

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

IN RE: D.O.T. LITIGATION

GREEN LEAF FARM HOLDINGS,
LLC; GREEN THERAPEUTICS LLC,
NEVCANN, LLC; RED EARTH, LLC
AND THC NEVADA, LLC,
Appellants,

vs.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT
OF TAXATION; CANNABIS
COMPLIANCE BOARD; LONE
MOUNTAIN PARTNERS, LLC;
DEEP ROOTS MEDICAL, LLC;
NEVADA ORGANIC REMEDIES,
LLC,
Respondents.

Electronically Filed
Dec 21 2023 07:02 AM
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 86071

District Court Case No.: A787004

APPELLANTS' APPENDIX
VOLUME 9 of 11

AMY L. SUGDEN, ESQ.
Nevada Bar No. 9983
E-mail: amy@sugdenlaw.com
Sugden Law
375 E. Warm Springs, Ste. 104
Las Vegas, Nevada 89119
Telephone: (702) 625-3605

ATTORNEYS FOR APPELLANT
THC NEVADA, LLC

NICHOLAS DONATH, ESQ.
Nevada Bar No. 13106
Email: nick@nrdarelaw.com
N.R. Donath & Associates, PLLC
1489 W. Warm Springs Rd, Ste 100
Henderson, Nevada 89014
Telephone: (702) 460-0718

ATTORNEY FOR APPELLANTS
GREEN LEAF FARM HOLDINGS,
LLC; GREEN THERAPEUTICS LLC,
NEVCANN, LLC; RED EARTH, LLC

TABLE OF CONTENTS

Chronological by Date Filed

Volume	Document	Date Filed	Pages
1-2	COMPLAINT	1/4/2019	0001-0315
2-3	AMENDED COMPLAINT	2/8/2019	0316-0635
3-4	ERRATA TO FIRST AMENDED COMPLAINT	2/21/2019	0636-0958
4-5	SECOND AMENDED COMPLAINT	1/16/2019	0959-1278
6	LONE MOUNTAIN PARTNERS, LLC'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT	6/7/2019	1279-1293
6	THIRD AMENDED COMPLAINT	1/29/2020	1294-1389
6	DEFENDANT DEEP ROOTS MEDICAL LLC'S ANSWER TO ETW PLAINTIFF'S THIRD AMENDED COMPLAINT	2/12/2020	1390-1397
6	NEVADA ORGANIC REMEDIES LLC'S ANSWER TO ETW PLAINTIFF'S THIRD AMENDED COMPLAINT	7/20/2020	1398-1412
6	NOTICE OF ENTRY OF JUDGMENT (PHASE II – BENCH TRIAL)	9/22/2020	1413-1445
6	NOTICE OF ENTRY OF JUDGMENT (PETITION FOR JUDICIAL REVIEW)	9/22/2020	1446-1460
6-7	VERIFIED MEMORANDUM OF COSTS	8/8/2022	1461-1734
7-8	LONE MOUNTAIN PARTNERS, LLC'S MEMORANDUM OF COSTS PURSUANT TO NRS 18.110	8/9/2022	1735-1928
8-9	NEVADA ORGANIC REMEDIES, LLC'S MEMORANDUM OF COSTS	8/9/2022	1929-2004
9	MOTION TO RETAX AND SETTLE COSTS	8/11/2022	2005-2015
9	MOTION TO RETAX AND SETTLE COSTS (RE: THE VERIFIED MEMORANDUM OF COSTS FILED BY DEEP ROOTS HARVEST, INC. ON AUGUST 8, 2022)	8/11/2022	2016-2022

9	MOTION TO RETAX AND SETTLE COSTS (RE: LONE MOUNTAIN PARTNERS LLC'S MEMORANDUM OF COSTS PURSUANT TO NRS 18.110 FILED ON AUGUST 9, 2022)	8/11/2022	2023-2029
9	MOTION TO RETAX AND SETTLE COSTS (RE: NEVADA ORGANIC REMEDIES, LLC'S MEMORANDUM OF COSTS FILED ON AUGUST 9, 2022)	8/11/2022	2030-2036
9	MOTION TO RETAX AND SETTLE COSTS REGARDING DEEP ROOTS HARVEST, NINC.'S MEMORANDUM OF COSTS	8/11/2022	2037-2046
9	PLAINTIFFS GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS LLC, NEVCANN LLC, AND RED EARTH LLC'S JOINDER TO MOTIONS TO RETAX AND SETTLE COSTS	8/11/2022	2047-2050
9	MOTIONS TO RETAX AND SETTLE COSTS REGARDING NEVADA ORGANIC REMEDIES, LLC	8/12/2022	2051-2077
9	MOTIONS TO RETAX AND SETTLE COSTS REGARDING LONE MOUNTAIN PARTNERS, LLC	8/12/2022	2078-2104
9	MOTION TO RETAX AND SETTLE COSTS REGARDING LONE MOUNTAIN PARTNERS, LLC	8/12/2022	2105-2148
9	THC NEVADA, LLC AND HERBAL CHOICE, INC.'S JOINDER TO MOTION TO RETAX AND SETTLE COSTS	8/12/2022	2149-2153
9	THC NEVADA, LLC AND HERBAL CHOICE, INC.'S JOINDER TO MOTION TO RETAX AND SETTLE COSTS	8/19/2022	2154-2157
9	DEEP ROOTS HARVEST, INC.'S OPPOSITION TO TGIG PLAINTIFF'S MOTION TO RETAX AND SETTLE COSTS	8/24/2022	2158-2167
9	DEEP ROOTS HARVEST, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO RETAX AND SETTLE COSTS	8/24/2022	2168-2177
9	DEEP ROOTS HARVEST, INC.'S OPPOSITION TO HIGH SIERRA HOLISTIC'S, LLC'S MOTION TO RETAX AND SETTLE COSTS	8/24/2022	2178-2188
9	LONE MOUNTAIN PARTNERS, LLC'S OPPOSITION TO THE TGIG PLAINTIFFS' MOTION TO RETAX AND SETTLE COSTS	8/25/2022	2189-2216
9	NEVADA ORGANIC REMEDIES LLC'S OMNIBUS OPPOSITION TO MOTIONS TO RETAX AND SETTLE COSTS AND	8/25/2022	2217-2225

	LIMITED JOINDER TO ESSENCE AND THRIVE'S OPPOSITIONS		
9	OMINUBUS REPLY TO OPPOSITIONS TO MOTIONS TO RETAX	9/9/2022	2226-2233
9-10	TRANSCRIPT OF PROCEEDINGS (9/16/2022)	10/4/2022	2234-2402
10-11	TRANSCRIPT OF PROCEEDINGS (10/21/2022)	10/27/2022	2403-2590
11	NOTICE OF ENTRY OF ORDER DENYING TGIG PLAINTIFFS' MOTIONS TO RETAX AND SETTLE COSTS AND AWARDED COSTS TO LONE MOUNTAIN PARTNERS	1/3/2023	2591-2617
11	NOTICE OF ENTRY OF ORDER (DENYING IN PART AND GRANTING IN PART TGIG PLAINTIFFS' MOTIONS TO RETAX AND SETTLE COSTS REGARDING NEVADA ORGANIC REMEDIES)	1/24/2023	2618-2632
11	NOTICE OF ENTRY OF ORDER (DENYING IN PART AND GRANTING IN PART THE TGIG PLAINTIFFS' MOTION TO RETAX AND SETTLE COSTS, AND AWARDED COSTS TO DEEP ROOTS HARVEST, INC.	1/25/2023	2633-2653

EXHIBIT 6

EXHIBIT 6



Jury to Verdict Trial Services

10620 Southern Highlands Pkwy.
Suite 110-208
Las Vegas, NV 89141
702-375-2538

Invoice

Date	Invoice #
7/28/2020	2019-2082

Koch & Scow
11500 S. Eastern Ave.
Suite 210
Henderson, NV 89052

Case	Terms
Dept. of Taxation	Due on receipt

Quantity	Description	Rate	Amount
5	7/10/20-Set up courtroom at Covention Center	100.00	500.00
9.5	7/13/20-Trial-David Pope	150.00	1,425.00
2	7/14/20-Hearing prep/setup and hearing	150.00	300.00
7	7/14/20-Fixing exhibits and videos	100.00	700.00
1.5	7/14/20-Prep videos for opening	100.00	150.00
5	7/15/20-Opening prep	100.00	500.00
1.5	7/16/20-Opening (suspended)	150.00	225.00
3.5	7/16/20-Video clips for opening	100.00	350.00
9.5	7/17/20-Opening/Video of Arbelaez	150.00	1,425.00
2	7/18/20-Prep exhibits	100.00	200.00
9	7/20/20-Hooks/Borhani (read)/Kellee Jesse (read)/Lucy Flores (video)	150.00	1,350.00
3	7/20/20-Prep exhibits	100.00	300.00
9	7/21/20-Amanda Connor	150.00	1,350.00
2	7/21/20-Prep exhibits	100.00	200.00
9	7/22/20-Connor/Steven Gilbert	150.00	1,350.00
1.5	7/22/20-Prep exhibits	100.00	150.00
9	7/23/20-Gilbert/Randy Black/Damon Hernandez	150.00	1,350.00
9	7/24/20-Hernandez/Kara Cronkhite	150.00	1,350.00
1	Less balance owed by 6 other parties	-11,292.86	-11,292.86

Thank you for your business.
brian@jurytoverdict.com

Balance Due \$1,882.14

AA2002

**Jury to Verdict Trial Services**

10620 Southern Highlands Pkwy.

Suite 110-208

Las Vegas, NV 89141

702-375-2538

Invoice

Date	Invoice #
8/9/2020	2020-2090

Koch & Scow
11500 S. Eastern Ave.
Suite 210
Henderson, NV 89052

		Case	Terms
		Dept. of Taxation	Due on receipt
Quantity	Description	Rate	Amount
9	7/27/20-Plaskon	150.00	1,350.00
9	7/28/20-Video of Elloyan/Video of Kluever	150.00	1,350.00
9	7/29/20-Video of Kluever/Video of Lemons	150.00	1,350.00
7	7/30/20-Video of Lemons/Video of Contine/Read/Armen/Yemenidjian	150.00	1,050.00
4.5	7/31/20-Hearing/Holifield	150.00	675.00
7.5	8/3/20-Keith Capurra/Jorge Pupo	150.00	1,125.00
9	8/4/20-Ron Seigneur/Jorge Pupo	150.00	1,350.00
9	8/5/20-Jorge Pupo/Greg Smith/Allan Puliz	150.00	1,350.00
9	8/6/20-Allan Puliz/Cronkhite/Video of William Anderson	150.00	1,350.00
1	Less amounts charged to other parties	-9,385.72	-9,385.72
Thank you for your business. brian@jurytoverdict.com		Balance Due	\$1,564.28

AA2003



Jury to Verdict Trial Services

10620 Southern Highlands Pkwy.
Suite 110-208
Las Vegas, NV 89141
702-375-2538

Invoice

Date	Invoice #
8/23/2020	2020-2098

Koch & Scow
11500 S. Eastern Ave.
Suite 210
Henderson, NV 89052

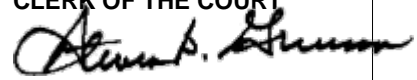
Case	Terms
DOT	Due on receipt

Quantity	Description	Rate	Amount
7	8/10/20-Mitchell Britten/Jeremy Aguero	150.00	1,050.00
4	8/10/20-Video Clips Nahass/Stewart/Thompson (Gravitas)/Thomas/Fieldman/Thompson (Fidelis)	100.00	400.00
5	8/10/20-Sillitoe/Viellion/Sibley Videos	100.00	500.00
1.5	8/11/20-Videos Nahass/Madrigal	100.00	150.00
9	8/11/20-Hearing/Kouretas/Video Nahass, Stewart, Sillitoe, Sibley	150.00	1,350.00
7	8/11/20-Fix videos Dave Thomas/White clips/Mersha clips	100.00	700.00
4.5	8/12/20-Video Dave Thomas/Madrigal video/Thompson (Fidelis) video/Kara Cronkhite/Read Ritter	150.00	675.00
5	8/15/20-Closing prep	100.00	500.00
5	8/16/20-Closing prep	100.00	500.00
9	8/17/20-Closing	150.00	1,350.00
4.5	8/18/20-Closing	150.00	675.00
4	8/19/20-Break down court room	100.00	400.00
1	Exhibit Coverations	300.00	300.00
1	Equipment	2,851.58	2,851.58
1	Amounts paid by other parties	-9,772.78	-9,772.78

Thank you for your business.
brian@jurytoverdict.com

Balance Due \$1,628.80

AA2004



HOLLEY DRIGGS, LTD.
JAMES W. PUZEY, ESQ.
NV Bar No. 5745
jpuzey@nevadafirm.com
800 South Meadows Pkwy., Suite 800
Reno, Nevada 89521
Telephone: 775/851-8700
Facsimile: 775/851-7681

Attorney for High Sierra Holistics, LLC

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

In Re: D.O.T. Litigation:

CASE NO.: A-19-787004-B
Consolidated with:

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

DEPT. NO.: XXXI

MOTION TO RETAX AND SETTLE COSTS

COMES NOW, HIGH SIERRA HOLISTICS, LLC (“HSH”), by and through its attorney of record, James W. Puzey, Esq. of Holley Driggs, Ltd., and out of an abundance of caution, hereby moves this court to retax and settle the costs set forth in DEEP ROOTS HARVEST, INC.’s (“Deep Roots”) Verified Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 11th day of August, 2022.

HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

AA2005

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Deep Roots cannot recover the costs claimed in the Memorandum against HSH. Deep
4 Roots cannot recover costs because it never appeared in Case No. A-19-787726-C involving
5 HSH, is neither a prevailing party in this action against the HSH nor does Deep Roots have a
6 statutory right to recover its costs. Even if the Memorandum is considered, none of the claimed
7 costs were reasonably, necessarily, and actually incurred as to the HSH's petition for judicial
8 review. As a result, HSH requests that this Court award no costs to Deep Roots.

9 Finally, none of the claimed costs are appropriately partitioned amongst the numerous
10 Plaintiffs.

11 **II. RELEVANT FACTUAL BACKGROUND**

12 **A. The Proceedings and Settlement**

13 Case No. A-19-787726-C was commenced on January 16, 2019. Deep Roots never
14 intervened or otherwise appeared in the action. The primary and substantive causes of action
15 were asserted against only the Nevada Department of Taxation (the "Department"). Namely, the
16 causes of action for violation of substantive due process, violation of procedural due process,
17 violation of equal protection, and petition for writ of mandamus were asserted exclusively
18 against the Department.

19 Nearly one year later, prior to the trial in this matter, Case No. A-19-787726-C was
20 consolidated with Case No. A-19-787004-B on December 6, 2019. Also prior to the trial, the
21 Court determined that (i) the Department acted beyond the scope of its authority by replacing the
22 requirement for a background check on each prospective owner with the 5 percent or greater
23 standard in NAC 453D.255(1)¹ and (ii) that appeals were to be heard arising from the denial of
24 licensure in the September 2018 retail licensure application competition.²

25
26 ¹ See Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment
27 on First Claim for Relief ("Order Granting Summary Judgment"), at 6:4-8, dated Aug. 15, 2020,
on file herein.

28 ² See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM
Development Company, Inc. and LivFree Wellness, LLC's Motion for Summary Judgment or

1 The trial in these proceedings began on July 13, 2020. Importantly, the proceedings were
2 conducted in a series of three phases where only certain claims would be examined and
3 determined in each phase. The First Phase addressed only the petition for judicial review (the
4 “First Phase Claim”), the Second Phase addressed the equal protection, due process, declaratory
5 relief, and permanent injunction claims (the “Second Phase Claims”), and the Third Phase would
6 address writ of mandamus claims (the “Third Phase Claim”).³

7 During the Second Phase of the proceedings, HSH settled with the State of Nevada,
8 Department of Taxation. See attached hereto by reference as **Exhibit 1**, a copy of said Settlement
9 Agreement. The Second Phase concluded with a decision issued by the Court on September 3,
10 2020.⁴ Therein, the Court granted declaratory relief.⁵

11 Before beginning the next phase (i.e., the First Phase), the Court limited the evidence and
12 record that could be considered for that phase to only the administrative record pursuant to the
13 requirements of NRS 233B.135(1)(b).⁶ More specifically, the Court determined that evidence
14 related to a claim for judicial review is to be restricted to the administrative record because it
15 contains all relevant evidence that resulted in the Department’s analysis of the plaintiffs’
16 applications.⁷ The Court proceeded with and completed the First Phase thereafter.

17 **B. The Memorandum of Costs**

18 On August 8, 2022, Deep Roots filed their Memorandum, approximately twenty-one (21)
19 days after the Second Phase Judgment was entered and eight (8) days after the First Phase
20 Judgment was entered.⁸ In the Memorandum, Deep Roots impermissibly claims a total of
21 \$44,250.67 in costs. That is comprised of: Clerks’ Fees \$1,102.49, Reporters’ Fees \$16,553.45,

22 _____ (continued)
23 for Writ of Mandamus (“FFCL re Summary Judgment”), at 3:10-14, dated July 11, 2020, on file
24 herein.

25 ³ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
26 preceded the First Phase.

27 ⁴ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the
28 “Second Phase Judgment”). As noted therein, the Court recognized that HSH had reached a
settlement with the Department prior to the issuance of the Second Phase Judgment. Id.

⁵ Id. at 29:3.

⁶ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the
“First Phase Judgment”).

⁷ Id.

⁸ See First Phase Judgment and Second Phase Judgment, respectively.

Expert Witness Fees \$235.00, Photocopies \$4,718.00, Long distance phone \$292.43, Postage \$106.63, Travel & lodging \$13,355.24, Miscellaneous Fees \$1,339.28, Computerized legal research \$1,472.93 and Trial technology services \$5,075.22.⁹

III. LEGAL STANDARD AND ARGUMENT

A. Legal Standard

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly exercised when considering whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005).

In addition, the plain language of a statute governs the manner in which it is applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).

B. Deep Roots Cannot Recover the Claimed Costs.

1. Deep Roots is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Deep Roots cannot recover against HSH because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party*” against any

⁹ See Mem. of Costs of Deep Roots, Aug. 8, 2022.

adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered*.” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

HSH’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Consequently, the Second Phase Claims did not proceed to judgment in favor of Deep Roots, and there is no court order declaring any party as the prevailing party as to those claims. Further, pursuant to NRS 18.020, Deep Roots does not fall within any of the identified categories to recover its costs. See NRS 18.020. Indeed, with no judgment against HSH for either the Second Phase Claims or the First Phase Claim, Deep Roots cannot recover its claimed costs.

C. The Claimed Costs are not Reasonable and Necessary

Additionally, even though HSH had settled its action prior to the commencement of Phase I, nonetheless, Deep Roots cannot recover any of the claimed costs because they were not reasonably, necessarily, and actually incurred as part of the First Phase Claim. Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase to include only the administrative record.¹⁰ This necessarily excluded from the record all court filings, Westlaw legal research, photocopies, deposition and transcripts, documents delivered by runner, witness testimony, trial exhibits, trial transcripts, and any trial administrative services; which comprise all of Deep Roots’s claimed costs. Indeed, the record consisted of only the plaintiffs’ applications and related information that was before the Department when it evaluated the applicants and awarded the licenses.

Because the record for the First Phase Claim was restricted and did not include any of the evidence related to Deep Roots’s claimed costs, the claimed costs were not reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary, and actually incurred for the First Phase Claim, they cannot be recovered in

¹⁰ See First Phase Judgment, at 11:4-9.

1 connection with the First Phase Judgment.

2 Moreover, even if the Court were to consider any of these claimed costs, Deep Roots
3 includes requests for unnecessary, unreasonable and excessive costs. Assuming HSH as a settling
4 party is responsible for any costs, Deep Roots's Memorandum of Cost and Disbursements does
5 not identify which of the costs pertain to HSH. HSH was not the only Plaintiff in the
6 consolidated action upon which Deep Roots relies in filing its Memorandum. Deep Roots sent no
7 written discovery to HSH, took no depositions of anyone from HSH, took no witness testimony
8 from HSH, sent no correspondence to HSH, engaged in no phone calls with HSH, nothing. Just
9 as unapportioned joint offers of judgment are invalid for purposes of determining prevailing
10 party eligibility for recovery of attorney's fees and costs against a party rejecting the offer under
11 NRCF 68 (See *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172 (1999)), unapportioned
12 Memorandum of Costs should be invalid as there is no way for an opponent of the Memorandum
13 to ascertain which costs are the result of litigation against which party. For that reason, under
14 NRS 18.050, the Court has discretion in allowing costs and should not permit any of these to be
15 attributed to HSH.

16 **D. Deep Roots's Memorandum of Costs does not fall within the parameters of**
17 **NRS 18.020.**

18 If Deep Roots's Memo of Costs is filed in connection with the *Findings of Fact,*
19 *Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-
20 2020 FFCL&PI") which denied the Petition of Judicial Review, then the Memo of Costs should
21 be denied because the 9-16-2020 FFCL&PI's denial of the Petition for Judicial Review is not
22 one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS
23 18.020, which provides:

24 NRS 18.020 Cases in which costs allowed prevailing party. Costs must be
25 allowed of course to the prevailing party against any adverse party against whom
judgment is rendered, in the following cases:

- 26 1. In an action for the recovery of real property or a possessory right thereto.
- 27 2. In an action to recover the possession of personal property, where the
value of the property amounts to more than \$2,500. The value must be determined
by the jury, court or master by whom the action is tried.
- 28 3. In an action for the recovery of money or damages, where the plaintiff
seeks to recover more than \$2,500.

1 4. In a special proceeding, except a special proceeding conducted pursuant
2 to NRS 306.040.

3 5. In an action which involves the title or boundaries of real estate, or the
4 legality of any tax, impost, assessment, toll or municipal fine, including the costs
5 accrued in the action if originally commenced in a Justice Court. [1911 CPA §
6 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
7 1981, 470; 1985, 1503, 1622; 1995, 2793)

8 In addition to the fact that HSH settled its action against the State of Nevada Department
9 of Taxation before the First Phase of the Trial began, a Petition for Judicial Review, which is the
10 subject of the First Phase of Trial, is not within any of the five (5) category of cases listed at
11 NRS 18.020 and, therefore, the same does not provide authority for Deep Roots to seek an award
12 of costs.

13 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
14 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
15 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
16 costs in the following five actions: (1) an action for the recovery of real property or a possessory
17 right thereto; (2) an action to recover the possession of personal property valued more than
18 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
19 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
20 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
21 actions noted in NRS 18.020.

22 If the Legislature intended that costs be awarded for petitions for judicial review, the
23 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
24 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
25 reference petition for judicial review, but the legislature did not include more expansive phrases
26 in the wording of the statute such as “including but not limited to” or “in other actions where the
27 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
28 only the five cases specified, and the Court must follow the plain language of the statute. See
Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
is significant that the Legislature did not include petitions for judicial review in the types of cases

1 for which a party may recover its costs. The Legislature is presumed to have knowledge of
2 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
3 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
4 57 Nev. 332, 366, 65 P.2d 133 (1937).

5 Chapter 233B of the NRS does not classify a petition for judicial review as a special
6 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
7 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
8 An aggrieved party seeking review of a district court's decision on a petition for judicial review
9 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
10 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
11 a "civil case."

12 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
13 a court to assess additional costs against a party unreasonably refusing to limit the record to be
14 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
15 contains no other mention of assessing costs against a party in a petition for judicial review and it
16 doesn't mention or make reference to NRS Chapter 18.

17 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
18 most recent amendment occurring in 1995 where it added to subsection 4 the following language
19 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
20 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
21 the type of cases for which costs may be awarded, the Court may presume that the Legislature
22 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
23 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
24 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
25 doing and purposefully uses the specific language [it chooses].").

26 Therefore, the Memo of Costs should be denied because petitions for judicial review are
27 not special proceedings for purposes of NRS 18.020.

1 **E. Deep Roots was never a party to the HSH case**

2 Deep Roots never intervened into Case No. A-19-787726-C nor have they made any
3 appearance in the HSH case.

4 The Nevada Supreme Court has determined that consolidation does not merge two suits
5 into a single cause or change the rights of the parties or make one party a party in a separate suit.
6 See *Mikulich v. Carner*, 68 Nev. 161, 169, 228 P.2d 257, 260 (1951) citing *Johnson v.*
7 *Manhattan R. Co.*, 289 U.S. 479, 535, Ct. 721, 77 L. Ed. 1331, 1345.

8 In *Mukulich v. Carner*, 68 Nev. 161, 170, 228 P.2d 257, 261 (1951), the Nevada Supreme
9 Court relied on federal cases, which have consistently construed FRCP 42(a) consolidation
10 orders providing for the combined trial of two or more cases as “not having the effect of merging
11 the several causes into a single cause.” In such a case, the trial court simply enters two separate
12 judgments. *Mukulich*, 68 Nev. At 169, 228 P.2d at 261.

13 Even after consolidation, the actions retain their separate identities, and the parties and
14 pleadings in one action do not automatically become parties and pleadings in the other action.
15 *Mikulich*, 68 Nev. At 170, 228 P.2d at 261.

16 The Order Granting Joint Motion to Consolidate was entered on December 6, 2019. Deep
17 Roots filed Answer to ETW Plaintiff's Third Amended Complaint, MM Development Company,
18 Inc. & Livfree Wellness, LLC's Second Amended Complaint and Petition for Judicial Review or
19 Writ of Mandamus, Answer to Nevada Wellness Center's Amended Complaint and Petition for
20 Judicial Review or Writ of Mandamus, Answer to Rural Remedies' Complaint in Intervention,
21 Petition for Judicial Review or Writ of Mandamus and Answer to the Serenity Plaintiffs' Second
22 Amended Complaint on February 12, 2020. Deep Roots never intervened or made an appearance
23 in Case No. A-19-787726-C either before or after consolidation. Deep Roots never appeared via
24 Answer or other pleadings in the HSH case either before or after consolidation.

25 **IV. CONCLUSION**

26 Based on the foregoing, HSH respectfully request that this Court grant this Motion to
27 Retax and Settle Costs in its entirety and award Deep Roots no costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

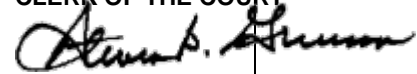
Dated this 11th day of August, 2022.

HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Kelsey Fusco
An Employee of Holley Driggs, Ltd.



CLARK HILL PLLC
DOMINIC P. GENTILE (NSBN 1923)
Email: dgentile@clarkhill.com
JOHN A. HUNT (NSBN 1888)
Email: jhunt@clarkhill.com
MARK DZARNOSKI (NSBN 3398)
Email: mdzarnoski@clarkhill.com
A. WILLIAM MAUPIN (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Tel: (702) 862-8300; Fax: (702) 862-8400
Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Requested
	)	Oral Argument Requested: Yes
)	

**MOTION TO RETAX AND SETTLE COSTS
(re: the *Verified Memorandum of Costs* filed
by Deep Roots Harvest, Inc. on August 8, 2022)**

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC., Plaintiffs in Case A-19-786962-B (“Plaintiffs”), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding the *Verified Memorandum of Costs* filed on August 8, 2022 (“Memo of Costs”), by Deep Roots Harvest, Inc. (“Deep Roots”). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Deep Roots is simply not authorized as a matter of law to receive its

costs under NRS 18.020.

This Motion is made and based upon the following points and authorities, the papers and pleadings on file herein, any attached exhibit, and any oral argument the court may allow.

POINTS & AUTHORITIES

I. **INTRODUCTION**

Deep Roots' Memo of Costs notes a total of \$44,250.67 in claimed costs. As more fully referenced below, the Memo of Costs should be denied. NRS 18.110.

II. **DISCUSSION**

1. Deep Roots' Memo of Costs should be denied because it is Plaintiffs, not Deep Roots, who fall within the definition of a "prevailing party" for purposes of an award of costs.

