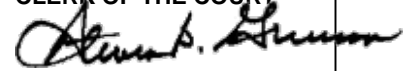
By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel

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

EXHIBIT A

EXHIBIT A



1 **FFCL**

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

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

Case No. A-19-787004-B
Consolidated with:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19-787540-W
A-19-787726-C
A-19-801416-B

11 **Dept. No.** XI

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

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

17 *The Plaintiffs*

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

23
24 ¹ Phase 1 of the Trial as outlined in the Trial Protocol includes all claims related to the petitions for judicial review
25 filed by various Plaintiffs. Many of the Plaintiffs who filed Petitions for Judicial Review have now resolved their claims
with the State and certain Industry Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

2 *The State*

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

6 *The Industry Defendants*

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

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

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

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

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

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

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

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

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

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

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

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

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

14 15 **PROCEDURAL POSTURE**

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

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

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

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

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

10 PRELIMINARY STATEMENT

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

19 FINDINGS OF FACT

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

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

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

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

2. BQ2 specifically identified regulatory and public safety concerns:

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

- (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly controlled through State licensing and regulation;
- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the State will be tested and labeled.

NRS 453D.020(3).

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

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

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

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

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

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

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

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

5 10. The DoT published a revised application on July 30, 2018. This revised application was
6 sent to all participants via the DoT's Listserv. The revised application modified physical address
7 requirements. For example, a sentence on Attachment A of the application, prior to this revision, the
8 sentence had read, "Marijuana Establishment's proposed physical address (this must be a Nevada
9 address and cannot be a P.O. Box)." The revised application on July 30, 2018, read: "Marijuana
10 Establishment's proposed physical address if the applicant owns property or has secured a lease or
11 other property agreement (this must be a Nevada address and not a P.O. Box)." Otherwise, the
12 applications are virtually identical.
13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

NRS 233B.121(7).

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

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

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

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

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

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

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

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

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

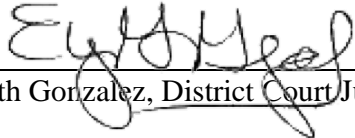
3 **ORDER**

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

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

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

7 DATED this 16th day of September 2020.

8
9 
10 _____
11 Elizabeth Gonzalez, District Court Judge

12
13 **Certificate of Service**

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

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