"[S]tatutes permitting recovery of costs, being in derogation of the common law, must be strictly construed." Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418, 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v. Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S. Laboratories, Inc., the Nevada Supreme Court held that "a district court's decision regarding an award of costs will not be overturned absent a finding that the district court abused its discretion." 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999)).

A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d

40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”).

The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part) and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not Deep Roots, who fall within the definition of a “prevailing party” for purposes of an award of costs. Accordingly, because Deep Roots is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request for costs should be denied.

2. If Deep Roots’ Memo of Costs is filed in connection with the Findings of Fact, Conclusion of Law and Permanent Injunction e-filed and e-served on September 16, 2020, it should be denied because it does not fall within the parameters of NRS 18.020.

Alternatively, if Deep Roots’ Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

NRS 18.020 Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. [1911 CPA § 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725; 1981, 470; 1985, 1503, 1622; 1995, 2793)

1 A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not
2 within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does
3 not provide authority for Deep Roots to seek an award of costs.

4 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
5 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
6 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
7 costs in the following five actions: (1) an action for the recovery of real property or a possessory
8 right thereto; (2) an action to recover the possession of personal property valued more than
9 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
10 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
11 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
12 actions noted in NRS 18.020.

13
14
15 If the Legislature intended that costs be awarded for petitions for judicial review, the
16 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
17 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
18 reference petition for judicial review, but the legislature did not include more expansive phrases
19 in the wording of the statute such as “including but not limited to” or “in other actions where the
20 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
21 only the five cases specified, and the Court must follow the plain language of the statute. See
22 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
23 is significant that the Legislature did not include petitions for judicial review in the types of cases
24 for which a party may recover its costs. The Legislature is presumed to have knowledge of
25 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
26
27
28

1 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
2 57 Nev. 332, 366, 65 P.2d 133 (1937).

3 Chapter 233B of the NRS does not classify a petition for judicial review as a special
4 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
5 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
6 An aggrieved party seeking review of a district court's decision on a petition for judicial review
7 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
8 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
9 a "civil case."
10

11
12 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
13 a court to assess additional costs against a party unreasonably refusing to limit the record to be
14 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
15 contains no other mention of assessing costs against a party in a petition for judicial review and it
16 doesn't mention or make reference to NRS Chapter 18
17

18 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
19 most recent amendment occurring in 1995 where it added to subsection 4 the following language
20 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
21 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
22 the type of cases for which costs may be awarded, the Court may presume that the Legislature
23 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
24 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
25 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
26 doing and purposefully uses the specific language [it chooses].").
27
28

1 Therefore, the Memo of Costs should be denied because petitions for judicial review are
2 not special proceedings for purposes of NRS 18.020.

3 **3. If Deep Roots' Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming,**
4 **arguendo, it falls within the parameters of NRS 18.020, the Memo of Costs should**
5 **still be denied because the vast majority – nearly all -- of the claimed costs have**
6 **nothing to do with the Petition for Judicial Review claim.**

7 If Deep Roots' Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming,
8 *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied
9 because the vast majority – nearly all -- of the claimed costs have nothing to do with the Petition
10 for Judicial Review claim.

11 Review of Deep Roots' Memo of Costs reveals that other than the initial filing fee, it is
12 submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review
13 claim since such a claim was limited to the record submitted by the Department of Taxation. The
14 costs referenced in Deep Roots' Memo of Costs pertain to discovery and trial, not the Petition for
15 Judicial Review. Thus, such costs should be denied if same are claimed in connection with the
16 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

17 **III.**
18 **CONCLUSION**

19 Wherefore, as addressed above, Deep Roots' Memo of Costs should be denied, and no
20 costs assessed against Plaintiffs.

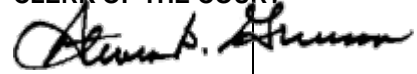
21
22 Dated this 11th day of August 2022.

23 **CLARK HILL, PLLC**

24 By /s/ Mark S. Dzarnoski, Esq.
25 John A. Hunt, Esq. (NSBN 1888)
26 Dominic P. Gentile, Esq. (NSBN 1923)
27 Mark S. Dzarnoski, Esq. (NSBN 3398)
28 A. William Maupin (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Attorneys for TGIG Plaintiffs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Tanya Bain
An Employee of Clark Hill



CLARK HILL PLLC
DOMINIC P. GENTILE (NSBN 1923)
Email: dgentile@clarkhill.com
JOHN A. HUNT (NSBN 1888)
Email: jhunt@clarkhill.com
MARK DZARNOSKI (NSBN 3398)
Email: mdzarnoski@clarkhill.com
A. WILLIAM MAUPIN (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Tel: (702) 862-8300; Fax: (702) 862-8400
Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Requested
	)	Oral Argument Requested: Yes
)	

MOTION TO RETAX AND SETTLE COSTS
(re: Lone Mountain Partners LLC's Memorandum of Costs Pursuant to NRS 18.110
filed on August 9, 2022)

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B ("Plaintiffs"), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding *Lone Mountain Partners LLC's Memorandum of Costs Pursuant to NRS 18.110* filed on August 9, 2022 ("Memo of Costs"). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Defendant/Intervenor, Lone Mountain Partners, LLC ("LMP"), is

1 simply not authorized as a matter of law to receive its costs under NRS 18.020.

2 This Motion is made and based upon the following points and authorities, the papers and
3 pleadings on file herein, any attached exhibit, and any oral argument the court may allow.
4

5 **POINTS & AUTHORITIES**

6 **I.** 7 **INTRODUCTION**

8 LMP's Memo of Costs notes a total of \$71,431.72 in claimed costs. As more fully
9 referenced below, the Memo of Costs should be denied. NRS 18.110.

10 **II.** 11 **DISCUSSION**

12 **1. LMP's Memo of Costs should be denied because it is Plaintiffs, not LMP, who fall** 13 **within the definition of a "prevailing party" for purposes of an award of costs.**

14 "[S]tatutes permitting recovery of costs, being in derogation of the common law, must be
15 strictly construed." Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting
16 Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418,
17 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v.
18 Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S.
19 Laboratories, Inc., the Nevada Supreme Court held that "a district court's decision regarding an
20 award of costs will not be overturned absent a finding that the district court abused its
21 discretion." 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v.
22 I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev.
23 236, 240, 984 P.2d 172, 174 (1999)).

24 A party prevails "if it succeeds on any significant issue in litigation which achieves some
25 of the benefit it sought in bringing suit." Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106
26 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not
27 succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d
28 40 (1983) (observing that "a plaintiff [can be] deemed 'prevailing' even though he succeeded on
only some of his claims for relief").

1 The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3,
2 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part)
3 and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not LMP, who fall
4 within the definition of a “prevailing party” for purposes of an award of costs. Accordingly,
5 because LMP is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request
6 for costs should be denied.

7
8 **2. If LMP’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion***
9 **of Law and Permanent Injunction e-filed and e-served on September 16, 2020, it**
10 **should be denied because it does not fall within the parameters of NRS 18.020.**

11 Alternatively, if LMP’s Memo of Costs is filed in connection with the *Findings of Fact,*
12 *Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-
13 2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should
14 be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not
15 one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS
16 18.020, which provides:

17 NRS 18.020 Cases in which costs allowed prevailing party. Costs must be
18 allowed of course to the prevailing party against any adverse party against whom
19 judgment is rendered, in the following cases:

- 20 1. In an action for the recovery of real property or a possessory right thereto.
- 21 2. In an action to recover the possession of personal property, where the
22 value of the property amounts to more than \$2,500. The value must be determined
23 by the jury, court or master by whom the action is tried.
- 24 3. In an action for the recovery of money or damages, where the plaintiff
25 seeks to recover more than \$2,500.
- 26 4. In a special proceeding, except a special proceeding conducted pursuant
27 to NRS 306.040.
- 28 5. In an action which involves the title or boundaries of real estate, or the
legality of any tax, impost, assessment, toll or municipal fine, including the costs
accrued in the action if originally commenced in a Justice Court. [1911 CPA §
435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
1981, 470; 1985, 1503, 1622; 1995, 2793)

A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not
within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does
not provide authority for LMP to seek an award of costs.

1 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
2 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
3 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
4 costs in the following five actions: (1) an action for the recovery of real property or a possessory
5 right thereto; (2) an action to recover the possession of personal property valued more than
6 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
7 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
8 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
9 actions noted in NRS 18.020.
10
11

12 If the Legislature intended that costs be awarded for petitions for judicial review, the
13 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
14 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
15 reference petition for judicial review, but the legislature did not include more expansive phrases
16 in the wording of the statute such as “including but not limited to” or “in other actions where the
17 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
18 only the five cases specified, and the Court must follow the plain language of the statute. See
19 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
20 is significant that the Legislature did not include petitions for judicial review in the types of cases
21 for which a party may recover its costs. The Legislature is presumed to have knowledge of
22 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
23 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
24 57 Nev. 332, 366, 65 P.2d 133 (1937).
25
26
27
28

1 Chapter 233B of the NRS does not classify a petition for judicial review as a special
2 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
3 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
4 An aggrieved party seeking review of a district court's decision on a petition for judicial review
5 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
6 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
7 a "civil case."
8

9 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
10 a court to assess additional costs against a party unreasonably refusing to limit the record to be
11 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
12 contains no other mention of assessing costs against a party in a petition for judicial review and it
13 doesn't mention or make reference to NRS Chapter 18
14

15 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
16 most recent amendment occurring in 1995 where it added to subsection 4 the following language
17 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
18 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
19 the type of cases for which costs may be awarded, the Court may presume that the Legislature
20 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
21 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
22 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
23 doing and purposefully uses the specific language [it chooses].").
24
25
26
27
28

Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

3. **If LMP's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority -- nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.**

If LMP's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority -- nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.

Review of LMP's Memo of Costs reveals that other than the initial filing fee, it is submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review claim since such a claim was limited to the record submitted by the Department of Taxation. The costs referenced in LMP's Memo of Costs pertain to discovery and trial, not the Petition for Judicial Review. Thus, such costs should be denied if same are claimed in connection with the 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

III. CONCLUSION

Wherefore, as addressed above, LMP's Memo of Costs should be denied and no costs assessed against Plaintiffs.

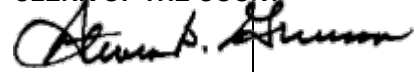
Dated this 11th day of August 2022.

CLARK HILL, PLLC

By /s/ Mark S. Dzarnoski, Esq.
John A. Hunt, Esq. (NSBN 1888)
Dominic P. Gentile, Esq. (NSBN 1923)
Mark S. Dzarnoski, Esq. (NSBN 3398)
A. William Maupin (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Attorneys for TGIG Plaintiffs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Tanya Bain
An Employee of Clark Hill



CLARK HILL PLLC
DOMINIC P. GENTILE (NSBN 1923)
Email: dgentile@clarkhill.com
JOHN A. HUNT (NSBN 1888)
Email: jhunt@clarkhill.com
MARK DZARNOSKI (NSBN 3398)
Email: mdzarnoski@clarkhill.com
A. WILLIAM MAUPIN (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Tel: (702) 862-8300; Fax: (702) 862-8400
Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Requested
	)	Oral Argument Requested: Yes
)	

MOTION TO RETAX AND SETTLE COSTS
(re: Nevada Organic Remedies, LLC's Memorandum of Costs filed on August 9, 2022)

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B ("Plaintiffs"), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding *Nevada Organic Remedies, LLC's Memorandum of Costs* filed on August 9, 2022 ("Memo of Costs"). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Defendant/Intervenor/Counterclaimant, Nevada Organic Remedies, LLC ("NOR"), is

1 simply not authorized as a matter of law to receive its costs under NRS 18.020.

2 This Motion is made and based upon the following points and authorities, the papers and
3 pleadings on file herein, any attached exhibit, and any oral argument the court may allow.
4

5 **POINTS & AUTHORITIES**

6 **I.** 7 **INTRODUCTION**

8 NOR's Memo of Costs notes a total of \$22,068.92 in claimed costs. As more fully
9 referenced below, the Memo of Costs should be denied. NRS 18.110.

10 **II.** 11 **DISCUSSION**

12 **1. NOR's Memo of Costs should be denied because it is Plaintiffs, not NOR, who fall** 13 **within the definition of a "prevailing party" for purposes of an award of costs.**

14 "[S]tatutes permitting recovery of costs, being in derogation of the common law, must be
15 strictly construed." Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting
16 Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418,
17 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v.
18 Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S.
19 Laboratories, Inc., the Nevada Supreme Court held that "a district court's decision regarding an
20 award of costs will not be overturned absent a finding that the district court abused its
21 discretion." 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v.
22 I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev.
23 236, 240, 984 P.2d 172, 174 (1999)).

24 A party prevails "if it succeeds on any significant issue in litigation which achieves some
25 of the benefit it sought in bringing suit." Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106
26 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not
27 succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d
28 40 (1983) (observing that "a plaintiff [can be] deemed 'prevailing' even though he succeeded on
only some of his claims for relief").

1 The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3,
2 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part)
3 and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not NOR, who fall
4 within the definition of a “prevailing party” for purposes of an award of costs. Accordingly,
5 because NOR is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request
6 for costs should be denied.

7
8 **2. If NOR’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion***
9 **of Law and Permanent Injunction e-filed and e-served on September 16, 2020, it**
10 **should be denied because it does not fall within the parameters of NRS 18.020.**

11 Alternatively, if NOR’s Memo of Costs is filed in connection with the *Findings of Fact,*
12 *Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-
13 2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should
14 be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not
15 one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS
16 18.020, which provides:

17 NRS 18.020 Cases in which costs allowed prevailing party. Costs must be
18 allowed of course to the prevailing party against any adverse party against whom
19 judgment is rendered, in the following cases:

- 20 1. In an action for the recovery of real property or a possessory right thereto.
- 21 2. In an action to recover the possession of personal property, where the
22 value of the property amounts to more than \$2,500. The value must be determined
23 by the jury, court or master by whom the action is tried.
- 24 3. In an action for the recovery of money or damages, where the plaintiff
25 seeks to recover more than \$2,500.
- 26 4. In a special proceeding, except a special proceeding conducted pursuant
27 to NRS 306.040.
- 28 5. In an action which involves the title or boundaries of real estate, or the
legality of any tax, impost, assessment, toll or municipal fine, including the costs
accrued in the action if originally commenced in a Justice Court. [1911 CPA §
435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
1981, 470; 1985, 1503, 1622; 1995, 2793)

A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not
within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does
not provide authority for NOR to seek an award of costs.

1 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
2 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
3 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
4 costs in the following five actions: (1) an action for the recovery of real property or a possessory
5 right thereto; (2) an action to recover the possession of personal property valued more than
6 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
7 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
8 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
9 actions noted in NRS 18.020.
10
11

12 If the Legislature intended that costs be awarded for petitions for judicial review, the
13 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
14 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
15 reference petition for judicial review, but the legislature did not include more expansive phrases
16 in the wording of the statute such as “including but not limited to” or “in other actions where the
17 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
18 only the five cases specified, and the Court must follow the plain language of the statute. See
19 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
20 is significant that the Legislature did not include petitions for judicial review in the types of cases
21 for which a party may recover its costs. The Legislature is presumed to have knowledge of
22 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
23 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
24 57 Nev. 332, 366, 65 P.2d 133 (1937).
25
26
27
28

Chapter 233B of the NRS does not classify a petition for judicial review as a special proceeding. NRS 233B.130 provides that judicial review in a district court is available to any party who is aggrieved by a final decision from an administrative proceeding in a contested case. An aggrieved party seeking review of a district court's decision on a petition for judicial review may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is a "civil case."

NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows a court to assess additional costs against a party unreasonably refusing to limit the record to be transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B contains no other mention of assessing costs against a party in a petition for judicial review and it doesn't mention or make reference to NRS Chapter 18

NRS 18.020, which was enacted in 1911, has been amended six times since then, with the most recent amendment occurring in 1995 where it added to subsection 4 the following language "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794. By amending NRS 18.020 multiple times and not including petitions for judicial review as one of the type of cases for which costs may be awarded, the Court may presume that the Legislature intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is doing and purposefully uses the specific language [it chooses].").

Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

1 **3. If NOR's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming,**
2 **arguendo, it falls within the parameters of NRS 18.020, the Memo of Costs should**
3 **still be denied because the vast majority -- nearly all -- of the claimed costs have**
4 **nothing to do with the Petition for Judicial Review claim.**

5 If NOR's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it
6 falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the
7 vast majority -- nearly all -- of the claimed costs have nothing to do with the Petition for Judicial
8 Review claim.

9 Review of NOR's Memo of Costs reveals that other than the initial filing fee, it is
10 submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review
11 claim since such a claim was limited to the record submitted by the Department of Taxation. The
12 costs referenced in NOR's Memo of Costs pertain to discovery and trial, not the Petition for
13 Judicial Review. Thus, such costs should be denied if same are claimed in connection with the
14 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

15 **III.**
16 **CONCLUSION**

17 Wherefore, as addressed above, NOR's Memo of Costs should be denied and no costs
18 assessed against Plaintiffs.

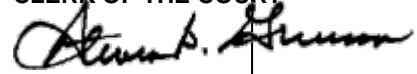
19 Dated this 11th day of August 2022.

20 **CLARK HILL, PLLC**

21 By /s/ Mark S. Dzarnoski, Esq.
22 John A. Hunt, Esq. (NSBN 1888)
23 Dominic P. Gentile, Esq. (NSBN 1923)
24 Mark S. Dzarnoski, Esq. (NSBN 3398)
25 A. William Maupin (NSBN 1150)
26 3800 Howard Hughes Pkwy., #500
27 Las Vegas, Nevada 89169
28 Attorneys for TGIG Plaintiffs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Tanya Bain
An Employee of Clark Hill



MRTX
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
STEPHANIE J. SMITH, ESQ.
Nevada Bar No. 11280
BENDAVID LAW
7301 Peak Dr., Suite 150
Las Vegas, NV 89128
(702) 385-6114
jbendavid@bendavidfirm.com
ssmith@bendavidfirm.com
Attorneys for Natural Medicine L.L.C.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No. A-19-787004-B

In Re: D.O.T. Litigation

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. XXXI

HEARING REQUESTED

**MOTION TO RETAX AND SETTLE COSTS REGARDING DEEP ROOTS
HARVEST, INC.'S MEMORANDUM OF COSTS**

Plaintiffs, MM DEVELOPMENT COMPANY, INC. D/B/A/ PLANET 13
("MM") and LIVFREE WELLNESS, LLC D/B/A THE DISPENSARY ("LivFree"),
by and through their counsel of record, Will Kemp, Esq. and Nathanael R. Rulis, Esq.,
of the law firm of Kemp Jones, LLP; and QUALCAN LLC ("Qualcan") by and through
its counsel of undersigned counsel of record, Peter Christiansen, Esq. and Whitney
Barrett, Esq., of the law firm Christiansen Trial Lawyers; and Plaintiff-in-Intervention
NATURAL MEDICINE, L.L.C. ("Natural Medicine") by and through its counsel of

BendavidLaw

702.385.6114
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

1 record, Jeffery A. Bendavid Esq. and Stephanie J. Smith, Esq. of Bendavid Law, and
2 Plaintiff NEVADA WELLNESS CENTER, LLC (“NWC”), by and through its counsel
3 of record Theodore Parker, III, Esq. of Parker Nelson & Associates CHTD. (MM,
4 Livfree, Qualcan, Natural Medicine, and NWC are collectively referred to herein as
5 “Settling Plaintiffs”), hereby move this court to retax and settle the costs set forth in
6 Defendant Deep Roots Harvest, Inc. (“Deep Roots”) Memorandum of Costs filed
7 August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110,
8 and is supported by the following Memorandum of Points and Authorities, the
9 pleadings and papers on file herein, and any arguments by counsel on the hearing of
10 this matter. Dated this 11th day of August, 2022.
11
12
13
14

15 **KEMP JONES, LLP**

16 /s/ Nathanael Rulis
17 WILL KEMP, ESQ.
18 Nevada Bar No. 1205
19 NATHANAEL R. RULIS, ESQ.
20 Nevada Bar No. 11259
21 3800 Howard Hughes Pkwy.
22 17th Floor
23 Las Vegas, NV 89169
24 Attorneys for MM Development
25 Company & LivFree Wellness, LLC

26 **BENDAVID LAW**

27 /s/ Stephanie J. Smith, Esq.
28 JEFFERY A. BENDAVID, ESQ.
NV Bar No. 6620
STEPHANIE J. SMITH, ESQ.
NV Bar No. 11280
7301 Peak Dr., Suite 150
Las Vegas, NV 89128
Attorneys for Natural Medicine
L.L.C

CHRISTIENSEN TRIAL LAWYERS

/s/ Whitney Barrett
PETER CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
WHITNEY BARRETT, ESQ.
Nevada Bar No. 13662
710 S. 7th Street
Las Vegas, NV 89101
Attorneys for Qualcan LLC

**PARKER NELSON & ASSOCIATES,
CHTD.**

/s/ Theodore Parker, III, Esq.
THEODORE PARKER, III, ESQ.
NV Bar No. 4716
JENNIFER DELCARMEN, ESQ.
Nevada Bar No. 12727
2460 Professional Ct., Suite 200
Las Vegas, NV 89128
Attorney for Nevada Wellness Center LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION.**

4 Deep Roots cannot recover the costs claimed in the Memorandum against the
5 Settling Plaintiffs. Deep Roots cannot recover costs because it is neither a prevailing
6 party in this action against the Settling Plaintiffs nor does Deep Roots have a statutory
7 right to recover its costs. Even if the Memorandum is considered, none of the claimed
8 costs were reasonably, necessarily, and actually incurred as to the Settling Plaintiffs'
9 petitions for judicial review, or other phases. As a result, Settling Plaintiffs request
10 that this Court award no costs to Deep Roots from Settling Plaintiffs.
11

12 **II. RELEVANT FACTUAL BACKGROUND.**

13 **A. The Proceedings and Settlement.**

14 This matter was commenced on January 4, 2019. Even though several parties
15 were named as defendants, they were added only to comply with statutory mandate.
16 NRS 233B.130(2)(a); *Washoe Cnty. v. Otto*, 128 424 (2012). The primary and
17 substantive causes of action were asserted against only the Nevada Department of
18 Taxation (the "Department"). Namely, the causes of action for violation of substantive
19 due process, violation of procedural due process, violation of equal protection, and
20 petition for writ of mandamus were asserted exclusively against the Department.¹
21 Several Parties also intervened in subsequent months and years, with the final date to
22 intervene occurring in February 2020, prior to the consolidation of all matters into the
23 present above-captioned litigation.
24
25
26
27

28 ¹ Each Settling Plaintiff had their own claims, for instance Natural Medicine asserted only declaratory relief, petition for judicial review and then writ claims, whereas NWC had equal protection and due process claims.

1 Prior to the commencement of the trial phases in this matter, Settling Plaintiffs
2 prevailed on several issues before the Court, including summary judgment that (i) the
3 Department acted beyond the scope of its authority by replacing the requirement for a
4 background check on each prospective owner with the 5 percent or greater standard in
5 NAC 453D.255(1)² and (ii) that MM and LivFree’s appeals are to be heard arising
6 from the denial of their licensure of their applications in the September 2018 retail
7 licensure application competition.³

9 The consolidated trial in these proceedings began on July 13, 2020.
10 Importantly, the proceedings were conducted in a series of three phases where only
11 certain claims would be examined and determined in each phase. The First Phase
12 addressed only the petition for judicial review (the “First Phase Claim”), the Second
13 Phase addressed the equal protection, due process, declaratory relief, and permanent
14 injunction claims (the “Second Phase Claims”), and the Third Phase would address
15 writ of mandamus claims (the “Third Phase Claim”).⁴
16
17
18
19
20
21
22

23 ² See Order Regarding Plaintiff Nevada Wellness Center, LLC’s Motion for Summary
24 Judgment on First Claim for Relief (“Order Granting Summary Judgment”), at 6:4-8,
dated Aug. 15, 2020, on file herein. Natural Medicine’s joinder to this motion was
filed on March 18, 2020.

25 ³ See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in
26 Part MM Development Company, Inc. and LivFree Wellness, LLC’s Motion for
27 Summary Judgment or for Writ of Mandamus (“FFCL re Summary Judgment”), at
3:10-14, dated July 11, 2020, on file herein.

28 ⁴ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second
Phase preceded the First Phase.

1 During the Second Phase of the proceedings, the Settling Plaintiffs settled
2 with certain Defendants.⁵ The Second Phase concluded with a decision issued by the
3 Court on September 3, 2020.⁶ Therein, the Court granted declaratory relief.⁷

4 Before beginning the next phase (*i.e.*, the First Phase), the Court limited the
5 evidence and record that could be considered for that phase to only the administrative
6 record pursuant to the requirements of NRS 233B.135(1)(b).⁸ More specifically, the
7 Court determined that evidence related to a claim for judicial review is to be restricted
8 to the administrative record because it contains all relevant evidence that resulted in
9 the Department's analysis of the plaintiffs' applications.⁹ The Court proceeded with
10 and completed the First Phase thereafter. The Third Phase which was limited to only
11 certain plaintiffs' claims is still pending before this Court.

12
13
14 **B. The Memorandum of Costs.**

15 On August 8, 2022, Deep Roots filed the Memorandum four days after the
16 First Phase Judgment was entered.¹⁰ In the Memorandum, Deep Roots impermissibly
17 claims a total of \$44,250.67 in total costs that is comprised of: \$1,102.49 in various
18 "Clerks' Fees"; \$16,553.45 in reporters' fees for depositions that includes both
19

20
21
22 ⁵ Natural Medicine entered into a subsequent settlement agreement on August 17,
2020 which was approved on August 27, 2020 by the NV Tax Commission.

23 ⁶ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020
24 (the "Second Phase Judgment"). As noted therein, two additional Plaintiffs reached a
25 settlement with the Department and certain Defendants prior to the issuance of the
Second Phase Judgment. *Id.*

26 ⁷ *Id.* at 29:3.

27 ⁸ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16,
2020 (the "First Phase Judgment").

28 ⁹ *Id.*

¹⁰ See First Phase Judgment and Second Phase Judgment, respectively.

1 reporting and videotaping; \$235.00 in process server fees; \$4,718.00 in photocopies at
2 20 cents per page; \$292.43 in long distance telephone charges; \$106.63 in unidentified
3 postage fees; \$13,355.24 in travel and lodging; \$1,339.28 in unnecessary
4 “Miscellaneous Fees”, \$1,472.93 in unidentified Legal Research that does not identify
5 any topics or how they related to instant case or claims; \$5,075.22 for a trial technician.
6

7 **III. LEGAL STANDARD AND ARGUMENT.**

8 **A. Legal Standard.**

9 Even though trial courts have discretion to determine allowable costs, the
10 Nevada Supreme Court requires that “statutes permitting the recovery of costs are to
11 be strictly construed because they are in derogation of the common law.” *Bobby*
12 *Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352,
13 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543
14 (1994). The trial court’s discretion should also “be sparingly exercised when
15 considering whether or not to allow expenses not specifically allowed by statute and
16 precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993).
17 Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient
18 support for the court to conclude that each taxed cost was reasonable, necessary, and
19 actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261,
20 277-78, 112 P.3d 1082, 1093 (2005).
21

22 In addition, the plain language of a statute governs the manner in which it is
23 applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River*
24 *Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station,*
25 *Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W.*
26 *Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).
27
28

1 **B. Deep Roots Cannot Recover the Claimed Costs.**

2 1. Deep Roots is Neither a Prevailing Party nor Statutorily Permitted to Recover
3 its Costs.

4 Deep Roots cannot recover against the Settling Plaintiffs because it is not a
5 prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed
6 only “*to the prevailing party* against any adverse party against whom judgment is
7 rendered,” and only to “the party *in whose favor judgment is rendered.*” See NRS
8 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party
9 cannot be considered a prevailing party where the matter does not proceed to judgment.
10 *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d
11 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).
12

13 The Settling Plaintiffs’ First Phase Claims and Second Phase Claims were not
14 litigated, they were settled. Notwithstanding, the Court entered summary judgment in
15 favor of the Settling Plaintiffs.¹¹ Consequently, the Second Phase Claims did not
16 proceed to judgment in favor of Deep Roots, and there is no court order declaring any
17 party as the prevailing party as to those claims.
18

19 Further, pursuant to NRS 18.020, Deep Roots does not fall within any of the
20 identified categories to recover its costs. See NRS 18.020. NRS 18.020, specifically
21 states that costs to prevailing parties are awarded “against any adverse party against
22 whom judgment is rendered...” Here there is no judgment entered against any of the
23 Settling Plaintiffs. Indeed, with no actual judgment against Settling Plaintiffs for either
24 the Second Phase Claims or the First Phase Claim, Deep Roots cannot recover its
25 claimed costs.
26
27

28

¹¹ See Order Granting Summary Judgment; see also FFCL re Summary Judgment.

1 **C. The Claimed Costs are not Reasonable and Necessary.**

2 Deep Roots cannot recover any of the claimed costs because they were not
3 reasonably, necessarily, and actually incurred as part of the First Phase Claim.
4 Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and
5 evidence for the First Phase to include only the administrative record.¹² This
6 necessarily excluded from the record all court filings, Westlaw legal research,
7 photocopies, deposition and transcripts, documents delivered by runner, witness
8 testimony, trial exhibits, trial transcripts, and any trial administrative services; which
9 comprise all of Deep Roots’s claimed costs. Indeed, the record consisted of only the
10 plaintiffs’ applications and related information that was before the Department when
11 it evaluated the applicants and awarded the licenses.
12

13
14 Because the record for the First Phase Claim was restricted and did not include
15 any of the evidence related to Deep Roots’s claimed costs, the claimed costs were not
16 reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs
17 that were not reasonable, necessary, and actually incurred for the First Phase Claim,
18 they cannot be recovered in connection with the First Phase Judgment.
19

20 Moreover, even if the Court were to consider any of these claimed costs, Deep
21 Roots includes requests for unnecessary, unreasonable and excessive costs for vaguely
22 documented, and unnecessary client representative travel and meals. Additionally, in
23 the legal research fees there appears to be only a vague description of “Deep Roots
24 Harvest” included, and legal research fees incurred even after trial for Phases 1 and 2
25 were completed. The Miscellaneous Fees appear to be Deep Roots trying to recover
26
27
28

¹² See First Phase Judgment, at 11:4-9.

1 costs to appear at mediation which is not a recoverable category. Indeed, closer
2 scrutiny of Exhibit 7 regarding travel costs includes other non-necessary expenses
3 including airfare of approximately \$577 per ticket for a simple roundtrip from Reno to
4 Las Vegas and back, grocery store charges, and even charges at what appear to be bars
5 at airports. Under NRS 18 et seq. the Court has discretion in allowing costs and should
6 not permit these, and further not apportion any costs to Settling Plaintiffs.
7

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25

26

27

28

1 **IV. CONCLUSION.**

2 Based on the foregoing, Settling Plaintiffs respectfully request that this Court
3 grant this Motion to Retax and Settle Costs in its entirety and award Deep Roots no
4 costs.
5

6 DATED this 11th day of August, 2022.

7 **KEMP JONES, LLP**

CHRISTIANSSEN TRIAL LAWYERS

8
9 /s/ Nathanael Rulis, Esq.

/s/ Whitney Barrett, Esq.

10 WILL KEMP, ESQ.

PETER CHRISTIANSEN, ESQ.

11 Nevada Bar No. 1205

Nevada Bar No. 5254

NATHANAEL R. RULIS, ESQ.,

WHITNEY BARRETT, ESQ.

12 Nevada Bar No. 11259

Nevada Bar No. 13662

3800 Howard Hughes Pkwy.

710 S. 7th Street

17th Floor

Las Vegas, NV 89101

13 Las Vegas, NV 89169

Attorneys for Qualcan LLC

Attorneys for MM Development

14 *Company &*

15 *LivFree Wellness, LLC*

16 **BENDAVID LAW**

**PARKER NELSON &
ASSOCIATES, CHTD.**

17
18 /s/ Stephanie J. Smith, Esq.

/s/ Theodore Parker, III, Esq..

19 JEFFERY A. BENDAVID, ESQ.

THEODORE PARKER, III, ESQ.

NV Bar No. 6620

NV Bar No. 4716

20 STEPHANIE J. SMITH, ESQ.

JENNIFER DELCARMEN, ESQ.

NV Bar No. 11280

Nevada Bar No. 12727

21 7301 Peak Dr., Suite 150

2460 Professional Ct., Suite 200

22 Las Vegas, NV 89128

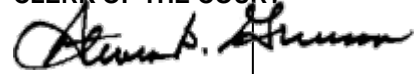
Las Vegas, NV 89128

Attorneys for Natural Medicine

Attorneys for Nevada Wellness

23 *L.L.C*

Center



1 **JMOT**

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

3 Nevada Bar No. 13106

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

5 871 Coronado Center Dr., Ste. 200

6 Henderson, NV 89052

7 (702) 460-0718

8 (702) 446-8063 Facsimile

9 nick@nrdarelaw.com Email

10 *Attorney for Green Leaf Farms Holdings, LLC,*

11 *Green Therapeutics, LLC, NevCann LLC, Red Earth LLC*

12
13
14
15
16
17
18
19
20
21
22 **EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA**

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

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

25 Consolidated with: A-785818

26 A-786357

27 A-786962

28 A-787035

A-787540

A-787726

A-801416

DEPT. NO.: XXXI

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
**PLAINTIFFS GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS
LLC, NEVCANN LLC, AND RED EARTH LLC'S JOINDER TO MOTIONS TO
RETAX AND SETTLE COSTS**

COME NOW, Plaintiffs Green Leaf Farms Holdings LLC, Green Therapeutics LLC,
NevCann LLC, and Red Earth LLC (collectively, "Green Leaf Plaintiffs") by and through their

counsel of record, Nicolas R. Donath, Esq. of N.R. Donath & Associates PLLC, and hereby join the following Motions to Retax and Settle Costs:

(1) TGIG Plaintiffs' Motion to Retax and Settle Costs (re: *Nevada Organic Remedies, LLC's Memorandum of Costs* filed on August 9, 2022) (**Doc. # 2920**);

(2) TGIG Plaintiffs' Motion to Retax and Settle Costs (re the *Verified Memorandum of Costs* filed by Deep Roots Harvest, Inc. on August 8, 2022) (**Doc. # 2918**);

(3) TGIG Plaintiffs' Motion to Retax and Settle Costs (re: the *Verified Memorandum of Costs and Disbursements* filed on August 8, 2022, by CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, Inc., and Commerce Park Medical, LLC) (**Doc. # 2917**);

(4) TGIG Plaintiffs' Motion to Retax and Settle Costs (re: *Lone Mountain Partners LLC's Memorandum of Costs Pursuant to NRS 18110* filed on August 9, 2022) (**Doc. # 2919**);

(5) TGIG Plaintiffs' Motion to Retax and Settle Costs (re: *Clear River LLC's Memorandum of Costs* filed on August 9, 2022) (**Doc. # 2916**); and

(6) TGIG Plaintiffs' Motion to Retax and Settle Costs (re: *Memorandum of Cost and Disbursements of Wellness Connection of Nevada, LLC* filed on August 9, 2022) (**Doc. # 2921**);

(7) High Sierra Holistics LLC's Motion to Retax and Settle Costs (**Doc. # 2913**) (re: Memorandum of Costs filed August 8, 2022, by PCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC);

(8) High Sierra Holistics LLC's Motion to Retax and Settle Costs (**Doc. # 2914**) (re: Memorandum of Costs filed August 8, 2022, by Deep Roots Harvest Inc.);

(9) High Sierra Holistics LLC's Motion to Retax and Settle Costs (**Doc. # 2915**) (re: Memorandum of Costs filed August 8, 2022, by Clear River LLC);

(10) Motion to Retax and Settle Costs Regarding Deep Roots Harvest, Inc.'s Memorandum of Costs (**Doc. # 2922**);

(11) Motion to Retax and Settle Costs Regarding Clear River LLC's Memorandum of Costs (**Doc. # 2923**);

1 (12) Motion to Retax and Settle Costs Regarding CPCM Holding, LLC d/b/a Thrive
2 Cannabis Marketplace, Cheyenne Medical LLC, and Commerce Park Medical LLC (**Doc.**
3 **#2924**).

4 The Green Leaf Plaintiffs hereby join in full, adopt, and incorporate by reference herein
5 all of the points and authorities contained in the Motions to Retax, including the evidence
6 presented and all written and oral legal arguments.

7 DATED this 11th day of August, 2022.

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

9
10 */s/ Nicolas R. Donath*

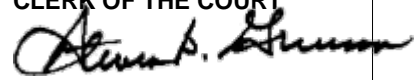
11 **NICOLAS R. DONATH, ESQ.**
12 *Attorney for Green Leaf Plaintiffs*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2022, I served a true and correct copy of the foregoing PLAINTIFFS GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS LLC, NEVCANN LLC AND RED EARTH LLC'S JOINDER MOTIONS TO RETAX AND SETTLE COSTS through the Court's electronic filing system to all parties currently receiving service in this matter on the electronic service list pursuant to Administrative Order 20-17.

/s/ Nicolas R. Donath

An Employee of N.R. Donath & Associates PLLC



HOLLEY DRIGGS, LTD.
JAMES W. PUZEY, ESQ.
NV Bar No. 5745
jpuzey@nevadafirm.com
800 South Meadows Pkwy., Suite 800
Reno, Nevada 89521
Telephone: 775/851-8700
Facsimile: 775/851-7681

Attorney for High Sierra Holistics, LLC

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

In Re: D.O.T. Litigation:

CASE NO.: A-19-787004-B
Consolidated with:

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

DEPT. NO.: XXXI

**MOTION TO RETAX AND SETTLE COSTS REGARDING NEVADA ORGANIC
REMEDIES, LLC**

COMES NOW, HIGH SIERRA HOLISTICS, LLC (“HSH”), by and through its attorney of record, James W. Puzey, Esq. of Holley Driggs, Ltd., and out of an abundance of caution, hereby moves this court to retax and settle the costs set forth in NEVADA ORGANIC REMEDIES, LLC (“NOR”)’s Verified Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 12th day of August, 2022.

HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

AA2051

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 NOR cannot recover the costs claimed in the Memorandum against HSH. NOR cannot
4 recover costs because it never appeared in Case No. A-19-787726-C involving HSH, is neither a
5 prevailing party in this action against the HSH nor does NOR have a statutory right to recover its
6 costs. Even if the Memorandum is considered, none of the claimed costs were reasonably,
7 necessarily, and actually incurred as to the HSH's petition for judicial review. As a result, HSH
8 requests that this Court award no costs to NOR.

9 Finally, none of the claimed costs are appropriately partitioned amongst the numerous
10 Plaintiffs.

11 **II. RELEVANT FACTUAL BACKGROUND**

12 **A. The Proceedings and Settlement**

13 Case No. A-19-787726-C was commenced on January 16, 2019. NOR never intervened
14 or otherwise appeared in the action. The primary and substantive causes of action were asserted
15 against only the Nevada Department of Taxation (the "Department"). Namely, the causes of
16 action for violation of substantive due process, violation of procedural due process, violation of
17 equal protection, and petition for writ of mandamus were asserted exclusively against the
18 Department.

19 Nearly one year later, prior to the trial in this matter, Case No. A-19-787726-C was
20 consolidated with Case No. A-19-787004-B on December 6, 2019. Also prior to the trial, the
21 Court determined that (i) the Department acted beyond the scope of its authority by replacing the
22 requirement for a background check on each prospective owner with the 5 percent or greater
23 standard in NAC 453D.255(1)¹ and (ii) that appeals were to be heard arising from the denial of
24 licensure in the September 2018 retail licensure application competition.²

25
26 ¹ See Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment
27 on First Claim for Relief ("Order Granting Summary Judgment"), at 6:4-8, dated Aug. 15, 2020,
on file herein.

28 ² See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM
Development Company, Inc. and LivFree Wellness, LLC's Motion for Summary Judgment or

1 The trial in these proceedings began on July 13, 2020. Importantly, the proceedings were
2 conducted in a series of three phases where only certain claims would be examined and
3 determined in each phase. The First Phase addressed only the petition for judicial review (the
4 “First Phase Claim”), the Second Phase addressed the equal protection, due process, declaratory
5 relief, and permanent injunction claims (the “Second Phase Claims”), and the Third Phase would
6 address writ of mandamus claims (the “Third Phase Claim”).³

7 During the Second Phase of the proceedings, HSH settled with the State of Nevada,
8 Department of Taxation. See attached hereto by reference as **Exhibit 1**, a copy of said Settlement
9 Agreement. The Second Phase concluded with a decision issued by the Court on September 3,
10 2020.⁴ Therein, the Court granted declaratory relief.⁵

11 Before beginning the next phase (i.e., the First Phase), the Court limited the evidence and
12 record that could be considered for that phase to only the administrative record pursuant to the
13 requirements of NRS 233B.135(1)(b).⁶ More specifically, the Court determined that evidence
14 related to a claim for judicial review is to be restricted to the administrative record because it
15 contains all relevant evidence that resulted in the Department’s analysis of the plaintiffs’
16 applications.⁷ The Court proceeded with and completed the First Phase thereafter.

17 **B. The Memorandum of Costs**

18 On August 9, 2022, NOR filed their Memorandum, approximately twenty-two (22) days
19 after the Second Phase Judgment was entered and nine (9) days after the First Phase Judgment
20 was entered.⁸ In the Memorandum, NOR impermissibly claims a total of \$22,068.92 in costs.
21 That is comprised of: Filing Fees \$3,872.18, Computerized Services and Electronic Research

22 _____ (continued)
23 for Writ of Mandamus (“FFCL re Summary Judgment”), at 3:10-14, dated July 11, 2020, on file
24 herein.

25 ³ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
26 preceded the First Phase.

27 ⁴ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the
28 “Second Phase Judgment”). As noted therein, the Court recognized that HSH had reached a
settlement with the Department prior to the issuance of the Second Phase Judgment. Id.

⁵ Id. at 29:3.

⁶ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the
“First Phase Judgment”).

⁷ Id.

⁸ See First Phase Judgment and Second Phase Judgment, respectively.

\$2,346.27, Photocopies \$1,203.97, Deposition and Transcript Fees \$6,534.85, Courier Service Printing and Delivery \$311.43, and Trial Tech Services \$7,800.22.⁹

III. LEGAL STANDARD AND ARGUMENT

A. Legal Standard

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly exercised when considering whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005).

In addition, the plain language of a statute governs the manner in which it is applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).

B. NOR Cannot Recover the Claimed Costs.

1. NOR is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

NOR cannot recover against HSH because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party* against any adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is*

⁹ See Mem. of Costs of NOR, Aug. 9, 2022.

1 **rendered.**” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds
2 that a party cannot be considered a prevailing party where the matter does not
3 proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498,
4 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

5 HSH’ First Phase Claims and Second Phase Claims were not litigated, they were settled.
6 Consequently, the Second Phase Claims did not proceed to judgment in favor of NOR, and there
7 is no court order declaring any party as the prevailing party as to those claims. Further, pursuant
8 to NRS 18.020, NOR does not fall within any of the identified categories to
9 recover its costs. See NRS 18.020. Indeed, with no judgment against HSH for either the Second
10 Phase Claims or the First Phase Claim, NOR cannot recover its claimed costs.

11 **C. The Claimed Costs are not Reasonable and Necessary**

12 Additionally, even though HSH had settled its action prior to the commencement of
13 Phase I, nonetheless, NOR cannot recover any of the claimed costs because they were not
14 reasonably, necessarily, and actually incurred as part of the First Phase Claim. Following the
15 mandate of NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase
16 to include only the administrative record.¹⁰ This necessarily excluded from the record all court
17 filings, Westlaw legal research, photocopies, deposition and transcripts, documents delivered by
18 runner, witness testimony, trial exhibits, trial transcripts, and any trial administrative services;
19 which comprise all of NOR’s claimed costs. Indeed, the record consisted of only the plaintiffs’
20 applications and related information that was before the Department when it evaluated the
21 applicants and awarded the licenses.

22 Because the record for the First Phase Claim was restricted and did not include any of the
23 evidence related to NOR’s claimed costs, the claimed costs were not reasonably, necessarily,
24 and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary,
25 and actually incurred for the First Phase Claim, they cannot be recovered in connection with the
26 First Phase Judgment.

27 _____
28 ¹⁰ See First Phase Judgment, at 11:4-9.

Moreover, even if the Court were to consider any of these claimed costs, NOR includes requests for unnecessary, unreasonable and excessive costs. Assuming HSH as a settling party is responsible for any costs, NOR's Memorandum of Cost and Disbursements does not identify which of the costs pertain to HSH. HSH was not the only Plaintiff in the consolidated action upon which NOR relies in filing its Memorandum. NOR sent no written discovery to HSH, took no depositions of anyone from HSH, took no witness testimony from HSH, sent no correspondence to HSH, engaged in no phone calls with HSH, nothing. Just as unapportioned joint offers of judgment are invalid for purposes of determining prevailing party eligibility for recovery of attorney's fees and costs against a party rejecting the offer under NRCp 68 (See *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172 (1999)), unapportioned Memorandum of Costs should be invalid as there is no way for an opponent of the Memorandum to ascertain which costs are the result of litigation against which party. For that reason, under NRS 18.050, the Court has discretion in allowing costs and should not permit any of these to be attributed to HSH.

D. NOR's Memorandum of Costs does not fall within the parameters of NRS 18.020.

If NOR's Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI") which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI's denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

NRS 18.020 Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs

1 accrued in the action if originally commenced in a Justice Court. [1911 CPA §
2 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
3 1981, 470; 1985, 1503, 1622; 1995, 2793)

4 In addition to the fact that HSH settled its action against the State of Nevada Department
5 of Taxation before the First Phase of the Trial began, a Petition for Judicial Review, which is the
6 subject of the First Phase of Trial, is not within any of the five (5) category of cases listed at
7 NRS 18.020 and, therefore, the same does not provide authority for NOR to seek an award of
8 costs.

9 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
10 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
11 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
12 costs in the following five actions: (1) an action for the recovery of real property or a possessory
13 right thereto; (2) an action to recover the possession of personal property valued more than
14 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
15 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
16 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
17 actions noted in NRS 18.020.

18 If the Legislature intended that costs be awarded for petitions for judicial review, the
19 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
20 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
21 reference petition for judicial review, but the legislature did not include more expansive phrases
22 in the wording of the statute such as “including but not limited to” or “in other actions where the
23 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
24 only the five cases specified, and the Court must follow the plain language of the statute. See
25 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
26 is significant that the Legislature did not include petitions for judicial review in the types of cases
27 for which a party may recover its costs. The Legislature is presumed to have knowledge of
28 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.

1 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
2 57 Nev. 332, 366, 65 P.2d 133 (1937).

3 Chapter 233B of the NRS does not classify a petition for judicial review as a special
4 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
5 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
6 An aggrieved party seeking review of a district court's decision on a petition for judicial review
7 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
8 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
9 a "civil case."

10 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
11 a court to assess additional costs against a party unreasonably refusing to limit the record to be
12 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
13 contains no other mention of assessing costs against a party in a petition for judicial review and it
14 doesn't mention or make reference to NRS Chapter 18.

15 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
16 most recent amendment occurring in 1995 where it added to subsection 4 the following language
17 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
18 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
19 the type of cases for which costs may be awarded, the Court may presume that the Legislature
20 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
21 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
22 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
23 doing and purposefully uses the specific language [it chooses].").

24 Therefore, the Memo of Costs should be denied because petitions for judicial review are
25 not special proceedings for purposes of NRS 18.020.

26 **E. NOR was never a party to the HSH case**

27 NOR never intervened into Case No. A-19-787726-C nor have they made any appearance
28 in the HSH case.

1 The Nevada Supreme Court has determined that consolidation does not merge two suits
2 into a single cause or change the rights of the parties or make one party a party in a separate suit.
3 See *Mikulich v. Carner*, 68 Nev. 161, 169, 228 P.2d 257, 260 (1951) citing *Johnson v.*
4 *Manhattan R. Co.*, 289 U.S. 479, 535, Ct. 721, 77 L. Ed. 1331, 1345.

5 In *Mukulich v. Carner*, 68 Nev. 161, 170, 228 P.2d 257, 261 (1951), the Nevada Supreme
6 Court relied on federal cases, which have consistently construed FRCP 42(a) consolidation
7 orders providing for the combined trial of two or more cases as “not having the effect of merging
8 the several causes into a single cause.” In such a case, the trial court simply enters two separate
9 judgments. *Mukulich*, 68 Nev. At 169, 228 P.2d at 261.

10 Even after consolidation, the actions retain their separate identities, and the parties and
11 pleadings in one action do not automatically become parties and pleadings in the other action.
12 *Mikulich*, 68 Nev. At 170, 228 P.2d at 261.

13 NOR was granted intervention into Case No. A-19-787004-B by Court Order on April
14 26, 2019.

15 Over 7 months later, the Order Granting Joint Motion to Consolidate was entered on
16 December 6, 2019. NOR never intervened or made an appearance in Case No. A-19-787726-C
17 either before or after consolidation. NOR never appeared via Answer or other pleadings in the
18 HSH case either before or after consolidation.

19 **F. NOR is prevented from seeking costs from HSH by paragraph 14 of its**
20 **settlement with LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”),**
21 **MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management**
22 **Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC,**
23 **Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”);**
24 **Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan,**
25 **LLC, a Nevada limited liability company, (“Qualcan”).**

26 NOR and the State of Nevada Department of Taxation settled its action with certain
27 Plaintiffs.

28 Section 14 of that Settlement Agreement provides:

1 “14. If any Settling Party settles any other matter related to the Lawsuit (each, a “Future
2 Settlement”), every other Settling Party shall be included as released parties in such Future
3 Settlement on the same release terms and conditions as set forth herein; provided, however, that
any Settling Party receiving such release shall bear its own costs and attorneys’ fees with respect
thereto as provided in this Agreement.”

4 HSH settled its action with the State of Nevada Department of Taxation shortly
5 thereafter. Therefore NOR is subject to the “Future Settlement” provision of their earlier
6 agreement. As such, since the State of Nevada Department of Taxation settled a “Future
7 Settlement”, NOR is a released party “in such Future Settlement on the same release terms and
8 conditions as set forth herein”.

9 Paragraph C of the Recitals provides:

10 “C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing
11 the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own
costs and attorneys’ fees, and to exchange mutual releases as provided in this Agreement.”

12 As such, NOR would be in violation of its settlement agreement if it was awarded any
13 costs against HSH, as HSH is part of a “future settlement” and therefore each party is to bear its
14 own costs and attorneys’ fees.

15 **IV. CONCLUSION**

16 Based on the foregoing, HSH respectfully request that this Court grant this Motion to
17 Retax and Settle Costs in its entirety and award NOR no costs.

18 **AFFIRMATION**

19 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
20 document does not contain the social security number of any person.

21 Dated this 12th day of August, 2022.

22 **HOLLEY DRIGGS, LTD.**

23
24 /s/ James W. Puzey
25 JAMES W. PUZEY, ESQ.
26 800 South Meadows Parkway, #800
27 Reno, Nevada 89521
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Kelsey Fusco
An Employee of Holley Driggs, Ltd.

EXHIBIT 1

EXHIBIT 1

8/18/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August, 2020 (the "Effective Date") (this "Agreement"), among High Sierra Holistics, LLC, a Nevada limited liability company ("HSH") ("Settling Plaintiff"), the State of Nevada, Department of Taxation ("DOT") and TRNVP098, LLC a Nevada limited liability company ("TRNVP098") (collectively "Settling Defendants" or individually, a "Settling Defendant").

RECITALS

- A. HSH, TRNVP098 and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFER AND ISSUANCES OF LICENSE

1. The Settling Defendant hereby assigns (subject to DOT and/or Cannabis Compliance Board ("CCB") approval) all rights, interest and title in the Nevada retail marijuana dispensary conditional license (the "Conditionally Approved License") to HSH contingent on the execution of a Purchase Agreement and as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 4-6 hereof, shall first be fulfilled:

➤ TRNVP098 hereby assigns 1 Lyon County conditional license to HSH.

2. The license described in this Agreement must be in good standing.

3. The license transfer pursuant to this Agreement cannot create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

TRANSFER OF OWNERSHIP APPLICATIONS

4. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process HSH's transfer of ownership application described in paragraphs 1 and 6 in this Agreement.

5. As a condition and term of the settlement, DOT agrees to take all necessary steps to attempt to have all other non-settling parties waive their costs and fees against the settling parties. ✓

8/18/2020

TIMING OF TRANSFERS

6. As a condition and term of this settlement, after the conditions precedent in Paragraphs 4-5 are met, the CCB agrees to make a good faith effort to expedite any Transfer of Interest request for the transfer of the license from TRNVP098 to HSH as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process the Transfer of Interest request after submission thereof. For purposes of approving the transfers, HSH was previously and is currently approved by the DOT as an owner and operator of marijuana cultivation and distribution licenses in the state of Nevada. In compliance with Nevada law, HSH has operated pursuant to those licenses without any suspensions or revocations of those licenses. Any delays in approvals of the Transfer of Interest request due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

7. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, the parties will execute mutual releases in the form attached hereto as Exhibit A, with each party to bear its own costs and attorneys' fees.

8. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, HSH shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. A-19-787726-C currently pending in the Eighth Judicial District Court of the State of Nevada, In and For the County of Clark;
- b. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. 19-CV-00073 currently pending in the Third Judicial District Court of the State of Nevada, In and For the County of Lyon; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00271-MMD-CLB; consolidated into Case No. 3:19-CV-00270-LRH-CLB;
- c. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. CV19-000142 currently pending in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00270-LRH-CLB

HSH will dismiss the Dismissed Claims with prejudice against DOT, as applicable, and without costs or fees to or from any such Settling Party.

9. HSH agrees to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

8/18/2020

CONTINUED PARTICIPATION BY SETTLING PLAINTIFFS

10. If any Settling Party settles any other matter related to the Lawsuit (each, a "Future Settlement"), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys' fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

11. This Settlement Agreement shall only be valid if the current litigation pending in Case No. A-19-787004-B is settled in its totality and/or the litigation results in TRNVP098 retaining the conditional license granted to it in Lyon County. Should it be determined that TRNVP098 is not entitled to retain the conditional license granted to it in Lyon County, then this Settlement Agreement shall be declared null and void and all monies and other items shall be returned to the party from which they originated.

12. DOT and/or CCB agrees that the parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on the conditional license received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including but not limited to the Counties of Humboldt, Pershing, White Pine, Storey and Lander), DOT and/or CCB agrees to extend the deadline to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses owned by TRNVP098 in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

13. DOT and/or CCB further agrees to make a good faith effort to perform final inspections on an expedited time period – within 5 business days of the request for inspection – for the new locations of the Settling Parties.

REPRESENTATIONS AND WARRANTIES

14. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

15. TRNVP098 represents and warrants that it has full and complete control to assign the conditional license it was awarded and TRNVP098 shall indemnify, defend and hold HSH harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any entity claiming an ownership interest in the TRNVP098 conditional Lyon County license being transferred. TRNVP098 is not responsible for securing any ownership transfer approvals

8/18/2020

from the DOT or CCB for the Lyon County license TRNVP098 transfers hereunder. HSH will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

16. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

17. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

18. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

19. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit ("Global Settlement") consistent with this Agreement. ✓

20. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

GENERAL PROVISIONS

21. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

22. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

8/18/2020

23. Mediation. If the event of a dispute among the Parties concerning this agreement, the Parties agree they shall attempt to resolve such dispute through mediation with a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

24. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns contingent upon the execution of a final Purchase Agreement between HSH and TRNVP098. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

25. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

26. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

27. Partial Invalidity. Except with respect to Paragraph 5, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

28. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

29. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Lyon County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of

8/18/2020

compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

30. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

32. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

33. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or" are used in the inclusive sense of "and/or".

[Signatures on following pages]

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

TRNVP098, LLC

By: 

By: _____

Print Name: Russell Ernst

Print Name: Shane Terry

Title: MANAGING PARTNER

Title: Managing Member

STATE OF NEVADA,
DEPARTMENT OF TAXATION

By: _____

Print Name: _____

Title: _____

8/18/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August, 2020 (the "Effective Date") (this "Agreement"), among High Sierra Holistics, LLC, a Nevada limited liability company ("HSH") ("Settling Plaintiff"), the State of Nevada, Department of Taxation ("DOT") and TRNVP098, LLC a Nevada limited liability company ("TRNVP098") (collectively "Settling Defendants" or individually, a "Settling Defendant").

RECITALS

- A. HSH, TRNVP098 and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFER AND ISSUANCES OF LICENSE

- 1. The Settling Defendant hereby assigns (subject to DOT and/or Cannabis Compliance Board ("CCB") approval) all rights, interest and title in the Nevada retail marijuana dispensary conditional license (the "Conditionally Approved License") to HSH contingent on the execution of a Purchase Agreement and as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 4-6 hereof, shall first be fulfilled:
 - TRNVP098 hereby assigns 1 Lyon County conditional license to HSH.

- 2. The license described in this Agreement must be in good standing.
- 3. The license transfer pursuant to this Agreement cannot create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

TRANSFER OF OWNERSHIP APPLICATIONS

- 4. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process HSH's transfer of ownership application described in paragraphs 1 and 6 in this Agreement.
- 5. As a condition and term of the settlement, DOT agrees to take all necessary steps to attempt to have all other non-settling parties waive their costs and fees against the settling parties.

8/18/2020

TIMING OF TRANSFERS

6. As a condition and term of this settlement, after the conditions precedent in Paragraphs 4-5 are met, the CCB agrees to make a good faith effort to expedite any Transfer of Interest request for the transfer of the license from TRNVP098 to HSH as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process the Transfer of Interest request after submission thereof. For purposes of approving the transfers, HSH was previously and is currently approved by the DOT as an owner and operator of marijuana cultivation and distribution licenses in the state of Nevada. In compliance with Nevada law, HSH has operated pursuant to those licenses without any suspensions or revocations of those licenses. Any delays in approvals of the Transfer of Interest request due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

7. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, the parties will execute mutual releases in the form attached hereto as Exhibit A, with each party to bear its own costs and attorneys' fees.

8. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, HSH shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. A-19-787726-C currently pending in the Eighth Judicial District Court of the State of Nevada, In and For the County of Clark;
- b. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. 19-CV-00073 currently pending in the Third Judicial District Court of the State of Nevada, In and For the County of Lyon; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00271-MMD-CLB; consolidated into Case No. 3:19-CV-00270-LRH-CLB;
- c. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. CV19-000142 currently pending in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00270-LRH-CLB

HSH will dismiss the Dismissed Claims with prejudice against DOT, as applicable, and without costs or fees to or from any such Settling Party.

9. HSH agrees to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

8/18/2020

CONTINUED PARTICIPATION BY SETTLING PLAINTIFFS

10. If any Settling Party settles any other matter related to the Lawsuit (each, a "Future Settlement"), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys' fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

11. This Settlement Agreement shall only be valid if the current litigation pending in Case No. A-19-787004-B is settled in its totality and/or the litigation results in TRNVP098 retaining the conditional license granted to it in Lyon County. Should it be determined that TRNVP098 is not entitled to retain the conditional license granted to it in Lyon County, then this Settlement Agreement shall be declared null and void and all monies and other items shall be returned to the party from which they originated.

12. DOT and/or CCB agrees that the parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on the conditional license received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including but not limited to the Counties of Humboldt, Pershing, White Pine, Storey and Lander), DOT and/or CCB agrees to extend the deadline to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses owned by TRNVP098 in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

13. DOT and/or CCB further agrees to make a good faith effort to perform final inspections on an expedited time period -- within 5 business days of the request for inspection -- for the new locations of the Settling Parties.

REPRESENTATIONS AND WARRANTIES

14. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

15. TRNVP098 represents and warrants that it has full and complete control to assign the conditional license it was awarded and TRNVP098 shall indemnify, defend and hold HSH harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any entity claiming an ownership interest in the TRNVP098 conditional Lyon County license being transferred. TRNVP098 is not responsible for securing any ownership transfer approvals

8/18/2020

from the DOT or CCB for the Lyon County license TRNVP098 transfers hereunder. HSH will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

16. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

17. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

18. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

19. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit ("Global Settlement") consistent with this Agreement.

20. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

GENERAL PROVISIONS

21. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

22. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

8/18/2020

23. Mediation. If the event of a dispute among the Parties concerning this agreement, the Parties agree they shall attempt to resolve such dispute through mediation with a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

24. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns contingent upon the execution of a final Purchase Agreement between HSH and TRNVP098. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

25. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

26. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

27. Partial Invalidity. Except with respect to Paragraph 5, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

28. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

29. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Lyon County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of

8/18/2020

compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

30. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

32. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

33. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or" are used in the inclusive sense of "and/or".

[Signatures on following pages]

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

By: 

Print Name: Russell Ernst

Title: MANAGING PARTNER

TRNVP008, LLC

By: 

Print Name: Shane Terry

Title: Managing Member

STATE OF NEVADA,
DEPARTMENT OF TAXATION

By: 

Print Name: Melanie Young

Title: Executive Director

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

TRNVP098, LLC

By: 

By: _____

Print Name: Russell Ernst

Print Name: Shane Terry

Title: MANAGING PARTNER

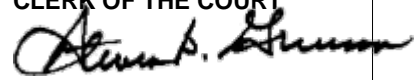
Title: Managing Member

STATE OF NEVADA,
DEPARTMENT OF TAXATION

By: _____

Print Name: _____

Title: _____



HOLLEY DRIGGS, LTD.
JAMES W. PUZEY, ESQ.
NV Bar No. 5745
jpuzey@nevadafirm.com
800 South Meadows Pkwy., Suite 800
Reno, Nevada 89521
Telephone: 775/851-8700
Facsimile: 775/851-7681

Attorney for High Sierra Holistics, LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation:

CASE NO.: A-19-787004-B
Consolidated with:

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

DEPT. NO.: XXXI

MOTION TO RETAX AND SETTLE COSTS REGARDING LONE MOUNTAIN

PARTNERS, LLC

COMES NOW, HIGH SIERRA HOLISTICS, LLC (“HSH”), by and through its attorney of record, James W. Puzey, Esq. of Holley Driggs, Ltd., and out of an abundance of caution, hereby moves this court to retax and settle the costs set forth in LONE MOUNTAIN PARTNERS, LLC (“LMP”)’s Verified Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 12th day of August, 2022.

HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

AA2078

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 LMP cannot recover the costs claimed in the Memorandum against HSH. LMP cannot
4 recover costs because it never appeared in Case No. A-19-787726-C involving HSH, is neither a
5 prevailing party in this action against the HSH nor does LMP have a statutory right to recover its
6 costs. Even if the Memorandum is considered, none of the claimed costs were reasonably,
7 necessarily, and actually incurred as to the HSH's petition for judicial review. As a result, HSH
8 requests that this Court award no costs to LMP.

9 Finally, none of the claimed costs are appropriately partitioned amongst the numerous
10 Plaintiffs.

11 **II. RELEVANT FACTUAL BACKGROUND**

12 **A. The Proceedings and Settlement**

13 Case No. A-19-787726-C was commenced on January 16, 2019. LMP never intervened
14 or otherwise appeared in the action. The primary and substantive causes of action were asserted
15 against only the Nevada Department of Taxation (the "Department"). Namely, the causes of
16 action for violation of substantive due process, violation of procedural due process, violation of
17 equal protection, and petition for writ of mandamus were asserted exclusively against the
18 Department.

19 Nearly one year later, prior to the trial in this matter, Case No. A-19-787726-C was
20 consolidated with Case No. A-19-787004-B on December 6, 2019. Also prior to the trial, the
21 Court determined that (i) the Department acted beyond the scope of its authority by replacing the
22 requirement for a background check on each prospective owner with the 5 percent or greater
23 standard in NAC 453D.255(1)¹ and (ii) that appeals were to be heard arising from the denial of
24 licensure in the September 2018 retail licensure application competition.²

25
26 ¹ See Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment
27 on First Claim for Relief ("Order Granting Summary Judgment"), at 6:4-8, dated Aug. 15, 2020,
on file herein.

28 ² See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM
Development Company, Inc. and LivFree Wellness, LLC's Motion for Summary Judgment or

1 The trial in these proceedings began on July 13, 2020. Importantly, the proceedings were
2 conducted in a series of three phases where only certain claims would be examined and
3 determined in each phase. The First Phase addressed only the petition for judicial review (the
4 “First Phase Claim”), the Second Phase addressed the equal protection, due process, declaratory
5 relief, and permanent injunction claims (the “Second Phase Claims”), and the Third Phase would
6 address writ of mandamus claims (the “Third Phase Claim”).³

7 During the Second Phase of the proceedings, HSH settled with the State of Nevada,
8 Department of Taxation. See attached hereto by reference as **Exhibit 1**, a copy of said Settlement
9 Agreement. The Second Phase concluded with a decision issued by the Court on September 3,
10 2020.⁴ Therein, the Court granted declaratory relief.⁵

11 Before beginning the next phase (i.e., the First Phase), the Court limited the evidence and
12 record that could be considered for that phase to only the administrative record pursuant to the
13 requirements of NRS 233B.135(1)(b).⁶ More specifically, the Court determined that evidence
14 related to a claim for judicial review is to be restricted to the administrative record because it
15 contains all relevant evidence that resulted in the Department’s analysis of the plaintiffs’
16 applications.⁷ The Court proceeded with and completed the First Phase thereafter.

17 **B. The Memorandum of Costs**

18 On August 8, 2022, LMP filed their Memorandum, approximately twenty-two (22) days
19 after the Second Phase Judgment was entered and nine (9) days after the First Phase Judgment
20 was entered.⁸ In the Memorandum, LMP impermissibly claims a total of \$71,431.72 in costs.
21 That is comprised of: Clerk Filing Fees \$7,944.36, Reporters’ Fees For Depositions and

22 _____ (continued)
23 for Writ of Mandamus (“FFCL re Summary Judgment”), at 3:10-14, dated July 11, 2020, on file
24 herein.

25 ³ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
26 preceded the First Phase.

27 ⁴ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the
28 “Second Phase Judgment”). As noted therein, the Court recognized that HSH had reached a
settlement with the Department prior to the issuance of the Second Phase Judgment. Id.

⁵ Id. at 29:3.

⁶ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the
“First Phase Judgment”).

⁷ Id.

⁸ See First Phase Judgment and Second Phase Judgment, respectively.

1 Transcripts \$20,877.12, Expert Witness Fees \$331.11, Hearing/Trial Transcripts \$26,504.36,
2 Photocopy Costs \$655.18, Postage Costs \$54.38, and Other Reasonable and Necessary Expense
3 Incurred with this Action \$15,065.21.⁹

4 **III. LEGAL STANDARD AND ARGUMENT**

5 **A. Legal Standard**

6 Even though trial courts have discretion to determine allowable costs, the Nevada
7 Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed
8 because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the*
9 *Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v.*
10 *Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also
11 “be sparingly exercised when considering whether or not to allow expenses not specifically
12 allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566
13 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient
14 support for the court to conclude that each taxed cost was reasonable, necessary, and actually
15 incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d
16 1082, 1093 (2005).

17 In addition, the plain language of a statute governs the manner in which it is applied
18 according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118
19 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252
20 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170,
21 443 P.3d 1115, 1117 (2019).

22 **B. LMP Cannot Recover the Claimed Costs.**

23 1. LMP is Neither a Prevailing Party nor Statutorily Permitted to Recover 24 its Costs.

25 LMP cannot recover against HSH because it is not a prevailing party in this matter. NRS
26 Chapter 18 plainly states that costs are allowed only “*to the prevailing party*” against any adverse

27 ⁹ See Mem. of Costs of LMP, Aug. 9, 2022.
28

1 party against whom judgment is rendered,” and only to “the party *in whose favor judgment is*
2 *rendered.*” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds
3 that a party cannot be considered a prevailing party where the matter does not
4 proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498,
5 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

6 HSH’ First Phase Claims and Second Phase Claims were not litigated, they were settled.
7 Consequently, the Second Phase Claims did not proceed to judgment in favor of LMP, and there
8 is no court order declaring any party as the prevailing party as to those claims. Further, pursuant
9 to NRS 18.020, LMP does not fall within any of the identified categories to
10 recover its costs. See NRS 18.020. Indeed, with no judgment against HSH for either the Second
11 Phase Claims or the First Phase Claim, LMP cannot recover its claimed costs.

12 **C. The Claimed Costs are not Reasonable and Necessary**

13 Additionally, even though HSH had settled its action prior to the commencement of
14 Phase I, nonetheless, LMP cannot recover any of the claimed costs because they were not
15 reasonably, necessarily, and actually incurred as part of the First Phase Claim. Following the
16 mandate of NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase
17 to include only the administrative record.¹⁰ This necessarily excluded from the record all court
18 filings, Westlaw legal research, photocopies, deposition and transcripts, documents delivered by
19 runner, witness testimony, trial exhibits, trial transcripts, and any trial administrative services;
20 which comprise all of LMP’s claimed costs. Indeed, the record consisted of only the plaintiffs’
21 applications and related information that was before the Department when it evaluated the
22 applicants and awarded the licenses.

23 Because the record for the First Phase Claim was restricted and did not include any of the
24 evidence related to LMP’s claimed costs, the claimed costs were not reasonably, necessarily,
25 and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary,
26 and actually incurred for the First Phase Claim, they cannot be recovered in connection with the

27 _____
28 ¹⁰ See First Phase Judgment, at 11:4-9.

1 First Phase Judgment.

2 Moreover, even if the Court were to consider any of these claimed costs, LMP includes
3 requests for unnecessary, unreasonable and excessive costs. Assuming HSH as a settling party is
4 responsible for any costs, LMP's Memorandum of Cost and Disbursements does not identify
5 which of the costs pertain to HSH. HSH was not the only Plaintiff in the consolidated action
6 upon which LMP relies in filing its Memorandum. LMP sent no written discovery to HSH, took
7 no depositions of anyone from HSH, took no witness testimony from HSH, sent no
8 correspondence to HSH, engaged in no phone calls with HSH, nothing. Just as unapportioned
9 joint offers of judgment are invalid for purposes of determining prevailing party eligibility for
10 recovery of attorney's fees and costs against a party rejecting the offer under NRCp 68 (See
11 *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172 (1999)), unapportioned Memorandum of Costs
12 should be invalid as there is no way for an opponent of the Memorandum to ascertain which
13 costs are the result of litigation against which party. For that reason, under NRS 18.050, the
14 Court has discretion in allowing costs and should not permit any of these to be attributed to HSH.

15 **D. LMP's Memorandum of Costs does not fall within the parameters of NRS**
16 **18.020.**

17 If LMP's Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of*
18 *Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020
19 FFCL&PI") which denied the Petition of Judicial Review, then the Memo of Costs should be
20 denied because the 9-16-2020 FFCL&PI's denial of the Petition for Judicial Review is not one of
21 the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS
22 18.020, which provides:

23 NRS 18.020 Cases in which costs allowed prevailing party. Costs must be
24 allowed of course to the prevailing party against any adverse party against whom
judgment is rendered, in the following cases:

- 25 1. In an action for the recovery of real property or a possessory right thereto.
- 26 2. In an action to recover the possession of personal property, where the
value of the property amounts to more than \$2,500. The value must be determined
by the jury, court or master by whom the action is tried.
- 27 3. In an action for the recovery of money or damages, where the plaintiff
seeks to recover more than \$2,500.
- 28 4. In a special proceeding, except a special proceeding conducted pursuant
to NRS 306.040.

1 5. In an action which involves the title or boundaries of real estate, or the
2 legality of any tax, impost, assessment, toll or municipal fine, including the costs
3 accrued in the action if originally commenced in a Justice Court. [1911 CPA §
4 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
5 1981, 470; 1985, 1503, 1622; 1995, 2793)

6 In addition to the fact that HSH settled its action against the State of Nevada Department
7 of Taxation before the First Phase of the Trial began, a Petition for Judicial Review, which is the
8 subject of the First Phase of Trial, is not within any of the five (5) category of cases listed at
9 NRS 18.020 and, therefore, the same does not provide authority for LMP to seek an award of
10 costs.

11 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
12 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
13 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
14 costs in the following five actions: (1) an action for the recovery of real property or a possessory
15 right thereto; (2) an action to recover the possession of personal property valued more than
16 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
17 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
18 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
19 actions noted in NRS 18.020.

20 If the Legislature intended that costs be awarded for petitions for judicial review, the
21 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
22 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
23 reference petition for judicial review, but the legislature did not include more expansive phrases
24 in the wording of the statute such as “including but not limited to” or “in other actions where the
25 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
26 only the five cases specified, and the Court must follow the plain language of the statute. See
27 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
28 is significant that the Legislature did not include petitions for judicial review in the types of cases
for which a party may recover its costs. The Legislature is presumed to have knowledge of

1 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
2 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
3 57 Nev. 332, 366, 65 P.2d 133 (1937).

4 Chapter 233B of the NRS does not classify a petition for judicial review as a special
5 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
6 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
7 An aggrieved party seeking review of a district court's decision on a petition for judicial review
8 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
9 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
10 a "civil case."

11 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
12 a court to assess additional costs against a party unreasonably refusing to limit the record to be
13 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
14 contains no other mention of assessing costs against a party in a petition for judicial review and it
15 doesn't mention or make reference to NRS Chapter 18.

16 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
17 most recent amendment occurring in 1995 where it added to subsection 4 the following language
18 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
19 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
20 the type of cases for which costs may be awarded, the Court may presume that the Legislature
21 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
22 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
23 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
24 doing and purposefully uses the specific language [it chooses].").

25 Therefore, the Memo of Costs should be denied because petitions for judicial review are
26 not special proceedings for purposes of NRS 18.020.

27 **E. LMP was never a party to the HSH case**

28 LMP never intervened into Case No. A-19-787726-C nor have they made any appearance

1 in the HSH case.

2 The Nevada Supreme Court has determined that consolidation does not merge two suits
3 into a single cause or change the rights of the parties or make one party a party in a separate suit.
4 See *Mikulich v. Carner*, 68 Nev. 161, 169, 228 P.2d 257, 260 (1951) citing *Johnson v.*
5 *Manhattan R. Co.*, 289 U.S. 479, 535, Ct. 721, 77 L. Ed. 1331, 1345.

6 In *Mukulich v. Carner*, 68 Nev. 161, 170, 228 P.2d 257, 261 (1951), the Nevada Supreme
7 Court relied on federal cases, which have consistently construed FRCP 42(a) consolidation
8 orders providing for the combined trial of two or more cases as “not having the effect of merging
9 the several causes into a single cause.” In such a case, the trial court simply enters two separate
10 judgments. *Mukulich*, 68 Nev. At 169, 228 P.2d at 261.

11 Even after consolidation, the actions retain their separate identities, and the parties and
12 pleadings in one action do not automatically become parties and pleadings in the other action.
13 *Mikulich*, 68 Nev. At 170, 228 P.2d at 261.

14 LMP was granted intervention into Case No. A-19-787004-B by Court Order on April
15 17, 2019.

16 Over 7 ½ months later, the Order Granting Joint Motion to Consolidate was entered on
17 December 6, 2019. LMP never intervened or made an appearance in Case No. A-19-787726-C
18 either before or after consolidation. LMP never appeared via Answer or other pleadings in the
19 HSH case either before or after consolidation.

20 **F. LMP is prevented from seeking costs from HSH by paragraph 14 of its**
21 **settlement with LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”),**
22 **MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management**
23 **Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC,**
24 **Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”);**
25 **Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan,**
26 **LLC, a Nevada limited liability company, (“Qualcan”).**

27 LMP and the State of Nevada Department of Taxation settled its action with certain
28 Plaintiffs.

1 Section 14 of that Settlement Agreement provides:

2 “14. If any Settling Party settles any other matter related to the Lawsuit (each, a “Future
3 Settlement”), every other Settling Party shall be included as released parties in such Future
4 Settlement on the same release terms and conditions as set forth herein; provided, however, that
any Settling Party receiving such release shall bear its own costs and attorneys’ fees with respect
thereto as provided in this Agreement.”

5 HSH settled its action with the State of Nevada Department of Taxation shortly
6 thereafter. Therefore LMP is subject to the “Future Settlement” provision of their earlier
7 agreement. As such, since the State of Nevada Department of Taxation settled a “Future
8 Settlement”, LMP is a released party “in such Future Settlement on the same release terms and
9 conditions as set forth herein”.

10 Paragraph C of the Recitals provides:

11 “C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing
12 the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own
costs and attorneys’ fees, and to exchange mutual releases as provided in this Agreement.”

13 As such, LMP would be in violation of its settlement agreement if it was awarded any
14 costs against HSH, as HSH is part of a “future settlement” and therefore each party is to bear its
15 own costs and attorneys’ fees.

16 **IV. CONCLUSION**

17 Based on the foregoing, HSH respectfully request that this Court grant this Motion to
18 Retax and Settle Costs in its entirety and award LMP no costs.

19 **AFFIRMATION**

20 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
21 document does not contain the social security number of any person.

22 Dated this 12th day of August, 2022.

23 **HOLLEY DRIGGS, LTD.**

24
25 /s/ James W. Puzey
26 JAMES W. PUZEY, ESQ.
27 800 South Meadows Parkway, #800
28 Reno, Nevada 89521

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 12th day of August, 2022, I served a true and correct copy of
3 the foregoing MOTION TO RETAX AND SETTLE COSTS through the Court's electronic
4 filing system pursuant to Administrative Order 14-2 to all parties currently receiving service in
5 this matter on the electronic service list.

6 /s/ Kelsey Fusco
7 An Employee of Holley Driggs, Ltd.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

8/18/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August, 2020 (the "Effective Date") (this "Agreement"), among High Sierra Holistics, LLC, a Nevada limited liability company ("HSH") ("Settling Plaintiff"), the State of Nevada, Department of Taxation ("DOT") and TRNVP098, LLC a Nevada limited liability company ("TRNVP098") (collectively "Settling Defendants" or individually, a "Settling Defendant").

RECITALS

- A. HSH, TRNVP098 and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFER AND ISSUANCES OF LICENSE

1. The Settling Defendant hereby assigns (subject to DOT and/or Cannabis Compliance Board ("CCB") approval) all rights, interest and title in the Nevada retail marijuana dispensary conditional license (the "Conditionally Approved License") to HSH contingent on the execution of a Purchase Agreement and as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 4-6 hereof, shall first be fulfilled:

➤ TRNVP098 hereby assigns 1 Lyon County conditional license to HSH.

2. The license described in this Agreement must be in good standing.

3. The license transfer pursuant to this Agreement cannot create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

TRANSFER OF OWNERSHIP APPLICATIONS

4. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process HSH's transfer of ownership application described in paragraphs 1 and 6 in this Agreement.

5. As a condition and term of the settlement, DOT agrees to take all necessary steps to attempt to have all other non-settling parties waive their costs and fees against the settling parties. ✓

TIMING OF TRANSFERS

6. As a condition and term of this settlement, after the conditions precedent in Paragraphs 4-5 are met, the CCB agrees to make a good faith effort to expedite any Transfer of Interest request for the transfer of the license from TRNVP098 to HSH as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process the Transfer of Interest request after submission thereof. For purposes of approving the transfers, HSH was previously and is currently approved by the DOT as an owner and operator of marijuana cultivation and distribution licenses in the state of Nevada. In compliance with Nevada law, HSH has operated pursuant to those licenses without any suspensions or revocations of those licenses. Any delays in approvals of the Transfer of Interest request due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

7. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, the parties will execute mutual releases in the form attached hereto as Exhibit A, with each party to bear its own costs and attorneys' fees.

8. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, HSH shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. A-19-787726-C currently pending in the Eighth Judicial District Court of the State of Nevada, In and For the County of Clark;
- b. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. 19-CV-00073 currently pending in the Third Judicial District Court of the State of Nevada, In and For the County of Lyon; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00271-MMD-CLB; consolidated into Case No. 3:19-CV-00270-LRH-CLB;
- c. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. CV19-000142 currently pending in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00270-LRH-CLB

HSH will dismiss the Dismissed Claims with prejudice against DOT, as applicable, and without costs or fees to or from any such Settling Party.

9. HSH agrees to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

8/18/2020

CONTINUED PARTICIPATION BY SETTLING PLAINTIFFS

10. If any Settling Party settles any other matter related to the Lawsuit (each, a "Future Settlement"), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys' fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

11. This Settlement Agreement shall only be valid if the current litigation pending in Case No. A-19-787004-B is settled in its totality and/or the litigation results in TRNVP098 retaining the conditional license granted to it in Lyon County. Should it be determined that TRNVP098 is not entitled to retain the conditional license granted to it in Lyon County, then this Settlement Agreement shall be declared null and void and all monies and other items shall be returned to the party from which they originated.

12. DOT and/or CCB agrees that the parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on the conditional license received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including but not limited to the Counties of Humboldt, Pershing, White Pine, Storey and Lander), DOT and/or CCB agrees to extend the deadline to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses owned by TRNVP098 in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

13. DOT and/or CCB further agrees to make a good faith effort to perform final inspections on an expedited time period – within 5 business days of the request for inspection – for the new locations of the Settling Parties.

REPRESENTATIONS AND WARRANTIES

14. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

15. TRNVP098 represents and warrants that it has full and complete control to assign the conditional license it was awarded and TRNVP098 shall indemnify, defend and hold HSH harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any entity claiming an ownership interest in the TRNVP098 conditional Lyon County license being transferred. TRNVP098 is not responsible for securing any ownership transfer approvals

8/18/2020

from the DOT or CCB for the Lyon County license TRNVP098 transfers hereunder. HSH will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

16. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

17. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

18. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

19. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit ("Global Settlement") consistent with this Agreement. ✓

20. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

GENERAL PROVISIONS

21. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

22. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

8/18/2020

23. Mediation. If the event of a dispute among the Parties concerning this agreement, the Parties agree they shall attempt to resolve such dispute through mediation with a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

24. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns contingent upon the execution of a final Purchase Agreement between HSH and TRNVP098. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

25. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

26. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

27. Partial Invalidity. Except with respect to Paragraph 5, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

28. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

29. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Lyon County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of

8/18/2020

compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

30. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

32. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

33. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or" are used in the inclusive sense of "and/or".

[Signatures on following pages]

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

TRNVP098, LLC

By: 

By: _____

Print Name: Russell Ernst

Print Name: Shane Terry

Title: MANAGING PARTNER

Title: Managing Member

STATE OF NEVADA,
DEPARTMENT OF TAXATION

By: _____

Print Name: _____

Title: _____

8/18/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August, 2020 (the "Effective Date") (this "Agreement"), among High Sierra Holistics, LLC, a Nevada limited liability company ("HSH") ("Settling Plaintiff"), the State of Nevada, Department of Taxation ("DOT") and TRNVP098, LLC a Nevada limited liability company ("TRNVP098") (collectively "Settling Defendants" or individually, a "Settling Defendant").

RECITALS

- A. HSH, TRNVP098 and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFER AND ISSUANCES OF LICENSE

- 1. The Settling Defendant hereby assigns (subject to DOT and/or Cannabis Compliance Board ("CCB") approval) all rights, interest and title in the Nevada retail marijuana dispensary conditional license (the "Conditionally Approved License") to HSH contingent on the execution of a Purchase Agreement and as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 4-6 hereof, shall first be fulfilled:
 - TRNVP098 hereby assigns 1 Lyon County conditional license to HSH.

- 2. The license described in this Agreement must be in good standing.
- 3. The license transfer pursuant to this Agreement cannot create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

TRANSFER OF OWNERSHIP APPLICATIONS

- 4. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process HSH's transfer of ownership application described in paragraphs 1 and 6 in this Agreement.
- 5. As a condition and term of the settlement, DOT agrees to take all necessary steps to attempt to have all other non-settling parties waive their costs and fees against the settling parties.

8/18/2020

TIMING OF TRANSFERS

6. As a condition and term of this settlement, after the conditions precedent in Paragraphs 4-5 are met, the CCB agrees to make a good faith effort to expedite any Transfer of Interest request for the transfer of the license from TRNVP098 to HSH as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process the Transfer of Interest request after submission thereof. For purposes of approving the transfers, HSH was previously and is currently approved by the DOT as an owner and operator of marijuana cultivation and distribution licenses in the state of Nevada. In compliance with Nevada law, HSH has operated pursuant to those licenses without any suspensions or revocations of those licenses. Any delays in approvals of the Transfer of Interest request due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

7. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, the parties will execute mutual releases in the form attached hereto as Exhibit A, with each party to bear its own costs and attorneys' fees.

8. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, HSH shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. A-19-787726-C currently pending in the Eighth Judicial District Court of the State of Nevada, In and For the County of Clark;
- b. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. 19-CV-00073 currently pending in the Third Judicial District Court of the State of Nevada, In and For the County of Lyon; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00271-MMD-CLB; consolidated into Case No. 3:19-CV-00270-LRH-CLB;
- c. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. CV19-000142 currently pending in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00270-LRH-CLB

HSH will dismiss the Dismissed Claims with prejudice against DOT, as applicable, and without costs or fees to or from any such Settling Party.

9. HSH agrees to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

8/18/2020

CONTINUED PARTICIPATION BY SETTLING PLAINTIFFS

10. If any Settling Party settles any other matter related to the Lawsuit (each, a "Future Settlement"), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys' fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

11. This Settlement Agreement shall only be valid if the current litigation pending in Case No. A-19-787004-B is settled in its totality and/or the litigation results in TRNVP098 retaining the conditional license granted to it in Lyon County. Should it be determined that TRNVP098 is not entitled to retain the conditional license granted to it in Lyon County, then this Settlement Agreement shall be declared null and void and all monies and other items shall be returned to the party from which they originated.

12. DOT and/or CCB agrees that the parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on the conditional license received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including but not limited to the Counties of Humboldt, Pershing, White Pine, Storey and Lander), DOT and/or CCB agrees to extend the deadline to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses owned by TRNVP098 in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

13. DOT and/or CCB further agrees to make a good faith effort to perform final inspections on an expedited time period -- within 5 business days of the request for inspection -- for the new locations of the Settling Parties.

REPRESENTATIONS AND WARRANTIES

14. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

15. TRNVP098 represents and warrants that it has full and complete control to assign the conditional license it was awarded and TRNVP098 shall indemnify, defend and hold HSH harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any entity claiming an ownership interest in the TRNVP098 conditional Lyon County license being transferred. TRNVP098 is not responsible for securing any ownership transfer approvals

8/18/2020

from the DOT or CCB for the Lyon County license TRNVP098 transfers hereunder. HSH will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

16. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

17. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

18. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

19. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit ("Global Settlement") consistent with this Agreement.

20. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

GENERAL PROVISIONS

21. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

22. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

8/18/2020

23. Mediation. If the event of a dispute among the Parties concerning this agreement, the Parties agree they shall attempt to resolve such dispute through mediation with a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

24. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns contingent upon the execution of a final Purchase Agreement between HSH and TRNVP098. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

25. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

26. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

27. Partial Invalidity. Except with respect to Paragraph 5, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

28. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

29. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Lyon County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of

8/18/2020

compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

30. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

32. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

33. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or" are used in the inclusive sense of "and/or".

[Signatures on following pages]

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

By: 

Print Name: Russell Ernst

Title: MANAGING PARTNER

TRNVP008, LLC

By: 

Print Name: Shane Terry

Title: Managing Member

STATE OF NEVADA,
DEPARTMENT OF TAXATION

By: 

Print Name: Melanie Young

Title: Executive Director

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

TRNVP098, LLC

By: 

By: _____

Print Name: Russell Ernst

Print Name: Shane Terry

Title: MANAGING PARTNER

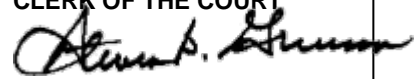
Title: Managing Member

STATE OF NEVADA,
DEPARTMENT OF TAXATION

By: _____

Print Name: _____

Title: _____



MRTX
PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 005254
pete@christiansenlaw.com
WHITNEY J. BARRETT, ESQ.
Nevada Bar No. 13662
wbarrett@christiansenlaw.com
CHRISTIANSEN TRIAL LAWYERS
710 S. 7th Street
Las Vegas, Nevada 89101
Telephone: (702) 240-7979
Facsimile: (866) 412-6992
Attorneys for Qualcan, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE: D.O.T. LITIGATION

Case No.: A-19-787004-B
Dept. No.: 31

Consolidated with:

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

HEARING REQUESTED

**MOTION TO RETAX AND SETTLE COSTS REGARDING
LONE MOUNTAIN PARTNERS, LLC**

Plaintiffs, MM DEVELOPMENT COMPANY, INC. D/B/A/ PLANET 13 (“MM”) and
LIVFREE WELLNESS, LLC D/B/A THE DISPENSARY (“LivFree”), by and through their
counsel of record, Will Kemp, Esq. and Nathanael R. Rulis, Esq., of the law firm of Kemp Jones,
LLP; and QUALCAN, LLC (“Qualcan”) by and through its counsel of undersigned counsel of
record, Peter Christiansen, Esq. and Whitney Barrett, Esq., of the law firm Christiansen Trial
Lawyers; and Plaintiff-in-Intervention NATURAL MEDICINE, L.L.C. (“Natural Medicine”) by
and through its counsel of record, Jeffery A. Bendavid Esq. and Stephanie J. Smith, Esq. of

AA2105



Bendavid Law, and Plaintiff NEVADA WELLNESS CENTER, LLC (“NWC”) by and through its counsel of record Theodore Parker, III, Esq. of Parker Nelson & Associates CHTD. (MM, Livfree, Qualcan, Natural Medicine, and NWC are collectively referred to herein as “Settling Plaintiffs”), hereby move this court to retax and settle the costs set forth in Defendant LONE MOUNTAIN PARTNERS, LLC (“LMP”) Memorandum of Costs filed August 9, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 12th of August, 2022.

KEMP JONES, LLP

/s/ Nathanael Rulis, Esq.
WILL KEMP, ESQ.
Nevada Bar No. 1205
NATHANAEL R. RULIS, ESQ.
Nevada Bar No. 11259
3800 Howard Hughes Pkwy.
17th Floor
Las Vegas, NV 89169
*Attorneys for MM Development Company
& LivFree Wellness, LLC*

BENDAVID LAW

/s/ Stephanie J. Smith, Esq.
JEFFERY A. BENDAVID, ESQ.
NV Bar No. 6620
STEPHANIE J. SMITH, ESQ.
NV Bar No. 11280
7301 Peak Dr., Suite 150
Las Vegas, NV 89128
Attorneys for Natural Medicine L.L.C

CHRISTIANSEN TRIAL LAWYERS

/s/ Whitney Barrett, Esq.
PETER CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
WHITNEY BARRETT, ESQ.
Nevada Bar No. 13662
710 S. 7th Street
Las Vegas, NV 89101
Attorneys for Qualcan LLC

**PARKER NELSON & ASSOCIATES,
CHTD.**

/s/ Theodore Parker, III, Esq.
THEODORE PARKER, III, ESQ.
NV Bar No. 4716
JENNIFER DELCARMEN, ESQ.
Nevada Bar No. 12727
2460 Professional Ct., Suite 200
Las Vegas, NV 89128
Attorneys for Nevada Wellness Center

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

LMP cannot recover the costs claimed in the Memorandum against the Settling Plaintiffs. Most notably LMP cannot recover costs because it was one of the settling defendant parties, and entered into an agreement not to seek any attorneys’ fees or costs against any of the parties to that agreement or against subsequent settling parties. Further, LMP cannot recover costs because it is neither a prevailing party in this action against the Settling Plaintiffs nor does LMP have a statutory right to recover its costs. Even if the Memorandum is considered, none of the claimed costs were reasonably, necessarily, and actually incurred as to the Settling Plaintiffs’ petitions for judicial review, or other phases. As a result, Settling Plaintiffs request that this Court award no costs to LMP from Settling Plaintiffs.

II. RELEVANT FACTUAL BACKGROUND.

A. The Proceedings and Settlement.

This matter was commenced on January 4, 2019. Even though several parties were named as defendants, they were added only to comply with statutory mandate. NRS 233B.130(2)(a); *Washoe Cnty. v. Otto*, 128 424 (2012). The primary and substantive causes of action were asserted against only the Nevada Department of Taxation (the “Department”). Namely, the causes of action for violation of substantive due process, violation of procedural due process, violation of equal protection, and petition for writ of mandamus were asserted exclusively against the Department.¹ Several Parties also intervened in subsequent months and years, with the final date to intervene occurring in February 2020, prior to the consolidation of all matters into the present above-captioned litigation.

Prior to the commencement of the trial phases in this matter, Settling Plaintiffs prevailed on several issues before the Court, including summary judgment that (i) the Department acted beyond the scope of its authority by replacing the requirement for a background check on

¹ Each Settling Plaintiff had their own claims, for instance, Natural Medicine asserted only declaratory relief, petition for judicial review and then writ claims, whereas NWC had equal protection and due process claims.

1 each prospective owner with the 5 percent or greater standard in NAC 453D.255(1)² and (ii) that
2 MM and LivFree’s appeals are to be heard arising from the denial of their licensure of their
3 applications in the September 2018 retail licensure application competition.³

4 The consolidated trial in these proceedings began on July 13, 2020. Importantly, the
5 proceedings were conducted in a series of three phases where only certain claims would be
6 examined and determined in each phase. The First Phase addressed only the petition for judicial
7 review (the “First Phase Claim”), the Second Phase addressed the equal protection, due process,
8 declaratory relief, and permanent injunction claims (the “Second Phase Claims”), and the Third
9 Phase would address writ of mandamus claims (the “Third Phase Claim”).⁴

10 During the Second Phase of the proceedings, the Settling Plaintiffs, except for Natural
11 Medicine settled with certain Defendants, including LMP.⁵ However, Natural Medicine entered
12 into a Future Settlement, and thereby became a Settling Party. The Second Phase concluded with
13 a decision issued by the Court on September 3, 2020.⁶ Therein, the Court granted declaratory
14 relief.⁷

17 ² See Order Regarding Plaintiff Nevada Wellness Center, LLC’s Motion for Summary
18 Judgment on First Claim for Relief (“Order Granting Summary Judgment”), at 6:4-8, dated
19 Aug. 15, 2020, on file herein. Natural Medicine’s joinder to this motion was filed on March 18,
20 2020.

21 ³ See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part
22 MM Development Company, Inc. and LivFree Wellness, LLC’s Motion for Summary
23 Judgment or for Writ of Mandamus (“FFCL re Summary Judgment”), at 3:10-14, dated July 11,
24 2020, on file herein.

25 ⁴ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
26 preceded the First Phase.

27 ⁵ Natural Medicine entered into a subsequent settlement agreement on August 17, 2020² which
28 was approved on August 27, 2020 by the NV Tax Commission.

⁶ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the
“Second Phase Judgment”). As noted therein, two additional Plaintiffs reached a settlement
with the Department and certain Defendants prior to the issuance of the Second Phase
Judgment. *Id.*

⁷ *Id.* at 29:3.

Before beginning the next phase (*i.e.*, the First Phase), the Court limited the evidence and record that could be considered for that phase to only the administrative record pursuant to the requirements of NRS 233B.135(1)(b).⁸ More specifically, the Court determined that evidence related to a claim for judicial review is to be restricted to the administrative record because it contains all relevant evidence that resulted in the Department’s analysis of the plaintiffs’ applications.⁹ The Court proceeded with and completed the First Phase thereafter. The Third Phase of trial has not yet occurred and is limited to specific parties with remaining Phase Three claims.

B. The Memorandum of Costs.

On August 9, 2022, LMP filed the Memorandum, approximately five days after the First Phase and Second Phase were certified.¹⁰ In the Memorandum, LMP impermissibly claims a total of \$71,431.72 in total costs that is comprised of: \$7,944.36 in various court filing fees; \$20,877.12 in deposition and transcript fees; \$331.11 in expert witness fees; \$26,504.36 in hearing and trial transcript fees; \$655.18 in photocopy fees; \$54.38 postage costs; and “other” expenses totaling \$15,065.21, including \$882.00 in parking fees; \$1,797.58 in relativity database fees; \$2,639.91 in mediation fees; \$8,287.72 in trial tech services fees; \$903.00 in remote conferencing fees; and \$555.00 in messenger service fees.¹¹

III. LEGAL STANDARD AND ARGUMENT.

A. Legal Standard.

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110

⁸ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the “First Phase Judgment”).

⁹ *Id.*

¹⁰ See First Phase Judgment and Second Phase Judgment, respectively.

¹¹ See LMP Mem. Of Costs, Aug. 9, 2022.

1 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly
2 exercised when considering whether or not to allow expenses not specifically allowed by statute
3 and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993).
4 Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support
5 for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.”
6 *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093
7 (2005).

8 In addition, the plain language of a statute governs the manner in which it is applied
9 according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118
10 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252
11 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170,
12 443 P.3d 1115, 1117 (2019).

13 **B. LMP Has Already Agreed Not to Seek Costs Against the Settling Plaintiffs**
14 **Pursuant to the July 28, 2020 Settlement Agreement.**

15 LMP signed a Settlement Agreement dated July 28, 2020, which was subsequently
16 approved by the Cannabis Control Board and signed by the State of Nevada Department of
17 Taxation (“DOT”). *See* Exhibit 1, attached hereto. This Settlement Agreement specifically
18 provides as follows:

19 The parties want to compromise and settle the Disputes in the Lawsuit by
20 dismissing the claims in the Lawsuit by and between the Settling Parties,
21 each Settling Party to bear its own costs and attorneys’ fees, and to exchange
22 mutual releases as provided in this Agreement

23 Ex. 1, Recital C, p. 1.

24 Additionally, the Settlement Agreement goes on to state the following:

25 If any Settling Party settles any other matter related to the Lawsuit (each, a
26 “Future Settlement”), every other Settling Party shall be included as released
27 parties in such Future Settlement on the same release terms and conditions
28 as set forth herein; provided, however, that any Settling Party receiving such
release shall bear its own costs and attorneys’ fees with respect thereto as
provided in this Agreement.

Ex. 1, ¶14, p. 5.

LivFree, MM, Qualcan, NWC and LMP were all signatories to the July 28, 2020 Settlement Agreement along with the DOT. Natural Medicine entered into a subsequent Settlement Agreement with the DOT, and which included terms in which Natural Medicine would contribute to some of the terms of the July 28, 2020 Settlement Agreement, thereby making it part of a Future Settlement. *See* Exhibit 2, attached hereto. By the plain language of the July 28, 2020 Settlement Agreement, LMP has agreed not to seek any costs or fees against the signatories to that settlement and any future settling parties, who agree to bear their own costs and fees. As such, there can be no costs awarded to LMP against the Settling Plaintiffs.

C. LMP Cannot Recover the Claimed Costs.

1. LMP is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Further, in addition to the fact that LMP has already waived its ability to seek fees and costs against Settling Plaintiffs, LMP cannot recover against the Settling Plaintiffs because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party* against any adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered.*” *See* NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

The Settling Plaintiffs’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Notwithstanding, the Court entered summary judgment in favor of the Settling Plaintiffs.¹² Consequently, the Second Phase Claims did not proceed to judgment in favor of LMP, and there is no court order declaring any party as the prevailing party as to those claims. Further, pursuant to NRS 18.020, LMP does not fall within any of the identified categories to recover its costs, and it also settled. *See* NRS 18.020. NRS 18.020, specifically states that costs to prevailing

¹² *See* Order Granting Summary Judgment; *see also* FFCL re Summary Judgment.

1 parties are awarded “against any adverse party against whom judgment is rendered...” Here there
2 is no judgment entered against any of the Settling Plaintiffs. Indeed, with no actual judgment
3 against Settling Plaintiffs for either the Second Phase Claims or the First Phase Claim. Indeed,
4 with no judgment against Settling Plaintiffs for either the Second Phase Claims or the First Phase
5 Claim, LMP simply cannot otherwise recover any claimed costs.

6 **D. The Claimed Costs are not Reasonable and Necessary.**

7 LMP cannot recover any of the claimed costs because they were not reasonably,
8 necessarily, and actually incurred as part of the First Phase Claim. Following the mandate of
9 NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase to include
10 only the administrative record.¹³ This necessarily excluded from the record all court filings,
11 computerized services and electronic research, photocopies, deposition and transcripts,
12 documents delivered by runner, witness testimony, trial exhibits, trial transcripts, and any trial
13 administrative services; which comprise all of LMP’s claimed costs. Indeed, the record consisted
14 of only the plaintiffs’ applications and related information that was before the Department when
15 it evaluated the applicants and awarded the licenses.

16 Because the record for the First Phase Claim was restricted and did not include any of the
17 evidence related to LMP’s claimed costs, the claimed costs were not reasonably, necessarily, and
18 actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary, and
19 actually incurred for the First Phase Claim, they cannot be recovered in connection with the First
20 Phase Judgment.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 _____

28 ¹³ See First Phase Judgment, at 11:4-9.

IV. CONCLUSION.

Based on the foregoing, Settling Plaintiffs respectfully request that this Court grant this Motion to Retax and Settle Costs in its entirety and award LMP no costs.

DATED this 12th day of August, 2022.

KEMP JONES, LLP

/s/ Nathanael Rulis, Esq.
WILL KEMP, ESQ.
Nevada Bar No. 1205
NATHANAEL R. RULIS, ESQ.
Nevada Bar No. 11259
3800 Howard Hughes Pkwy.
17th Floor
Las Vegas, NV 89169
*Attorneys for MM Development Company
& LivFree Wellness, LLC*

BENDAVID LAW

/s/ Stephanie J. Smith, Esq.
JEFFERY A. BENDAVID, ESQ.
NV Bar No. 6620
STEPHANIE J. SMITH, ESQ.
NV Bar No. 11280
7301 Peak Dr., Suite 150
Las Vegas, NV 89128
Attorneys for Natural Medicine L.L.C

CHRISTIANSEN TRIAL LAWYERS

/s/ Whitney Barrett, Esq.
PETER CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
WHITNEY BARRETT, ESQ.
Nevada Bar No. 13662
710 S. 7th Street
Las Vegas, NV 89101
Attorneys for Qualcan LLC

**PARKER NELSON & ASSOCIATES,
CHTD.**

/s/ Theodore Parker, III, Esq.
THEODORE PARKER, III, ESQ.
NV Bar No. 4716
JENNIFER DELCARMEN, ESQ.
Nevada Bar No. 12727
2460 Professional Ct., Suite 200
Las Vegas, NV 89128
Attorneys for Nevada Wellness Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Ramos Law and pursuant to NRCP 5(B), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, and that on this 12th day of August, 2022, I caused a true and correct copy of the foregoing ***MOTION TO RETAX AND SETTLE COSTS REGARDING LONE MOUNTAIN PARTNERS, LLC*** on all parties currently on the electronic service list by EFC: electronic filing with the Court delivering the document listed above via E-file & E-serve (Odyssey) filing system.



An employee of Christiansen Trial Lawyers

Exhibit “1”

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of July __, 2020 (the “Effective Date”) (this “Agreement”), among LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”), MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”); Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan, LLC, a Nevada limited liability company (“Qualcan”) (collectively, “Settling Plaintiffs” or individually, a “Settling Plaintiff”); Lone Mountain Partners, LLC, a Nevada limited liability company (“Lone Mountain”); Nevada Organic Remedies, LLC, a Nevada limited liability company (“NOR”); Greenmart of Nevada NLV, LLC, a Nevada limited liability company (“GreenMart”); Helping Hands Wellness Center, Inc., a Nevada corporation (“Helping Hands”); CPCM Holdings, LLC, a Nevada limited liability company, Cheyenne Medical, LLC, a Nevada limited liability company, and Commerce Park Medical, LLC, a Nevada limited liability company (collectively “Thrive”); and the State of Nevada, Department of Taxation (“DOT”) (collectively “Settling Defendants” or individually, a “Settling Defendant”).

RECITALS

- A. LivFree, MM, ETW Plaintiffs, NWC, Qualcan, Lone Mountain, NOR, GreenMart, Helping Hands, Thrive, and the DOT (collectively the “Settling Parties” and individually, a “Settling Party”) are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the “Lawsuit”).
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the “Disputes”).
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys’ fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFERS AND ISSUANCES OF LICENSES

1. The Settling Defendants hereby assign (subject to DOT and/or Cannabis Compliance Board (“CCB”) approval) all rights, interest and title in the various Nevada retail marijuana dispensary conditional licenses (the “Conditionally Approved Licenses”) to other entities as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 5-8 hereof, shall first be fulfilled:

- Lone Mountain hereby assigns 1 City of Las Vegas conditional license to Qualcan;
- Lone Mountain hereby assigns 1 Washoe County – City of Reno conditional license, 1 Lincoln County conditional license, 1 Esmerelda conditional license, and 1 Eureka County conditional license to ETW Plaintiffs;

- Helping Hands hereby assigns 1 Unincorporated Clark County conditional license to LivFree;
- NOR hereby assigns 1 Unincorporated Clark County conditional license to MM;
- NOR hereby assigns 1 Carson City conditional license to Qualcan;
- GreenMart hereby assigns 1 Unincorporated Clark County conditional license to NWC;
- Thrive hereby assigns 1 Clark County – City of Henderson conditional license (RD266) to ETW Management or a related-entity designee; and
- Lone Mountain hereby assigns 1 Douglas County conditional license to Thrive¹.

2. LivFree Henderson. To fully resolve the potential MM and LivFree appeals, the DOT and/or CCB agrees to issue a conditional Henderson license to LivFree and LivFree agrees that it will hold such license in abeyance (the “Limited Henderson License”) until such time as both of the following two conditions are satisfied and provided that no Settling Party has exercised the “put option” described below: (1) the Henderson moratorium and/or restriction on the opening of additional adult-use cannabis establishments (the “Henderson Moratorium”) is lifted; AND (2) the issuance of a final inspection certificate for this Henderson license does not require the DOT and/or CCB to exceed the current cap for Clark County licenses (presently 80 licenses) or any adjusted cap for Clark County licenses. Nothing herein shall be construed to excuse or eliminate any and all requirements or duties that LivFree is or maybe required to fulfill under state or local law pertaining to the Henderson conditional license in the event that conditions precedent 1 and 2 are fulfilled. Nothing in this Paragraph 2 shall prevent any Settling Parties issued conditional licenses in the City of Henderson from perfecting those conditional licenses if the Henderson Moratorium is lifted.

LivFree expressly does not commit to undertake any efforts to eliminate the existing Henderson Moratorium and, in fact, expressly reserves the right to undertake lobbying efforts to preserve any Henderson Moratorium, provided, however, that LivFree shall not seek any legal action to prevent the Henderson Moratorium from being lifted or seeking its continuance. Further, LivFree shall not engage in any tortious interference with any Settling Parties’ ability to perfect any Henderson license and/or to receive the issuance of a final inspection certificate from both the City of Henderson and the State of Nevada (CCB). LivFree agrees that the existing Henderson Moratorium applies to the Henderson conditional license issued to LivFree hereunder (but does not apply to LivFree’s existing operational Henderson dispensary license). To assist the DOT and/or CCB in reducing any potential issues with the current cap for Clark County licenses, LivFree agrees that, for a period of 5 years (the “Option Period”) following execution of this Agreement, it will pay \$250,000, or any other price on which the parties are able to agree, to purchase one Henderson conditional licenses. No such Settling Defendant shall have any obligation whatsoever to sell LivFree any such Henderson conditional licenses and nothing in this Agreement should be construed as any indication that the DOT and/or CCB is suggesting that any Settling Defendant should exercise this “put option.” However, LivFree agrees that any Settling Defendant, at their respective option (not obligation) and in their sole and unfettered discretion,

¹ Lone Mountain agrees that, subject to agreement to final terms by all parties to the Lawsuit, it will contribute its remaining Lander County, Mineral County, and White Pine County conditional licenses to a Global Settlement.

shall have a “put option” to sell to LivFree, and LivFree shall have the obligation to purchase, one such license from any Settling Defendant, whichever decides to exercise the option first (if at all), for \$250,000, or any other price on which the parties are able to agree, during the Option Period.

Nothing in this Paragraph 2 shall be construed to (a) prevent or limit any Settling Defendant’s ability to operate the conditional Henderson licenses during the Option Period, (b) prevent or limit any Settling Defendant’s ability to sell, assign, or otherwise transfer any Henderson conditional licenses during the Option Period to any other party at any time and upon any such terms as such Settling Defendant may agree, and (c) apply to any other licenses held by any affiliate of any Settling Defendant. Further, LivFree and DOT and/or CCB agree that the grant of any “put option” pursuant to this Paragraph 2 shall not constitute the creation of an “interest” (ownership or otherwise) in the Henderson conditional licenses for LivFree.

If LivFree acquires one of the conditional licenses through the exercise of the “put option”, LivFree agrees that it will surrender either the Limited Henderson License or the license acquired through the “put option” (at LivFree’s discretion to determine which of those options it will choose) to allow the DOT and/or CCB to reduce the existing or any future cap on total Clark County licenses. In no event shall LivFree have two additional Henderson conditional licenses by getting one directly or indirectly through this settlement (or any further settlement of the Lawsuit) and another through an exercise of the “put option”, in addition to the already existing LivFree Henderson license.

In the event that the pre-condition of lifting the Henderson moratorium occurs and LivFree is not able to exercise in good faith the “put option”, LivFree agrees to remain solely responsible for any and all local government and county approvals necessary for the CCB to reallocate a license which was not applied for during the September 2018 retail marijuana store competition.

3. All licensees described in this Agreement must be in good standing.
4. No license transfer pursuant to this Agreement can create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

DISSOLUTION OF BOND AND INJUNCTION

5. As a condition and term of this settlement, within 2 business days of the execution of this Agreement by all Parties, Settling Plaintiffs shall file a motion for a return of the cash bond that they have posted and seek an order shortening time. Contemporaneously, Settling Plaintiffs will withdraw the pending Motion for Case Terminating Sanctions filed against the DOT seeking to strike its Answer to the Lawsuit.
6. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process GreenMart’s previously submitted Change of Ownership request for transfer of interests and/or ownership (“CHOW”) .
7. As a condition and term of this settlement, DOT will notify the Court and will file an appropriate Motion on OST in the Lawsuit informing the Court that it has determined that Lone Mountain, NOR, GreenMart, and Helping Hands (each, a “Tier 3 Party”) have satisfied the DOT that each such Settling Defendant provided the information necessary in their respective applications to allow the DOT and/or CCB to conduct all necessary background checks and related actions and that Lone Mountain, NOR, GreenMart, and Helping Hands are being reassigned to Tier 2 status in the Lawsuit for purposes of the Preliminary Injunction or any other injunction that may be issued in the Lawsuit or any related proceedings. The Motion to be filed by DOT will

indicate the DOT's approval of the applications of the previously designated Tier 3 Defendant Intervenor and that final inspections may be completed for any establishments owned by Lone Mountain, NOR, GreenMart, and Helping Hands. All Parties will join in the DOT's Motion. The reassignment of the settling Tier 3 parties into Tier 2, is a material condition of this Agreement and a material condition and requirement for the assignments contained in Paragraph 1. In the event that a Tier 3 Party is prevented or precluded reassignment to Tier 2 or otherwise remains enjoined from perfecting its conditional licenses for any reason, whether by a court, another party to the Lawsuit, any third party, or otherwise, the assignments of conditional licenses identified in Paragraph 1 shall be void and of no effect, with title to the licenses identified in Paragraph 1 to remain with the transferring party and this Agreement shall be terminated without any further force or effect. In such instance, the DOT and/or CCB (or successor entity, as appropriate) and the proposed assignee shall perform all actions and execute all documents to ensure that such licenses remain with the affected transferring party.

TIMING OF TRANSFERS

8. As a condition and term of this settlement, after the conditions precedent in Paragraphs 5-7 are met, the CCB agrees to make a good faith effort to expedite any and all CHOW requests for the transfer of licenses from existing licensee to another existing licensee as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process all CHOWs after submission thereof. For purposes of approving the transfers, LivFree, MM, ETW Plaintiffs, NWC, Qualcan, and Thrive were previously and are currently approved by the DOT as owners and operators of medical and retail marijuana dispensary licenses in the state of Nevada. In compliance with NRS/NAC 453D, these parties have operated retail marijuana dispensaries without any suspensions or revocations of those licenses. Any delays in approvals of the CHOWs due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

9. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 are met, the parties will execute mutual releases in the form attached hereto as Exhibit B, with each party to bear its own costs and attorneys' fees.

10. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 are met, Settling Plaintiffs shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. MM Development/LivFree action (Case No. A-18-785818-W);²
- b. In Re: DOT Litigation (A-19-787004-B);
- c. Nevada Wellness Center action (A-19-787540-W);³
- d. Qualcan action (A-19-801416-B).

Settling Plaintiffs will dismiss the Dismissed Claims with prejudice against each Settling Party hereto, as applicable, and without costs or fees to or from any such Settling Party, Settling

² However, MM will not dismiss its counterclaims against D.H. Flamingo in the associated cases.

³ NWC's claims against Defendant Jorge Pupo will remain and not be dismissed as a result of this settlement.

Defendants reserve their rights to seek fees and costs from any Non-Settling Plaintiff (as defined below) in the Lawsuit.

11. LivFree/MM agree to stipulate with the DOT to dismiss the pending writ petition regarding the cell phone of Rino Tenorio (Supreme Court Case No. 79825).

12. MM Development, Nevada Wellness Center, and Liv Free agree to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

CONTINUED PARTICIPATION BY SETTTLING PLAINTIFFS

13. Further, upon the execution of this Agreement, the Settling Plaintiffs will file a Motion to Intervene as Defendants/Intervenors in the Lawsuit and participate in the Lawsuit in good faith and shall use best efforts to defend against the Lawsuit.

14. If any Settling Party settles any other matter related to the Lawsuit (each, a “Future Settlement”), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys’ fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

15. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process:

- a. a CHOW to be filed by Helping Hands;
- b. any CHOW submitted by NOR with respect to its licenses as the expedited handling of such CHOW requests may be necessary under the pending Companies’ Creditors’ Arrangement Act proceeding involving NOR’s parent company;
- c. a CHOW to be submitted by Lone Mountain; and
- d. any CHOW to be submitted by MM with respect to the transfer of cultivation and production licenses (medical and recreational) from West Coast Development Nevada, LLC.

16. DOT and/or CCB further agrees to perform final inspections on an expedited time period – within 5 business days of the request for inspection – for the new locations for the conditional licenses for the NOR proposed dispensary in Reno, NV and the MM proposed dispensary in Unincorporated Clark County, and any and all of Thrive’s conditional licenses to be designated by Thrive.

17. DOT and/or CCB agrees to, in good faith, expedite the processing of Thrive’s pending Change of Location Request for its Unincorporated Clark County license (RD263).

18. DOT and/or CCB agrees that all parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including

but not limited to the City of Henderson, Douglas County, and the City of Reno), DOT and/or CCB agrees to extend the deadline for any Settling Party to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

19. LivFree agrees to reimburse Helping Hands for its expenses, through January 31, 2020 totaling \$890,000, related to building out the designated location at 8605 S. Eastern Ave., Las Vegas, NV 89123 for the Unincorporated Clark County license. Payment of the \$890,000 by LivFree is contingent upon approval of a special use permit ("SUP") for this location by the Clark County Commission and will be made no later than 10 business days after final approval of the SUP. LivFree will submit the application for the SUP in good faith no later than forty-five (45) days following the Effective Date or 45 days after the conclusion of trial, whichever is later. Helping Hands makes no representations or warranties regarding the SUP for the Eastern location. If Clark County does not approve the SUP for such location on or before March 31, 2021, LivFree may request a SUP at a different location and would not be required to pay Helping Hands \$890,000.

20. LivFree agrees to assume the lease, attached hereto as Exhibit A, for the premises located at 8605 S. Eastern Ave., Las Vegas, NV 89123 upon receipt of an estoppel certificate executed by the landlord. Assumption of the lease by LivFree is contingent upon approval of a SUP for this location by the Clark County Commission and will be made no later than 10 business days after final approval of the SUP. Helping Hands will remain liable for lease payments until LivFree assumes the lease and LivFree will have no liability on the lease if the SUP is not approved.

21. LivFree agrees to pay to Thrive the amount of \$400,000 and Helping Hands agrees to pay to Thrive the amount of \$100,000 upon approval of the transfer of the Thrive conditional license as set forth in paragraph 1 of this Agreement. LivFree and Helping Hands agree to cooperate with Thrive to report the payment set out in this Paragraph in the most tax-advantaged way to Thrive and its affiliates.

REPRESENTATIONS AND WARRANTIES

22. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

23. Lone Mountain represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes and Lone Mountain shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Lone Mountain conditional licenses being transferred for only up to the time when the license transfer is completed. Lone Mountain is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license Lone Mountain transfers hereunder. The designated assignee of the Lone Mountain conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by Lone Mountain). Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

24. NOR represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes or any persons claiming to have an interest in the conditional license being transferred and NOR shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any person or entity claiming an ownership interest in any of the NOR conditional licenses. NOR is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license NOR transfers hereunder. The designated plaintiff assignee of any NOR conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by NOR). NOR represents and warrants that any pending legal proceedings involving its Parent Company in Canada do not affect its ability to transfer the above licenses. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

25. GreenMart represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes and GreenMart shall indemnify, defend and hold the Settling Party to which GreenMart's Clark County license is transferred hereunder (i.e, NWC) harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Greenmart conditional licenses being transferred for only up to the time when the license transfer is completed. GreenMart is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license GreenMart transfers hereunder. The designated plaintiff assignee of the GreenMart conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by GreenMart). Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

26. Helping Hands represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes or any persons claiming to have an interest in the conditional license being transferred and Helping Hands shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any person or entity claiming an ownership interest in any of the Helping Hands conditional licenses. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

27. Thrive represents and warrants that it has full and complete control to assign the conditional license it was awarded, that there are no ownership disputes and Thrive shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Thrive conditional license being transferred for only up to the time when the license transfer is completed. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

28. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

29. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

30. The CCB agrees to recommend an industry funded study to the Cannabis Advisory Commission, a duly authorized public body pursuant to NRS 678A.300 and NRS 678A.310, to gather information and make recommendations to the CCB on the following matters: (1) what are reasonable additional actions, if any, can be taken to deter black-market sales; (2) analysis of adequacy of number and commercial need for additional marijuana licenses, if any, to serve the citizens of Nevada, including consideration of minority access to licensure, (3) recommendations of changes, if any, relating to state and local fees and taxation of the marijuana industry, and (4) analysis of adequacy of safeguards to protect minors.

31. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

32. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit (“Global Settlement”) consistent with this Agreement.

33. Non-Transferability. For a period of 2 years from July 1, 2020, no license transferred to a Settling Plaintiff herein may be transferred to any entity without prior written approval of the party giving up the designated license in this Agreement. This prohibition on transfers shall not apply to good faith corporate mergers, buyouts and/or acquisitions, which shall not be utilized for purposes of circumventing this paragraph. For this same period of time, LivFree and MM or related entities will not obtain ownership of any GreenMart licenses transferred herein. This non-transferability provision shall not be circumvented by, including but not limited to, any consulting, management or licensing/IP agreement, or by other means. Specifically excepted from this prohibition is a transfer from a Settling Party to an additional plaintiff in the Lawsuit (“a Non-settling Plaintiff”) provided that any such transfer is only utilized towards a global or more inclusive resolution of the Lawsuit (e.g., a transfer of a rural license from an ETW Plaintiff to a Non-settling plaintiffs such as Rural Remedies if Rural Remedies and NWC give complete releases approved by the State), subject to the consent of the Settling Defendant who transferred the license pursuant to this Agreement , which shall not be unreasonably withheld.

34. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

Despite the assignment of rural county licenses to certain Settling Parties, all parties hereto expressly reserve their right to vigorously oppose any legislative action regarding the relocation of such licenses to different jurisdictions. MM, LivFree, Qualcan, Thrive, and others have

expressly informed the Settling Parties that they are vehemently opposed to any such transfer. In the event of such transfer, MM, LivFree, Qualcan, Thrive and others expressly reserve their rights to file a declaratory relief action to prevent such relocation and/or seek other appropriate legal remedies.

35. Location of Adult-Use Establishments. The Parties agree that the physical address of any adult-use cannabis establishment utilizing any of the conditional licenses transferred pursuant to Paragraph 1 of this Agreement may not be within 1,500 feet of any adult-use cannabis establishment that existed as of the Effective Date of this Agreement. Nothing in this paragraph applies to any other licenses held by any parties or any entity that already has a special use permit.

GENERAL PROVISIONS

36. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

37. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

38. Mediation. If any of the Parties breaches or terminates this Agreement but one of the other Parties disputes the basis for that breach or termination, the Parties agree that in the first instance, they shall attempt to resolve such dispute through mediation with the Honorable Jennifer Togliatti (Retired) at Advanced Resolution Management (“ARM”) (or, if she is not available, a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

39. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

40. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

41. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

42. Partial Invalidity. Except with respect to Paragraph 7, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

43. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

44. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Clark County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

45. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

46. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

47. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

48. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or"

7/28/2020

are used in the inclusive sense of “and/or”.

[Signatures on following pages]


7/27/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.


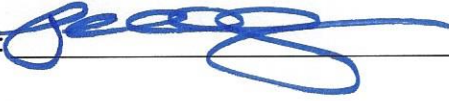
<p>LIVFREE WELLNESS, LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Will Kemp</u></p> <p>Title: <u>Attorney-In-Fact</u></p>	<p>MM DEVELOPMENT COMPANY, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ETW MANAGEMENT GROUP LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>	<p>GLOBAL HARMONY LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>
<p>ZION GARDENS LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>	<p>JUST QUALITY LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>
<p>LIBRA WELLNESS CENTER, LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>	<p>ROMBOUGH REAL ESTATE, INC.</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>

7/27/2020


IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

<p>LIVFREE WELLNESS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>MM DEVELOPMENT COMPANY, INC.</p> <p>By:  _____</p> <p>Print Name: Leighton Koehler</p> <p>Title: General Counsel</p>
<p>ETW MANAGEMENT GROUP LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>GLOBAL HARMONY LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ZION GARDENS LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>JUST QUALITY, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LIBRA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>ROMBOUGH REAL ESTATE, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

7/27/2020

NEVADA WELLNESS CENTER, LLC By: <u></u> Print Name: <u>Theodore Pantaleo</u> Title: <u>ATTY</u>	QUALCAN, LLC By: <u></u> Print Name: <u>Peter S. Christensen</u> Title: <u>Attorney</u>
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____


7/28/2020

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>QUALCAN, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____ </p> <p>Print Name: <u>George Archos</u></p> <p>Title: <u>Manager</u></p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

7/27/2020

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: <u>Raymond C. Whitaker III</u> Print Name: <u>Raymond C. Whitaker III</u> Title: <u>Authorized Person</u>
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

7/27/2020

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By:  _____ Print Name: Elizabeth Stavola Title: Manager	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

7/27/2020

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: <u>Mares J</u> Print Name: <u>Kearis Turtogian</u> Title: <u>PRESIDENT</u>
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

7/28/2020

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By:  _____ Print Name: _____ Title: _____

STATE OF NEVADA, DEPARTMENT OF
TAXATIONBy: Melanie YPrint Name: Melanie YoungTitle: Executive Director

Exhibit A

PAGE INTENTIONALLY LEFT BLANK

Exhibit A contains confidential lease terms for
Helping Hands/LivFree Unincorporated Clark
County Location*

* Confidential terms will be disclosed to Cannabis Compliance Board to the extent the CCB requires.

Exhibit B

Mutual Release

This Mutual Release (the “Release”) is entered into as _____, 2020 (the “Effective Date”), among LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”), MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”); Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan, LLC, a Nevada limited liability company (“Qualcan”) (collectively, “Settling Plaintiffs” or individually, a “Settling Plaintiff”); Lone Mountain Partners, LLC, a Nevada limited liability company (“Lone Mountain”); Nevada Organic Remedies, LLC, a Nevada limited liability company (“NOR”); Greenmart of Nevada NLV, LLC, a Nevada limited liability company (“GreenMart”); Helping Hands Wellness Center, Inc., a Nevada corporation (“Helping Hands”); CPCM Holdings, LLC, a Nevada limited liability company, Cheyenne Medical, LLC, a Nevada limited liability company, and Commerce Park Medical, LLC, a Nevada limited liability company (collectively “Thrive”); and the State of Nevada, Department of Taxation (“DOT”) (collectively “Settling Defendants” or individually, a “Settling Defendant”).

WHEREAS, the Settling Plaintiffs and the Settling Defendants (each individually, a “Party” and collectively, the “Parties”) entered that certain Settlement Agreement entered into as of July __, 2020 (the “Settlement Agreement”); and

WHEREAS, the Parties desire to execute this Release in accordance with the terms and conditions of this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Company and Vendor hereby agree as follows:

1. Except for such rights, claims or obligations as may be created by the Settlement Agreement, LivFree, MM, ETW Plaintiffs, NWC, and Qualcan, forever, fully and unconditionally release and discharge:

Lone Mountain, NOR, Greenmart, Helping Hands, Thrive and the DOT, their past, present, and future subsidiaries, parents, affiliates, partners, joint venturers, heirs, successors, assigns, contractors, subcontractors, officers, directors, shareholders, members, managers, employees, accountants, agents, representatives, attorneys, insurers, successors and assigns (in their individual and representative capacities),

from any and all claims, demands, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, liens, costs, expenses, attorneys’ fees, indemnities, subrogations (contractual or equitable) or duties, of any nature, character or description whatsoever, whether known or unknown, at law or in equity, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, asserted or unasserted,

arising out of or related to, directly or indirectly, the Lawsuit and the Disputes, as defined in the corresponding Settlement Agreement.

2. Except for such rights, claims or obligations as may be created by the Settlement Agreement, Lone Mountain, NOR, Greenmart, Helping Hands, Thrive and the DOT, forever, fully and unconditionally releases and discharges:

LivFree, MM, ETW Plaintiffs, NWC, and Qualcan, their past, present, and future subsidiaries, parents, affiliates, partners, joint venturers, heirs, successors, assigns, contractors, subcontractors, officers, directors, shareholders, members, managers, employees, accountants, agents, representatives, attorneys, insurers, successors and assigns (in their individual and representative capacities),

from any and all claims, demands, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, liens, costs, expenses, attorneys' fees, indemnities, subrogations (contractual or equitable) or duties, of any nature, character or description whatsoever, whether known or unknown, at law or in equity, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, asserted or unasserted,

arising out of or related to, directly or indirectly, the Lawsuit and the Disputes, as defined in the corresponding Settlement Agreement.

3. Each Party jointly and severally acknowledges that they may later discover material facts in addition to, or different from, those which they now know, suspect or believe to be true with respect to the Disputes, the Lawsuit or the negotiation, execution or performance of this Agreement. Each party further acknowledges that there may be future events, circumstances or occurrences materially different from those they know or believe likely to occur. It is the intention of the parties to fully, finally and forever settle and release all claims and differences relating to the Disputes or the Lawsuit. The releases provided in this Agreement shall remain in full force and effect notwithstanding the discovery or existence of any such additional or different facts or occurrence of any such future events, circumstances or conditions.
4. Each Party affirms that it has not filed with any governmental agency or court any type of action or report against any of the other Party other than the Lawsuit, and currently knows of no existing act or omission by any other Party that may constitute a claim or liability excluded from the releases set forth herein.
5. Effect of Release. In the event of any inconsistencies between this Release and the Settlement Agreement, the terms of this Release shall govern and control. Except as provided for herein, all other terms and conditions of the Settlement Agreement shall remain unchanged and the parties hereby reaffirm the terms and conditions of the Settlement Agreement. This Release may only be varied by a document, in writing, of even or subsequent date hereof, executed by the parties hereto.

6. Counterparts. This Release may be executed in any number of counterparts, whether by original, copy, email or telecopy signature, each of which, when executed and delivered, will be deemed an original, but all of which together will constitute one binding agreement and instrument
7. Paragraphs 35 through 47 of the Settlement Agreement are hereby incorporated as if fully set forth herein and govern the interpretation of this Release.

[Signature Page Follows]

LIVFREE WELLNESS, LLC By: _____ Print Name: _____ Title: _____	MM DEVELOPMENT COMPANY, INC. By: _____ Print Name: _____ Title: _____
ETW MANAGEMENT GROUP LLC By: _____ Print Name: _____ Title: _____	GLOBAL HARMONY LLC By: _____ Print Name: _____ Title: _____
ZION GARDENS LLC By: _____ Print Name: _____ Title: _____	JUST QUALITY, LLC By: _____ Print Name: _____ Title: _____
LIBRA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	ROMBOUGH REAL ESTATE, INC. By: _____ Print Name: _____ Title: _____

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

STATE OF NEVADA, DEPARTMENT OF
TAXATION

By: _____

Print Name: _____

Title: _____

Exhibit “2”

8/17/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August __, 2020 (the "Effective Date") (this "Agreement"), among Natural Medicine, LLC ("Natural Medicine") and the State of Nevada, Department of Taxation ("DOT").

RECITALS

- A. Natural Medicine and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

RELEASES AND DISMISSALS

- 1. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 of the July 28, 2020 Settlement Agreement signed by the DOT and other parties to the Lawsuit are met, the Settling Parties will execute mutual releases in the form attached hereto as Exhibit A. Non-settling parties are not intended to benefit from the mutual releases in this or any subsequent litigation.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

- 2. Natural Medicine agrees to pay \$100,000 towards the Paragraph 21 obligation of the July 28, 2020 Settlement Agreement signed by the DOT and other parties to the Lawsuit. Natural Medicine agrees to make its payments to LivFree in four equal quarterly installments over the year following execution of this Agreement.
- 3. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process Natural Medicine's previously submitted transfer of ownership application with Medifarm, LLC.

REPRESENTATIONS AND WARRANTIES

- 4. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

8/17/2020

5. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.


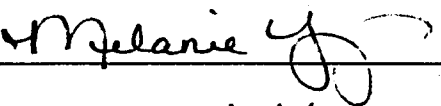
OTHER TERMS

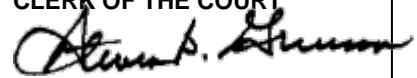
6. Paragraphs 29-42 of the July 28, 2020 Settlement Agreement signed by the DOT and other parties to the Lawsuit are hereby incorporated in to this Agreement as though set forth herein and the Parties agree to be bound by those same provisions.

[Signatures on following pages]

8/17/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

NATURAL MEDICINE, LLC	STATE OF NEVADA, DEPARTMENT OF TAXATION
By: 	By: 
Print Name: _____	Print Name: <u>Melanie Young</u>
Title: _____	Title: <u>Executive Director</u>



JOIN

AMY L. SUGDEN, ESQ.

Amy L. Sugden, Bar No. 9983

9728 Gilespe St.

Las Vegas, Nevada 89183

amy@sugdenlaw.com

Telephone: (702) 625-3605

Attorney for Plaintiff THC Nevada, LLC

SIGAL CHATTAH, ESQ.

Nevada Bar No. 8264

CHATTAH LAW GROUP

5875 S. Rainbow Blvd #203

Las Vegas NV 89118

Tel: (702) 360-6200

Fax (702) 643-6292

Chattahlaw@gmail.com

Attorney for Plaintiff Herbal Choice, Inc.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

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

)
) Dept. No: XI

)
) CONSOLIDATED WITH:

) A-18-785818-W

) A-18-786357-W

) A-19-786962-B

) A-19-787035-C

) A-19-787540-W

) A-19-787726-C

) A-19-801416-B

)

**THC NEVADA, LLC AND HERBAL CHOICE, INC.'S JOINDER
TO MOTIONS TO RETAX AND SETTLE COSTS**

1
2 **THC NEVADA, LLC AND HERBAL CHOICE, INC.'S JOINDER**
3 **TO MOTIONS TO RETAX AND SETTLE COSTS**

4 COME NOW, THC NEVADA, LLC ("THC NV"), by and through its counsel, Amy L.
5 Sugden, and HERBAL CHOICE, INC. ("Herbal Choice") by and through its Counsel, SIGAL
6 CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby joins the following Motions to Retax
7 and Settle Costs:
8

- 9 (1) High Sierra Holistics LLC's Motion to Retax and Settle Costs (**Doc. #2913**) (re:
10 Memorandum of Costs filed August 8, 2022, by PCM Holdings, LLC d/b/a Thrive
11 Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC);
12 (2) High Sierra Holistics LLC's Motion to Retax and Settle Costs (**Doc. #2914**) (re:
13 Memorandum of Costs filed August 8, 2022, by Deep Roots Harvest Inc.);
14 (3) High Sierra Holistics LLC's Motion to Retax and Settle Costs (**Doc. #2915**) (Memorandum
15 of Costs filed August 8, 2022, by Clear River LLC);
16 (4) TGIG Plaintiffs' Motion to Retax and Settle Costs (re: *Clear River LLC's*
17 *Memorandum of Costs* filed on August 9, 2022) (**Doc. #2916**);
18 (5) TGIG Plaintiffs' Motion to Retax and Settle Costs (re: the *Verified Memorandum of Costs*
19 *and Disbursements* filed on August 8, 2022, by CPCM Holdings, LLC d/b/a Thrive
20 Cannabis Marketplace, Cheyenne Medical, Inc., and Commerce Park Medical, LLC)
21 (**Doc. #2917**);
22 (6) TGIG Plaintiffs' Motion to Retax and Settle Costs (re the *Verified Memorandum of Costs*
23 filed by Deep Roots Harvest, Inc. on August 8, 2022) (**Doc. #2918**);
24
25
26
27
28

- 1 (7) TGIG Plaintiffs’ Motion to Retax and Settle Costs (re: *Lone Mountain Partners LLC’s*
2 *Memorandum of Costs Pursuant to NRS 18110* filed on August 9, 2022) (**Doc. #2919**);
- 3 (8) TGIG Plaintiffs’ Motion to Retax and Settle Costs (re: Nevada Organic Remedies, LLC’s
4 Memorandum of Costs filed on August 9, 2022) (**Doc. #2920**);
- 5 (9) TGIG Plaintiffs’ Motion to Retax and Settle Costs (re: *Memorandum of Cost and*
6 *Disbursements of Wellness Connection of Nevada, LLC* filed on August 9, 2022) (**Doc. #**
7 **2921**);
- 8 (10) MM Development Company, Inc. d/b/a Planet 13, LivFree Wellness, LLC d/b/a the
9 Dispensary, Qualcan, LLC, Natural Medicine, L.L.C., and Nevada Wellness Center, LLC’s
10 Motion to Retax and Settle Costs Regarding Deep Roots Harvest, Inc.’s Memorandum of
11 Costs (**Doc. #2922**);
- 12 (11) MM Development Company, Inc. d/b/a Planet 13, LivFree Wellness, LLC d/b/a the
13 Dispensary, Qualcan, LLC, Natural Medicine, L.L.C., and Nevada Wellness Center, LLC’s
14 Motion to Retax and Settle Costs Regarding Clear River LLC’s Memorandum of Costs
15 (**Doc. #2923**);
- 16 (12) MM Development Company, Inc. d/b/a Planet 13, LivFree Wellness, LLC d/b/a the
17 Dispensary, Qualcan, LLC, Natural Medicine, L.L.C., and Nevada Wellness Center, LLC’s
18 Motion to Retax and Settle Costs Regarding CPCM Holding, LLC d/b/a Thrive Cannabis
19 Marketplace, Cheyenne Medical LLC, and Commerce Park Medical LLC (**Doc.**
20 **#2924**); and
- 21 (13) Green Leaf Farms Holdings LLC, Green Therapeutics LLC, NevCann LLC and Red
22 Earth LLC's Joinder to Motions to Retax and Settle Costs (**Doc. #2927**) (collectively
23 “Motions to Retax”).
24
25
26
27
28

1 THC NV and HERBAL CHOICE, INC. hereby join, in full, the evidence and legal arguments
2 in the Motions to Retax. THC NV and HERBAL CHOICE, INC. hereby incorporates by reference the
3 arguments and evidence set forth in the Motions to Retax, as if fully set forth herein.

4 Dated this 12th day of August, 2022

6
7 SIGAL CHATTAH, ESQ

AMY L. SUGDEN, ESQ.

8 /s/ Sigal Chattah
9 Sigal Chattah
10 Nevada Bar No. 8264
11 5875 S. Rainbow Blvd #203
12 Las Vegas, NV 89118
13 *Attorney for Plaintiff*
14 *Herbal Choice, Inc.*

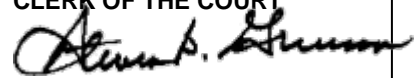
/s/ Amy L. Sugden
Amy L. Sugden
Nevada Bar No 9983
9728 Gilespeie Street
Las Vegas, NV 89183
Attorney for Plaintiff
THC Nevada, LLC

CERTIFICATE OF SERVICE

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

Dated: August 12, 2022

/s/ Amy L. Sugden
Attorney



JOIN

AMY L. SUGDEN, ESQ.

Amy L. Sugden, Bar No. 9983

9728 Gilespe St.

Las Vegas, Nevada 89183

amy@sugdenlaw.com

Telephone: (702) 625-3605

Attorney for Plaintiff THC Nevada, LLC

SIGAL CHATTAH, ESQ.

Nevada Bar No. 8264

CHATTAH LAW GROUP

5875 S. Rainbow Blvd #203

Las Vegas NV 89118

Tel: (702) 360-6200

Fax (702) 643-6292

Chattahlaw@gmail.com

Attorney for Plaintiff Herbal Choice, Inc.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

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

)
) Dept. No: XI

)
) CONSOLIDATED WITH:

) A-18-785818-W

) A-18-786357-W

) A-19-786962-B

) A-19-787035-C

) A-19-787540-W

) A-19-787726-C

) A-19-801416-B

)

**THC NEVADA, LLC AND HERBAL CHOICE, INC.'S JOINDER
TO MOTIONS TO RETAX AND SETTLE COSTS**

1 **THC NEVADA, LLC AND HERBAL CHOICE, INC.’S JOINDER**
2 **TO MOTIONS TO RETAX AND SETTLE COSTS**

3 COME NOW, THC NEVADA, LLC (“THC NV”), by and through its counsel, Amy L.
4 Sugden, and HERBAL CHOICE, INC. (“Herbal Choice”) by and through its Counsel, SIGAL
5 CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby joins the following Motions to Retax
6 and Settle Costs:
7

8 (1) HIGH SIERRA HOLISTICS, LLC’s (HSH) Motion to Retax and Settle Costs regarding
9 Nevada Organic Remedies LLC (**Doc. # 2939**);

10 (2) HSH’s Motion to Retax and Settle Costs regarding Lone Mountain Partners LLC (**Doc. #**
11 **2940**);

12 (3) HSH’s Motion to Retax and Settle Costs regarding Wellness Connection of Nevada LLC
13 (**Doc. # 2941**);

14 (4) Motion to Retax and Settle Costs regarding Lone Mountain Partners LLC (**Doc. # 2947**);

15 (5) Motion to Retax and Settle Costs regarding Nevada Organic Remedies LLC (**Doc. # 2948**);

16 and
17

18 (6) Motion to Retax and Settle Costs regarding Wellness Connection of Nevada LLC (**Doc. #**
19 **2966**).
20

21 //

22 //

23 //

24 //

25 //

26 //

1 THC NV and HERBAL CHOICE, INC. hereby join, in full, the evidence and legal arguments
2 in the Motions to Retax. THC NV and HERBAL CHOICE, INC. hereby incorporates by reference the
3 arguments and evidence set forth in the Motions to Retax, as if fully set forth herein.

4 Dated this 19th day of August, 2022

6
7 SIGAL CHATTAH, ESQ

AMY L. SUGDEN, ESQ.

8 /s/ Sigal Chattah
9 Sigal Chattah
Nevada Bar No. 8264
10 5875 S. Rainbow Blvd #203
11 Las Vegas, NV 89118
12 *Attorney for Plaintiff*
Herbal Choice, Inc.

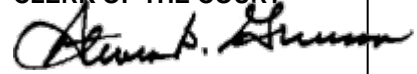
/s/ Amy L. Sugden
Amy L. Sugden
Nevada Bar No 9983
9728 Gilespe Street
Las Vegas, NV 89183
Attorney for Plaintiff
THC Nevada, LLC

CERTIFICATE OF SERVICE

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

Dated: August 19, 2022

/s/ Amy L. Sugden
Attorney



OPPM

Richard D. Williamson, Esq.

State Bar No. 9932

Jonathan J. Tew, Esq.

State Bar No. 11874

Anthony G. Arger, Esq.

State Bar No. 13660

ROBERTSON, JOHNSON, MILLER & WILLIAMSON

50 West Liberty Street, Suite 600

Reno, Nevada 89501

Telephone No.: (775) 329-5600

Facsimile No.: (775) 348-8300

Rich@nvlawyers.com

Jon@nvlawyers.com

Anthony@nvlawyers.com

Attorneys for Deep Roots Harvest, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE: DOT

Case No.: A-19-787004-B

Department: 31

CONSOLIDATED WITH:

A-19-787035-C; A-18-785818-W

A-18-786357-W; A-19-786962-B

A-19-787540-W; A-19-787726-C

A-19-801416-B

DEEP ROOTS HARVEST, INC.'S OPPOSITION TO TGIG PLAINTIFFS' MOTION TO

RETAX AND SETTLE COSTS

Hearing Date: September 16, 2022

Hearing Time: 9:00 a.m.

Defendant DEEP ROOTS HARVEST, INC. ("Deep Roots"), by and through its undersigned counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby files this opposition ("Opposition") to that Motion to Retax and Settle Costs ("Motion") 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 (collectively, the

1 “TGIG Plaintiffs”). This Opposition is based upon the attached memorandum of points and
2 authorities, all papers on file herein, and any oral argument this Court may deem necessary.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 The crux of the TGIG Plaintiffs’ Motion is that Deep Roots is not entitled to its costs
6 because it is in fact the TGIG Plaintiffs who are the prevailing parties pursuant to NRS 18.020.
7 This argument is fatally flawed, as the TGIG Plaintiffs did not prevail on any of their claims in a
8 meaningful way such that they can be considered the prevailing party.

9 The TGIG Plaintiffs cannot and should not be excused from their responsibility for Deep
10 Roots’ costs after Deep Roots ultimately prevailed in the consolidated case. Deep Roots thus
11 requests this Court deny TGIG Plaintiffs’ Motion and award Deep Roots its costs in full.

12 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

13 The TGIG Plaintiffs (among others) filed their Complaint in Case A-19-786962-B on
14 January 4, 2019. The only defendant at that time was the State of Nevada, Department of
15 Taxation (the “DOT”). Some parties subsequently intervened in the case to assist the DOT in
16 defending against the TGIG Plaintiffs’ motion for preliminary injunction. Deep Roots, however,
17 did not intervene. On July 11, 2019, the TGIG Plaintiffs and their then-associated co-plaintiffs
18 filed a Corrected First Amended Complaint which also only named the DOT as a Defendant.

19 On August 23, 2019, District Court Judge Elizabeth Gonzalez entered Findings of Fact
20 and Conclusions of Law Granting Preliminary Injunction. That preliminary injunction merely
21 enjoined the DOT from “conducting a final inspection of any of the conditional licenses issued in
22 or about December 2018 who did not provide the identification of each prospective owner,
23 officer and board member as required by NRS 453D.200(6) pending a trial on the merits.”
24 (Prelim. Inj. at 24:4-7.) Importantly, however, the preliminary injunction expressly confirmed
25 that the evidence indicated that Deep Roots and numerous other successful licensees actually
26 complied with the DOT’s licensing requirements. (*Id.* n.15 at 16:25-28.)

27 On October 29, 2019, Judge Gonzalez held a hearing on a joint motion to consolidate
28 TGIG Plaintiffs’ case with several other cases pending against the DOT. Ultimately, Judge

1 Gonzalez ruled case numbers A-18-785818, A-18-786357, A-19-786962 (the case brought by
2 the TGIG Plaintiffs), A-19-787004, A-19-787035, A-19-787540, A-19-787726, and A-19-
3 801416 should all be consolidated.

4 This case proceeded to a non-jury trial for Phase 2 on July 17, 2020. Phase 2 related to
5 the legality of the 2018 recreational marijuana application process. The Court issued its Findings
6 of Fact, Conclusion of Law and Permanent Injunction on September 3, 2020 (“Phase 2
7 FFCLPI”), wherein it granted the claim for declaratory relief, granted the claim for equal
8 protection in part, and ordered the State permanently enjoined from “conducting a final
9 inspection of any of the conditional licenses issued in or about December 2018 for an applicant
10 who did not provide the identification of each prospective owner, officer and board member as
11 required by NRS 453D.200(6).” (*Id.* at 29:15-19.) In other words, the Court enjoined the DOT
12 from operating outside the law – an obligation to which the DOT was already bound.

13 Phase 1 of the matter came before the Court on September 8, 2020. On September 16,
14 2020, the Court issued a second Findings of Fact, Conclusions of Law and Permanent Injunction
15 (“Phase 1 FFCLPI”) wherein it expressly denied all Plaintiffs’ – including TGIG Plaintiffs’ –
16 petitions for judicial review in their entirety.

17 In sum, the Court did not award any relief against Deep Roots. Indeed, the Court had
18 already found in its Amended Order Granting Preliminary Injunction, filed February 7, 2020,
19 that Deep Roots was among the “applicants [who] apparently provided the required information
20 for each prospective owner, officer and board member,” and, as such, Deep Roots’ application
21 was “complete at the time [it was] filed with reference to NRS 453D.200(6).” (*Id.* at fn.16.)
22 Thus, the declaratory relief granted by the Court did not affect Deep Roots nor was it aimed at
23 Deep Roots. Rather, Deep Roots prevailed and preserved all of its licenses from TGIG’s attacks.

24 **III. LEGAL STANDARD**

25 District courts have wide discretion to award costs to prevailing parties. Cade Co. v.
26 Woods & Erikson, LLP, 131 Nev. 114, 345 P.3d 1049 (2015). An award of costs under NRS
27 18.020 is mandatory as long as the costs are reasonable and necessarily incurred. See Schwartz
28 v. Estate of Greenspun, 110 Nev. 1042, 881 P.2d 638 (1994) (cost awards are mandatory for

prevailing parties); Schouweler v. Yancey Co., 101 Nev. 827, 832, 712 P.2d 786 (1985) (same). Costs are available to the prevailing party in special proceedings. NRS 18.020(4). Determination of which expenses are allowable as costs is within the Court's discretion. Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993); see also NRS 18.050.

IV. LEGAL ARGUMENT

A. Deep Roots Is a Prevailing Party Against TGIG Plaintiffs

The TGIG Plaintiffs lamely attempt to argue that it was not Deep Roots who was the prevailing party, but instead it was the TGIG Plaintiffs – despite the Court ruling expressly against the TGIG Plaintiffs in Phase 1 and granting only illusory relief in Phase 2. The TGIG Plaintiffs ignore the axiom that a defendant who avoids a judgment against it qualifies as a prevailing party. 145 E. Harmon II Tr. V. Residences at MGM Grand – Tower A Owners' Ass'n, 136 Nev. 115, 120, 460 P.3d 455, 459 (2020).

The Phase 1 FFCLPI expressly denied TGIG Plaintiffs', among other plaintiffs', petitions for judicial review. This denial rendered TGIG Plaintiffs the losing parties. Golightly & Vannah, PLLC v. TJ Allen, LLC, 132 Nev. 416, 422, 373 P.3d 103, 106 (when the court rejects the relief sought, that party cannot be the prevailing party). The TGIG Plaintiffs expressly sought judicial review from the Court, along with a variety of other plaintiffs, and the Court denied such review. The TGIG Plaintiffs cannot argue in good faith that Deep Roots was not the prevailing party of Phase 1 of the trial.

The Phase 2 FFCLPI offers only illusory relief to the TGIG Plaintiffs and the other plaintiffs. The Court there granted injunctive relief and permanently enjoined the DOT from straying from the requirements of NRS 453D.200(6). Effectively, the Court required the DOT to follow the law – an obligation the DOT carries to begin with. See e.g., Janitscheck v. U.S., 45 Fed.Appx. 809 (9th Cir. 2002) (United States required to comply with applicable OSHA laws); U.S. v. Connolly, 618 F.2d 553, 556 (9th Cir. 1980) (court has a duty to comply with applicable laws). Thus, the TGIG Plaintiffs cannot be considered the prevailing party in Phase 2 because the TGIG Plaintiffs did not obtain any relief beyond that to which they were already entitled: that the DOT follow all applicable laws in issuing recreational marijuana licenses.

1 A party may be considered the prevailing party “if it succeeds on any significant issue in
2 litigation which achieves some of the benefit it sought in bringing suit.” Valley Elec. Ass’n v.
3 Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Notably, the TGIG Plaintiffs did *not*
4 prevail on any significant issue – and certainly did not prevail in any way against Deep Roots.
5 Indeed, all the TGIG Plaintiffs obtained in Phase 2 was an order from the Court directing the
6 DOT to comply with its preexisting duty to follow all applicable laws. Certainly, this cannot be
7 considered prevailing on a significant issue which achieves the benefit the TGIG Plaintiffs
8 sought in bringing this lawsuit. The TGIG Plaintiffs, among the other plaintiffs, sought to strip
9 the successful licensees of their provisional recreational marijuana licenses and re-do the 2018
10 judging process, no matter the cost to the successful licensees. The TGIG Plaintiffs did not come
11 close to obtaining this relief.

12 The Phase 2 FFCLPI did not change the status of the TGIG Plaintiffs or Deep Roots with
13 respect to the issues in this action. Higher Taste, Inc. v. City of Tacoma, 717 F.3d 712, 716 (9th
14 Cir. 2013) (citing Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1118 (9th Cir. 2000) (a change in
15 relationship rendering a party to be prevailing occurs when “the plaintiff can force the defendant
16 to do something he otherwise would not have to do”)). Instead, the Phase 2 FFCLPI simply
17 confirmed the DOT’s duty to follow applicable law. Deep Roots was not affected in any way by
18 the Phase 2 FFCLPI, nor were the TGIG Plaintiffs.

19 Accordingly, Deep Roots is the prevailing party against the TGIG Plaintiffs and therefore
20 is entitled to its costs pursuant to NRS 18.020.

21 **B. Deep Roots Can Recover Costs Incurred in Phase 1 In This Matter Pursuant**
22 **to NRS 18.020(4)**

23 The TGIG Plaintiffs, in the alternative, argue that Deep Roots cannot recover its costs
24 pursuant to NRS 18.020 for Phase 1 because the “denial of the Petition for Judicial Review is not
25 one of the types of cases in which costs would be allowed to a prevailing party.” (Motion at
26 3:16-1.) This statement is flatly false. A case where a party seeks judicial review is a “special
27 proceeding” as set forth in NRS 18.020(4). T.L. Townsend Builders, LLC v. Nevada State
28 Contractors Bd., 485 P.3d 210 (Table), 2021 WL 1530073 (April 16, 2021) (where court

1 awarded costs to the Nevada State Contractors Board as the prevailing party after T.L. Townsend
2 Builders unsuccessfully sought judicial review of the Board action.)

3 The TGIG Plaintiffs provide Smith v. Crown Financial Services of America, 111 Nev.
4 277, 890 P.2d 769 (1995), to purportedly support their argument that prevailing parties in actions
5 for judicial review are not entitled to their costs pursuant to NRS 18.020. (Motion at 4:15-21.)
6 Tellingly, however, Smith is an opinion discussing the availability of *attorney's fees* – not costs.
7 The one substantive mention of NRS 18.020 is included where the court found: “However, as the
8 prevailing party in an action for damages in excess of \$110,000, respondents were entitled to
9 recover costs as a matter of right pursuant to NRS 18.020(3). Therefore, the error of the district
10 court was harmless.” Smith, 111 Nev. at 287, 890 P.2d at 775-76. Indeed, the Smith opinion
11 does not even mention judicial review. This proffered authority thus widely misses the mark and
12 must be disregarded.

13 Because the TGIG Plaintiffs sought judicial review in their complaints (along with other
14 claims), Deep Roots is entitled to recover its costs incurred in defending against these claims
15 pursuant to NRS 18.020(4). See State, Dept. of Bus. and Indus., Nevada Transp. Auth. v. Black,
16 130 Nev. 1249, 2014 WL 3784239 (Slip Copy) (July 30, 2014) (affirming award of costs
17 following a petition for judicial review).

18 **C. Deep Roots' Costs Are Reasonable and Were Necessarily Incurred**

19 The TGIG Plaintiffs next make the blanket argument that Deep Roots' costs were
20 unreasonable and unnecessary if they pertain to the Phase 1 FFCLPI. (Motion at 6:3-16.)

21 At the outset, it is absurd to argue that because the Court limited Phase 1's evidence to
22 the administrative record only, that no party could justify conducting legal research, making
23 photocopies, or paying clerk's fees. However, this appears to be TGIG Plaintiffs' argument:
24 since the administrative record provided all of the evidence for Phase 1, no legal research was
25 warranted. This argument is fatally flawed for a number of reasons. For example, each party to
26 the variety of petitions for judicial review were compelled to file briefs on the petitions. The
27 TGIG Plaintiffs themselves filed a thirty-three (33) page opening brief which cites to twenty-four
28 (24) cases, twenty-two (22) statutes, and thirteen (13) other authorities, rules, constitutional

1 provisions, and codes. Deep Roots was thus compelled to file a thirty (30) page answering brief.
2 These briefs necessarily required the parties to conduct significant legal research to make sense
3 of the administrative record and the Plaintiffs' various arguments. Thus, Deep Roots' costs
4 related to Phase 1 were necessarily incurred.

5 Next, in filing these briefs, court filing fees were incurred. Furthermore, these briefs
6 were not the only filings in this consolidated matter. Indeed, while the petition for judicial
7 review claims were designated Phase 1, Phase 2 of the trial proceeded first. Thus, any party to
8 the consolidated case was compelled to submit filings in preparation for Phase 2, which was
9 heard first, and then to submit filings in preparation and in the briefing of Phase 1. See Mayfield
10 v. Koroghli, 124 Nev. 343, 353, 184 P.3d 362, 368-69 (2008) (internal citations omitted) (when
11 claims are so "inextricably intertwined," costs need not be apportioned among claims).
12 According to the Court's Phase 2 FFCLPI, and the record in this case, the TGIG Plaintiffs were
13 leading the charge in Phase 2 of the trial. All filing fees associated with these filings were
14 therefore necessary and must be recoverable by Deep Roots as the prevailing party.

15 Each and every one of the costs listed in Deep Roots' costs memorandum was reasonable
16 and necessarily incurred in this consolidated matter. Namely, the clerk's fees were incurred in
17 connection with filing the various motions, oppositions, and joinders in this matter; the reporters'
18 fees were incurred for reporting various depositions and reporting Phases 1 and 2 of the trial; the
19 expert witness fees were incurred for statutory fees for expert witnesses; photocopy fees were
20 incurred for copying Deep Roots' documents, discovery productions in this matter, and pleadings
21 and papers which were filed with the Court; long distance telephone call fees were incurred for
22 making long-distance phone calls related to this matter; postage fees were incurred for mailing
23 correspondence, discovery responses, and papers to the other parties in this matter; travel fees
24 were incurred for Deep Roots' counsel to travel to Las Vegas to attend hearings, pretrial events,
25 and trial in this matter; miscellaneous fees incurred were to cover a mediation, the cost of which
26 was split between the parties; computerized legal research fees were incurred in order for Deep
27 Roots' counsel to conduct necessary and appropriate legal research in order to present a complete
28 defense in this matter; and trial technology services were incurred for the trial services before

1 and during Phases 1 and 2 of the trial which were necessary in this matter. (See Deep Roots’
2 Verified Memorandum of Costs, filed August 8, 2022.)

3 All of the enumerated costs were necessary and appropriate in order for Deep Roots to
4 defend itself in this matter. None of the costs are excessive or unreasonable considering the high
5 stakes of this litigation: that the TGIG Plaintiffs were trying to overturn the provisional licenses
6 the DOT issued to Deep Roots. Accordingly, Deep Roots’ costs must be awarded to it as the
7 prevailing party.

8 **D. Phase 1 and Phase 2 Were So Intertwined That Costs Need Not Be**
9 **Apportioned Between These Two Phases**

10 Plaintiffs Clark Natural Medicinal Solutions LLC, NYE Natural Medicinal Solutions
11 LLC, Clark NMSD LLC, and Inyo Fine Cannabis Dispensary L.L.C. joined HSH’s Motion and
12 further argued that because Deep Roots’ costs were not apportioned between Phase 1 and Phase
13 2 of the trial, the costs may not be awarded at all against parties who did not participate in Phase
14 1. This argument fails in light of the extent to which Phase 1 and Phase 2 were intertwined.

15 Apportionment is not necessary when the trial court concludes the claims are so
16 “inextricably intertwined” that it is “impracticable, if not impossible” to separate and apportion
17 costs between various claims. Mayfield, 124 Nev. at 353, 184 P.3d at 368-69. The court must,
18 however, attempt to apportion the costs before determining that such cost is impracticable. Id.

19 Here, the costs incurred for court filing fees, reporters’ fees, expert witness fees,
20 photocopies, long distance telephone calls, postage, travel and lodging, miscellaneous fees, legal
21 research, and trial technology are so inextricably intertwined because they were incurred in
22 preparing for and attending trial in this matter. Although the trial was split into phases where
23 only certain claims were heard, the preparation for trial conflated Phase 1 and Phase 2 such that
24 the costs incurred cannot be practicably apportioned to the respective phases. See, e.g., id.
25 (where buyer brought claims against sellers of commercial real estate and their real estate agent,
26 claims were so intertwined that costs could not practicably be apportioned).

1 **V. CONCLUSION**

2 Deep Roots should never have been made a party to this consolidated matter to begin
3 with; however, because Deep Roots was dragged into this case by the TGIG Plaintiffs and other
4 parties and was forced to expend resources successfully defending itself, Deep Roots is entitled
5 to recover its costs. The TGIG Plaintiffs, as non-prevailing parties in this matter, are jointly and
6 severally responsible for Deep Roots' costs. Accordingly, as Deep Roots was the prevailing
7 party in this litigation, Deep Roots requests the Court award its costs.

8 **AFFIRMATION**

9 Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding
10 document does not contain the social security number of any person.

11 DATED this 24th day of August, 2022.

12 ROBERTSON, JOHNSON,
13 MILLER & WILLIAMSON
14 50 West Liberty Street, Suite 600
15 Reno, Nevada 89501

16 By: /s/ Richard D. Williamson
17 Richard D. Williamson, Esq.
18 *Attorneys for Deep Roots Harvest, Inc.*
19
20
21
22
23
24
25
26
27
28

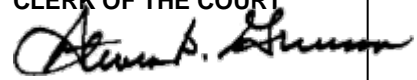
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of
4 eighteen, and not a party within this action. I further certify that I e-filed and served the
5 foregoing **DEEP ROOTS HARVEST, INC.'S OPPOSITION TO TGIG PLAINTIFFS'**
6 **MOTION TO RETAX AND SETTLE COSTS** to all parties listed on the Court's Master
7 Service List via the Clerk of the Court by using the electronic filing system on the 24th day of
8 August, 2022.

9 DATED this 24th day of August, 2022.

10 /s/ Stefanie E. Smith

11 An Employee of Robertson, Johnson, Miller & Williamson
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



OPPM

Richard D. Williamson, Esq.

State Bar No. 9932

Jonathan J. Tew, Esq.

State Bar No. 11874

Anthony G. Arger, Esq.

State Bar No. 13660

ROBERTSON, JOHNSON, MILLER & WILLIAMSON

50 West Liberty Street, Suite 600

Reno, Nevada 89501

Telephone No.: (775) 329-5600

Facsimile No.: (775) 348-8300

Rich@nvlawyers.com

Jon@nvlawyers.com

Anthony@nvlawyers.com

Attorneys for Deep Roots Harvest, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE: DOT

Case No.: A-19-787004-B

Department: 31

CONSOLIDATED WITH:

A-19-787035-C; A-18-785818-W

A-18-786357-W; A-19-786962-B

A-19-787540-W; A-19-787726-C

A-19-801416-B

DEEP ROOTS HARVEST, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO

RETAX AND SETTLE COSTS

Hearing Date: September 16, 2022

Hearing Time: 9:00 a.m.

Defendant DEEP ROOTS HARVEST, INC. ("Deep Roots"), by and through its undersigned counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby files this opposition ("Opposition") to that Motion to Retax and Settle Costs Regarding Deep Roots Harvest, Inc.'s Memorandum of Costs ("Motion") filed by MM Development Company, Inc. d/b/a Planet 13, Livfree Wellness, LLC d/b/a The Dispensary, Qualcan LLC, Natural Medicine, L.L.C., and Nevada Wellness Center, L.L.C. (collectively herein, "Plaintiffs"). This

1 Opposition is based upon the attached memorandum of points and authorities, all papers on file
2 herein, and any oral argument this Court may deem necessary.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 The crux of the Plaintiffs' Motion is their claims were settled and were not actually
6 litigated, so Deep Roots cannot recover costs from the Plaintiffs because it cannot be a prevailing
7 party pursuant to NRS 18.020. This claim is belied by the Court's Findings of Fact, Conclusion
8 of Law and Permanent Injunction relating to Phase 1 of the trial ("Phase 1 FFCLPI") and the
9 Court's Findings of Fact, Conclusions of Law and Permanent Injunction relating to Phase 2 of
10 the trial ("Phase 2 FFCLPI") listing each of the Plaintiffs as a party who "participated in this
11 Phase of the Trial." More importantly, Plaintiffs never settled their claims with Deep Roots.
12 Moreover, Plaintiffs' settlement with the Department of Taxation ("DOT") was not even
13 finalized until several weeks after the trial began. Finally, the Court confirmed the trial and
14 subsequent orders' application to Plaintiffs when it stated that the Phase 2 FFCLPI "applies to all
15 Plaintiffs, whether or not they settled." (Order Denying Motion to Amend and Countermotion to
16 Clarify Findings of Fact and Conclusions of Law, filed October 27, 2020.)

17 Plaintiffs therefore cannot and should not be excused from their responsibility for Deep
18 Roots' costs after Deep Roots ultimately prevailed in the consolidated case. Deep Roots thus
19 requests this Court deny Plaintiffs' Motion and award Deep Roots its costs in full.

20 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

21 Plaintiff MM Development Company, Inc. filed its Complaint and Petition for Judicial
22 Review of Writ of Mandamus on December 10, 2018, naming only the DOT as a defendant.
23 Plaintiff Nevada Wellness Center, LLC filed its Complaint and Petition for Judicial Review or
24 Writ of Mandamus on January 15, 2019, also naming only the DOT as a defendant. Plaintiff
25 Qualcan, LLC filed its Complaint and Petition for Judicial Review of Writ of Mandamus on
26 September 5, 2019, also naming only the DOT as a defendant. Some parties subsequently
27 intervened in the case to assist the DOT in defending against various motions. Deep Roots,
28 however, did not.

1 On August 23, 2019, District Court Judge Elizabeth Gonzalez entered Findings of Fact
2 and Conclusions of Law Granting Preliminary Injunction. That preliminary injunction merely
3 enjoined the State of Nevada from “conducting a final inspection of any of the conditional
4 licenses issued in or about December 2018 who did not provide the identification of each
5 prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial
6 on the merits.” (Prelim. Inj. at 24:4-7.) Importantly, however, the preliminary injunction
7 expressly confirmed that the evidence indicated Deep Roots and numerous other successful
8 licensees had actually complied with the DOT’s licensing requirements. (Id. n.15 at 16:25-28.)

9 On October 29, 2019, Judge Gonzalez held a hearing on a joint motion to consolidate
10 Plaintiffs’ cases with several other cases pending against the DOT. Ultimately, Judge Gonzalez
11 ruled case numbers A-18-785818, A-18-786357, A-19-786962, A-19-787004, A-19-787035, A-
12 19-787540, A-19-787726, and A-19-801416 should all be consolidated.

13 Despite the Court confirming Deep Roots had complied with NRS 453D.200(6),
14 Plaintiffs nevertheless amended their respective complaints and named Deep Roots as a
15 defendant. On January 28, 2020, Plaintiff Nevada Wellness Center, LLC filed its Amended
16 Complaint and Petition for Judicial Review or Writ of Mandamus, naming Deep Roots, among
17 many others, as a defendant. On January 29, 2020, Plaintiffs MM Development Company, Inc.
18 and Livfree Wellness, LLC filed their Second Amended Complaint and Petition for Judicial
19 Review or Writ of Mandamus, naming Deep Roots as a defendant. On February 11, 2020,
20 Plaintiff Qualcan, LLC filed its Second Amended Complaint, naming Deep Roots as a defendant,
21 among many others. Plaintiff Natural Medicine LLC filed its initial Complaint in Intervention,
22 Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition on February
23 7, 2020, naming Deep Roots, among many others, as a defendant.

24 This case proceeded to a non-jury trial for Phase 2 on July 17, 2020. Phase 2 related to
25 the legality of the 2018 recreational marijuana application process. The Court issued its Phase 2
26 FFCLPI, wherein it granted the claim for declaratory relief, granted the claim for equal
27 protection in part, and ordered the State permanently enjoined from “conducting a final
28 inspection of any of the conditional licenses issued in or about December 2018 for an applicant

1 who did not provide the identification of each prospective owner, officer and board member as
2 required by NRS 453D.200(6).” (*Id.* at 29:15-19.) In other words, the Court enjoined the DOT
3 from operating outside the law – an obligation to which the DOT was already bound.

4 Phase 1 of the matter came before the Court on September 8, 2020. On September 16,
5 2020, the Court issued its Phase 1 FFCLPI wherein it denied all the plaintiffs’ – including
6 Plaintiffs’ – petitions for judicial review in their entirety.

7 In sum, the Court did not award any relief against Deep Roots. Indeed, the Court had
8 already found in its Amended Order Granting Preliminary Injunction, filed February 7, 2020,
9 that Deep Roots was among the “applicants [who] apparently provided the required information
10 for each prospective owner, officer and board member,” and, as such, Deep Roots’ application
11 was “complete at the time [it was] filed with reference to NRS 453D.200(6).” (*Id.* at fn.16.)
12 Thus, the declaratory relief granted by the Court did not affect Deep Roots nor was it aimed at
13 Deep Roots and, in any case, any relief granted was illusory.

14 **III. LEGAL STANDARD**

15 District courts have wide discretion to award costs to prevailing parties. *Cade Co. v.*
16 *Woods & Erikson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015). An award of costs under NRS
17 18.020 is mandatory as long as the costs are reasonable and necessarily incurred. *See Schwartz*
18 *v. Estate of Greenspun*, 110 Nev. 1042, 881 P.2d 638 (1994) (cost awards are mandatory for
19 prevailing parties); *Schouweler v. Yancey Co.*, 101 Nev. 827, 832, 712 P.2d 786 (1985) (same).
20 Costs are available to the prevailing party in special proceedings. NRS 18.020(4).
21 Determination of which expenses are allowable as costs is within the Court’s discretion.
22 *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993); *see also* NRS 18.050.

23 **IV. LEGAL ARGUMENT**

24 **A. Deep Roots Is a Prevailing Party Against Plaintiffs**

25 Plaintiffs first argue that Deep Roots was not a prevailing party. Plaintiffs ignore the
26 axiom that a defendant who avoids a judgment against it qualifies as a prevailing party. *145 E.*
27 *Harmon II Tr. V. Residences at MGM Grand – Tower A Owners’ Ass’n*, 136 Nev. 115, 120, 460
28 P.3d 455, 459 (2020).

1 The Phase 1 FFCLPI *expressly denied* Plaintiffs', among other plaintiffs', petitions for
2 judicial review. This denial rendered Plaintiff the losing party. Golightly & Vannah, PLLC v.
3 TJ Allen, LLC, 132 Nev. 416, 422, 373 P.3d 103, 106 (when the court rejects the relief sought,
4 that party cannot be the prevailing party). The Plaintiffs expressly sought judicial review from
5 the Court, along with a variety of other plaintiffs, and the Court denied such review. Plaintiffs
6 cannot argue in good faith that Deep Roots was not the prevailing party of Phase 1 of the trial.

7 The Phase 2 FFCLPI offers only illusory relief. The Court there granted injunctive relief
8 and permanently enjoined the DOT from straying from the requirements of NRS 453D.200(6).
9 Effectively, the Court required the DOT to follow the law – an obligation the DOT carries to
10 begin with. See e.g., Janitscheck v. U.S., 45 Fed.Appx. 809 (9th Cir. 2002) (United States
11 required to comply with applicable OSHA laws); U.S. v. Connolly, 618 F.2d 553, 556 (9th Cir.
12 1980) (court has a duty to comply with applicable laws). Thus, Plaintiffs cannot be considered
13 the prevailing party in Phase 2 because the Plaintiffs did not obtain any relief beyond that to
14 which they were already entitled: that the DOT follow all applicable laws in issuing recreational
15 marijuana licenses.

16 Plaintiffs argue that because the Court granted summary judgment on their Phase 2 claim,
17 Deep Roots is not entitled to recover its costs. (Motion at 7:15-16.) Importantly, the Court's
18 Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment on
19 First Claim for Relief is dated August 14, 2020 – *after Phase 2 began*. Thus, regardless of this
20 order, Deep Roots was required to attend Phase 2 of the trial and defend against Plaintiffs'
21 unmeritorious claims as though they were still viable at that time – *because in the eyes of the*
22 *Court, they were*. This argument must therefore be disregarded entirely.

23 Notably, the Plaintiffs did not prevail on any significant issue – and certainly did not
24 prevail on anything related to Deep Roots.

25 Plaintiffs, among the other plaintiffs, sought to strip the successful licensees of their
26 provisional recreational marijuana licenses and re-do the 2018 judging process, no matter the
27 cost to the successful licensees. Plaintiffs did not obtain this relief.

1 The Phase 2 FFCLPI did not change the status of the Plaintiffs or Deep Roots with
2 respect to the issues in this action. Instead, the Phase 2 FFCLPI simply confirmed the DOT's
3 duty to follow applicable law. Deep Roots was not affected in any way by the Phase 2 FFCLPI,
4 nor were the Plaintiffs. Indeed, Deep Roots was allowed to keep and perfect its licenses.

5 Accordingly, Deep Roots is the prevailing party against the Plaintiffs and therefore is
6 entitled to its costs pursuant to NRS 18.020.

7 **B. Deep Roots Can Recover Costs Incurred in Phase 1 In This Matter Pursuant**
8 **to NRS 18.020(4)**

9 Plaintiffs next argue that Deep Roots cannot recover its costs pursuant to NRS 18.020
10 because "Deep Roots does not fall within any of the identified categories to recover its costs."
11 (Motion at 7:19-21 (emphasis removed).) This statement is flatly false. A case where a party
12 seeks judicial review is a "special proceeding" as set forth in NRS 18.020(4). T.L. Townsend
13 Builders, LLC v. Nevada State Contractors Bd., 485 P.3d 210 (Table), 2021 WL 1530073 (April
14 16, 2021) (where court awarded costs to the Nevada State Contractors Board as the prevailing
15 party after T.L. Townsend Builders sought judicial review of the Board action.) Thus, because
16 Plaintiffs each sought judicial review in their respective complaints and Deep Roots was required
17 to defend against such petitions for judicial review in this consolidated case, Deep Roots is
18 entitled to recover costs pursuant to NRS 18.020(4). See State, Dept. of Bus. and Indus., Nevada
19 Transp. Auth. v. Black, 130 Nev. 1249, 2014 WL 3784239 (Slip Copy) (July 30, 2014)
20 (affirming award of costs following a petition for judicial review). Moreover, seeking a writ also
21 qualifies as a special proceeding for purpose of NRS 18.020(4).¹

22
23
24 ¹ Plaintiff Natural Medicine, LLC ("Natural Medicine") argues separately that because it only named Deep Roots
25 "based on the procedural requirements for judicial review," Deep Roots cannot recover its costs. (Natural Medicine,
26 LLC's Joinder to High Sierra Holistics, LLC Motions to Retax and Settle Costs Re: Clear River LLC, Deep Roots
27 Harvest, Inc. and Thrive Entities Filed on August 11, 2022, filed August 12, 2022 at 2:12-20.) This argument does
28 not hold water. First, Natural Medicine's suggestion that because Deep Roots was only named pursuant to a
procedural rule, Deep Roots did not fully participate in its own defense is undercut by the record in this action.
Deep Roots was highly involved in its defense and understandably so: Natural Medicine and the other plaintiffs
sought to undo the 2018 recreational marijuana licensing process such that Deep Roots would be stripped of its
provisional licenses. Deep Roots thus incurred costs related to Natural Medicine's claim against Deep Roots, and
Natural Medicine cannot be excused from such costs – especially when the Court expressly ruled against Natural
Medicine.

1 Furthermore, Plaintiffs argue that because “there is no judgment entered against any of
2 the [] Plaintiffs,” Deep Roots cannot recover its costs. (Motion at 7:23-27.) This argument is
3 disingenuous. As noted above the Phase 1 FFCLPI lists each of the Plaintiffs as parties who
4 participated in that phase of the trial. Therein, the Court expressly *denied* Plaintiffs’ petitions for
5 judicial review. This certainly became a judgment entered against the Plaintiffs once the Order
6 Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) – which Plaintiffs
7 did not oppose – was issued on August 4, 2022. The Phase 2 FFCLPI also lists Plaintiffs as
8 participating parties and awards only illusory relief to Plaintiffs, leaving Deep Roots’ rights
9 intact and unchanged in any way. The Phase 2 FFCLPI also became a final judgment on August
10 4, 2022. There are thus two (2) judgments against Plaintiffs which render Plaintiffs the losing
11 parties and warrant an award of Deep Roots’ costs.

12 **C. Deep Roots’ Costs Are Reasonable and Were Necessarily Incurred**

13 The Plaintiffs finally argue that Deep Roots’ claimed costs were unreasonable and
14 unnecessarily incurred. (Motion at 6:3-16.)

15 Each and every one of the costs listed in Deep Roots’ costs memorandum was reasonable
16 and necessarily incurred in this consolidated matter. Namely, the clerk’s fees were incurred in
17 connection with filing the various motions, oppositions, and joinders in this matter; the reporters’
18 fees were incurred for reporting various depositions and reporting Phases 1 and 2 of the trial; the
19 expert witness fees were incurred for statutory fees for expert witnesses; photocopy fees were
20 incurred for copying Deep Roots’ documents, discovery productions in this matter, and pleadings
21 and papers which were filed with the Court; long distance telephone call fees were incurred for
22 making long-distance phone calls related to this matter; postage fees were incurred for mailing
23 correspondence, pleadings, and papers to Deep Roots and the Court in this matter; travel fees
24 were incurred for Deep Roots’ counsel to travel to Las Vegas to attend hearings, pretrial events,
25 and trial in this matter; miscellaneous fees incurred were to cover a mediation, the cost of which
26 was split between the parties; computerized legal research fees were incurred in order for Deep
27 Roots’ counsel to conduct necessary and appropriate legal research in order to present a complete
28 defense in this matter; and trial technology services were incurred for the trial services before

1 and during Phases 1 and 2 of the trial which were necessary in this matter. (See Deep Roots’
2 Verified Memorandum of Costs, filed August 8, 2022.)

3 All of the enumerated costs were necessary and appropriate in order for Deep Roots to
4 defend itself in this matter. Plaintiffs appear to take specific umbrage with those travel charges
5 incurred by Deep Roots’ counsel traveling to and from Las Vegas to attend various hearings and
6 trial in this matter. Indeed, while travelling, counsel is entitled to reasonable meals. NRS
7 18.005(15). Such costs incurred by Deep Roots relating to its counsel’s travel are reasonable and
8 should therefore be awarded to Deep Roots as it is the prevailing party. None of the remaining
9 costs are excessive nor unreasonable considering the high stakes of this litigation: that Deep
10 Roots could lose its provisional licenses issued by the DOT. Accordingly, Deep Roots’ costs
11 were reasonable and necessary. Deep Roots was a prevailing party and is entitled to recover its
12 costs from the Plaintiffs.

13 **D. Phase 1 and Phase 2 Were So Intertwined That Costs Need Not Be**
14 **Apportioned Between These Two Phases**

15 Plaintiffs Clark Natural Medicinal Solutions LLC, NYE Natural Medicinal Solutions
16 LLC, Clark NMSD LLC, and Inyo Fine Cannabis Dispensary L.L.C. joined HSH’s Motion and
17 further argued that because Deep Roots’ costs were not apportioned between Phase 1 and Phase
18 2 of the trial, the costs may not be awarded at all against parties who did not participate in Phase
19 1. This argument fails in light of the extent to which Phase 1 and Phase 2 were intertwined.

20 Apportionment is not necessary when the trial court concludes the claims are so
21 “inextricably intertwined” that it is “impracticable, if not impossible” to separate and apportion
22 costs between various claims. Mayfield v. Koroghli, 124 Nev. 343, 353, 184 P.3d 362, 368-69
23 (2008) (internal citations omitted). The court must, however, attempt to apportion the costs
24 before determining that such cost is impracticable. Id.

25 Here, the costs incurred for court filing fees, reporters’ fees, expert witness fees,
26 photocopies, long distance telephone calls, postage, travel and lodging, miscellaneous fees, legal
27 research, and trial technology are so inextricably intertwined because they were incurred in
28 preparing for and attending trial in this matter. Although the trial was split into phases where

1 only certain claims were heard, the preparation for trial conflated Phase 1 and Phase 2 such that
2 the costs incurred cannot be practicably apportioned to the respective phases. See, e.g., id.
3 (where buyer brought claims against sellers of commercial real estate and their real estate agent,
4 claims were so intertwined that costs could not practicably be apportioned).

5 **V. CONCLUSION**

6 Deep Roots should never have been made a party to this consolidated matter to begin
7 with; however, because Deep Roots was dragged into this case by the Plaintiffs (even after the
8 Court had stated Deep Roots had followed all of the rules at issue with respect to obtaining its
9 recreational marijuana provisional licenses) and was forced to expend resources to successfully
10 defend itself, Deep Roots is entitled to recover its costs. Plaintiffs, as non-prevailing parties in
11 this matter, are responsible for Deep Roots' costs. Accordingly, as Deep Roots was a prevailing
12 party in this litigation, Deep Roots requests the Court award its costs.

13 **AFFIRMATION**

14 Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding
15 document does not contain the social security number of any person.

16 DATED this 24th day of August, 2022.

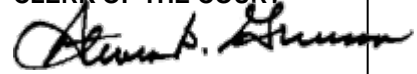
17 ROBERTSON, JOHNSON,
18 MILLER & WILLIAMSON
19 50 West Liberty Street, Suite 600
Reno, Nevada 89501

20 By: /s/ Richard D. Williamson
21 Richard D. Williamson, Esq.
22 *Attorneys for Deep Roots Harvest, Inc.*
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 24th day of August, 2022.

An Employee of Robertson, Johnson, Miller & Williamson



OPPM

Richard D. Williamson, Esq.

State Bar No. 9932

Jonathan J. Tew, Esq.

State Bar No. 11874

Anthony G. Arger, Esq.

State Bar No. 13660

ROBERTSON, JOHNSON, MILLER & WILLIAMSON

50 West Liberty Street, Suite 600

Reno, Nevada 89501

Telephone No.: (775) 329-5600

Facsimile No.: (775) 348-8300

Rich@nvlawyers.com

Jon@nvlawyers.com

Anthony@nvlawyers.com

Attorneys for Deep Roots Harvest, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE: DOT

Case No.: A-19-787004-B

Department: 31

CONSOLIDATED WITH:

A-19-787035-C; A-18-785818-W

A-18-786357-W; A-19-786962-B

A-19-787540-W; A-19-787726-C

A-19-801416-B

DEEP ROOTS HARVEST, INC.'S OPPOSITION TO HIGH SIERRA HOLISTICS,

LLC'S MOTION TO RETAX AND SETTLE COSTS

Hearing Date: September 16, 2022

Hearing Time: 9:00 a.m.

Defendant DEEP ROOTS HARVEST, INC. ("Deep Roots"), by and through its undersigned counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby files this opposition ("Opposition") to that Motion to Retax and Settle Costs ("Motion") filed by High Sierra Holistics, LLC ("HSH"). This Opposition is based upon the attached memorandum of points and authorities, all papers on file herein, and any oral argument this Court may deem necessary to decide the Motion.

DEEP ROOTS HARVEST, INC.'S OPPOSITION TO HIGH SIERRA HOLISTICS, LLC'S MOTION TO RETAX
AND SETTLE COSTS

PAGE 1

AA2178

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The crux of HSH's Motion is that Deep Roots and HSH were not adverse parties. This
4 argument is farcical and is belied by the voluminous record in this matter. While HSH may not
5 have named Deep Roots in its Complaint, HSH filed numerous joinders to oppositions to Deep
6 Roots' motions and otherwise poised itself in a directly adverse position to Deep Roots throughout
7 these proceedings. It is thus ludicrous to suggest that HSH is not responsible for Deep Roots' costs
8 incurred because HSH was not adverse to Deep Roots on paper.

9 In a similar (but also unmeritorious) vein, HSH argues that because the trial in this matter
10 was divided into three phases, only one of which HSH's complaint fell into, HSH also cannot be
11 held responsible for Deep Roots' costs incurred in any other phase. Again, this argument falls flat
12 in light of the substantial pre-trial motion practice that occurred in this case – of which there was
13 no shortage – and the number of joinders HSH filed which directly opposed Deep Roots' filings
14 relating to the second phase of the trial. HSH is thus partially responsible for Deep Roots being
15 forced to participate in, attend, and incur the costs of trial in this matter as HSH joined oppositions
16 to Deep Roots' motion for partial summary judgment which, if successful, would have dismissed
17 Deep Roots entirely.

18 HSH therefore cannot and should not be excused from its responsibility for Deep Roots'
19 costs after Deep Roots ultimately prevailed in the consolidated case. Deep Roots thus requests
20 this Court deny HSH's Motion and award Deep Roots its costs in full.

21 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

22 HSH filed its Complaint and Petition for Judicial Review or Writ of Mandamus on January
23 16, 2019. The only defendant at that time was the State of Nevada, Department of Taxation (the
24 "DOT").

25 On August 23, 2019, District Court Judge Elizabeth Gonzalez entered Findings of Fact and
26 Conclusions of Law Granting Preliminary Injunction. That preliminary injunction merely
27 enjoined the DOT from "conducting a final inspection of any of the conditional licenses issued in
28 or about December 2018 who did not provide the identification of each prospective owner, officer

1 and board member as required by NRS 453D.200(6) pending a trial on the merits.” (Prelim. Inj.
2 at 24:4-7.) Importantly, however, the preliminary injunction expressly confirmed that the evidence
3 indicated Deep Roots and numerous other successful licensees actually complied with the DOT’s
4 licensing requirements. (Id. n.15 at 16:25-28.)

5 Within the year of filing, HSH’s case was consolidated with seven (7) other cases wherein
6 each plaintiff “allege[s] substantially similar claims against the [DOT] and request substantially
7 similar remedies to rectify the [DOT]’s alleged wrongdoings.” (Order Granting Joint Motion to
8 Consolidate, filed December 6, 2019 at 3:25-27.) Ultimately, Judge Gonzalez ruled case numbers
9 A-18-785818, A-18-786357, A-19-786962, A-19-787004, A-19-787035, A-19-787540, A-19-
10 787726 (the case brought by HSH), and A-19-801416 should all be consolidated. Indeed, HSH
11 was a signatory to the proposed order which was ultimately adopted by the Court to consolidate
12 these matters. (Id. at 9.)

13 This case proceeded to a non-jury trial for Phase 2 on July 17, 2020. Phase 2 related to the
14 legality of the 2018 recreational marijuana application process. The Court issued its Findings of
15 Fact, Conclusion of Law and Permanent Injunction on September 3, 2020 (“Phase 2 FFCLPI”),
16 wherein it granted the claim for declaratory relief, granted the claim for equal protection in part,
17 and ordered the DOT permanently enjoined from “conducting a final inspection of any of the
18 conditional licenses issued in or about December 2018 for an applicant who did not provide the
19 identification of each prospective owner, officer and board member as required by NRS
20 453D.200(6).” (Id. at 29:15-19.) In other words, the Court enjoined the DOT from operating
21 outside the law – an obligation to which the DOT was already bound.

22 Phase 1 of the matter came before the Court on September 8, 2020. On September 16,
23 2020, the Court issued a second Findings of Fact, Conclusions of Law and Permanent Injunction
24 (“Phase 1 FFCLPI”) wherein it denied all plaintiffs’ – including HSH’s – petitions for judicial
25 review in their entirety.

26 In sum, the Court did not award any relief against Deep Roots. Indeed, the Court had
27 already found in its Amended Order Granting Preliminary Injunction, filed February 7, 2020, that
28 Deep Roots was among the “applicants [who] apparently provided the required information for

each prospective owner, officer and board member,” and, as such, Deep Roots’ application was “complete at the time [it was] filed with reference to NRS 453D.200(6).” (*Id.* at fn.16.) Thus, the declaratory relief granted by the Court did not affect Deep Roots nor was it aimed at Deep Roots.

The Court certified the Phase 1 FFCLPI and Phase 2 FFCLPI as final pursuant to NRC P 54(b) on August 4, 2022, after receiving an unopposed motion to do so. Deep Roots filed its Verified Memorandum of Costs (“Verified Memorandum”) on August 8, 2022 – four (4) days later. This filing was timely pursuant to NRS 18.110(1) which requires the prevailing party to file and serve such a verified memorandum of costs within five (5) days after entry of judgment. Deep Roots also electronically served its Verified Memorandum on August 8, 2022. Deep Roots’ Verified Memorandum is therefore timely.

III. LEGAL STANDARD

District courts have wide discretion to award costs to prevailing parties. *Cade Co. v. Woods & Erikson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015). An award of costs under NRS 18.020 is mandatory as long as the costs are reasonable and necessarily incurred. *See Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 881 P.2d 638 (1994) (cost awards are mandatory for prevailing parties); *Schouweler v. Yancey Co.*, 101 Nev. 827, 832, 712 P.2d 786 (1985) (same). Costs are available to the prevailing party in special proceedings. NRS 18.020(4). Determination of which expenses are allowable as costs is within the Court’s discretion. *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993); *see also* NRS 18.050.

IV. LEGAL ARGUMENT

A. Deep Roots Is a Prevailing Party Against HSH

HSH first argues that because HSH settled its Phase 1 and Phase 2 claims, Deep Roots cannot be the prevailing party. (Motion at 5:6-11.) Yet, that settlement came after the commencement of trial. Moreover, the Court’s Phase 1 FFCLPI listed HSH as a party who “participated in this Phase of the Trial.” (Phase 1 FFCLPI at 2:14-16.) Similarly, the Court’s Phase 2 FFCLPI listed HSH as a party who “participated in this Phase of the Trial.” (Phase 2 FFCLPI at 3:4-7.) HSH’s claim to have settled its claims and thus stripped Deep Roots of its right

1 to recover costs incurred in defending the claims is belied by the Court's two FFCLPIs which each
2 state unambiguously that HSH participated in the respective phases of the trial.

3 HSH next argues that because "no judgment against HSH for either the Second Phase
4 Claims or the First Phase Claim" was issued, "Deep Roots cannot recover its claimed costs."
5 (Motion at 5:10-11.) Again, this argument is belied by the Court's FFCLPIs. As noted above,
6 both the Phase 1 FFCLPI and the Phase 2 FFCLPI list HSH as a party which participated and thus
7 a party which is bound by the orders.

8 The Phase 1 FFCLPI expressly denied HSH's, among other plaintiffs', petition for judicial
9 review. This denial rendered HSH the losing party. Golightly & Vannah, PLLC v. TJ Allen, LLC,
10 132 Nev. 416, 422, 373 P.3d 103, 106 (when the court rejects the relief sought, that party cannot
11 be the prevailing party). HSH expressly sought judicial review from the Court, along with a variety
12 of other plaintiffs, and the Court denied such review. HSH cannot argue that either (a) its claim
13 did not reach judgment or (b) that Deep Roots was not the prevailing party.

14 The Phase 2 FFCLPI offers only illusory relief to HSH and the other plaintiffs. The Court
15 there granted injunctive relief and permanently enjoined the DOT from straying from the
16 requirements of NRS 453D.200(6). The Phase 2 FFCLPI did not make any order relating to Deep
17 Roots. Effectively, the Court required the DOT to follow the law – an obligation the DOT carried
18 to begin with. See e.g., Janitscheck v. U.S., 45 Fed.Appx. 809 (9th Cir. 2002) (United States
19 required to comply with applicable OSHA laws); U.S. v. Connolly, 618 F.2d 553, 556 (9th Cir.
20 1980) (court has a duty to comply with applicable laws). To be a prevailing party, there must be
21 a change in the legal relationship of the parties. Sole v. Wyner, 551 U.S. 74, 86 (2007). Such a
22 change "occurs when 'the plaintiff can force the defendant to do something he otherwise would
23 not have to do.'" Higher Taste, Inc. v. City of Tacoma, 717 F.3d 712, 716 (9th Cir. 2013) (citing
24 Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1118 (9th Cir. 2000)).

25 Thus, HSH cannot be considered the prevailing party in Phase 2 because HSH did not
26 obtain any change in its relationship with the DOT and/or Deep Roots: that the DOT follow all
27 applicable laws in issuing recreational marijuana licenses. HSH could not force the DOT or Deep
28 Roots to do anything the entities would otherwise not have to do. Id.

1 HSH, among the other plaintiffs, in bringing this litigation sought to strip the successful
2 licensees of their provisional recreational marijuana licenses and re-do the 2018 judging process,
3 no matter the cost to the successful licensees. Plaintiffs did not obtain this relief.

4 The Phase 2 FFCLPI did not change the status of HSH or Deep Roots with respect to the
5 issues in this action. Instead, the Phase 2 FFCLPI simply confirmed the DOT's duty to follow
6 applicable law. Deep Roots was not affected in any way by the Phase 2 FFCLPI, nor was HSH.

7 Accordingly, Deep Roots is the prevailing party against HSH and the other plaintiffs, and
8 therefore is entitled to its costs pursuant to NRS 18.020.

9 **B. Deep Roots Is Entitled to Recover Its Costs Pursuant to NRS 18.020(4)**

10 HSH next argues that Deep Roots cannot recover its costs pursuant to NRS 18.020 because
11 "Deep Roots does not fall within any of the identified categories." (Motion at 5:9-10 (emphasis
12 removed).) This statement is flatly false. A case where a party seeks judicial review is a "special
13 proceeding" as set forth in NRS 18.020(4). T.L. Townsend Builders, LLC v. Nevada State
14 Contractors Bd., 485 P.3d 210 (Table), 2021 WL 1530073 (April 16, 2021) (where court awarded
15 costs to the Nevada State Contractors Board as the prevailing party after T.L. Townsend Builders
16 unsuccessfully sought judicial review of the Board action.) Thus, because HSH sought judicial
17 review in its complaint and Deep Roots was required to defend against a variety of petitions for
18 judicial review in this consolidated case, Deep Roots is entitled to recover its costs pursuant to
19 NRS 18.020(4). See State, Dept. of Bus. and Indus., Nevada Transp. Auth. v. Black, 130 Nev.
20 1249, 2014 WL 3784239 (Slip Copy) (July 30, 2014) (affirming award of costs following a petition
21 for judicial review).

22 **C. Deep Roots' Costs Are Reasonable and Were Necessarily Incurred**

23 HSH again argues Deep Roots is not entitled to recover its costs because HSH "had settled
24 its action prior to the commencement of Phase [1]," however, the Court's inclusion of HSH in the
25 Phase 1 FFCLPI undercuts this argument. (Compare Motion at 5:13-17 with Phase 1 FFCLPI.)
26 HSH further argues, however, that Deep Roots' claimed costs were unnecessary because the Court
27 restricted Phase 1's evidence to only the administrative record. (Motion at 5: 15-17.) According

1 to HSH, this “necessarily excluded from the record all court filings, Westlaw legal research,
2 photocopies,” and other expenses.

3 At the outset, it is absurd to argue that because the Court limited Phase 1’s evidence to the
4 administrative record only, that no party could justify conducting legal research. However, this
5 appears to be HSH’s argument: since the administrative record provided all of the evidence for
6 Phase 1, no legal research was warranted. This argument is fatally flawed for a number of reasons.
7 For example, each party to the various petitions for judicial review was compelled to file briefs on
8 the petitions. These briefs necessarily required the parties to conduct legal research to make sense
9 of the administrative record.¹ Any claim to the contrary is simply ludicrous.

10 Next, in filing these briefs, court filing fees were incurred. Such court filing fees are
11 required pursuant to EJDRC 8.16 (discussing filing fees) and NRS Chapter 19. Moreover, court
12 filing fees are automatically awarded pursuant to NRS 18.110(3) and do not need substantiation.
13 Furthermore, these briefs were not the only filings in this matter. Indeed, while the petitions for
14 judicial review were designated Phase 1, Phase 2 of the trial proceeded first. Thus, any party to
15 the consolidated case was compelled to submit filings for Phase 2, which was heard first, and then
16 to submit filings in the briefing of Phase 1. According to the Court’s Phase 2 FFCLPI, HSH was
17 among those parties involved in Phase 2 of the trial. All filing fees associated with these filings
18 were therefore necessary and must be recoverable by Deep Roots as the prevailing party.

19 Each and every one of the costs listed in Deep Roots’ costs memorandum was reasonable
20 and necessarily incurred in this consolidated matter. Namely, the clerk’s fees were incurred in
21 connection with filing the various motions, oppositions, and joinders in this matter; the reporters’
22 fees were incurred for reporting various depositions and reporting Phases 1 and 2 of the trial; the
23 expert witness fees were incurred for statutory fees for expert witnesses; photocopy fees were
24 incurred for copying Deep Roots’ documents, discovery productions in this matter, and pleadings

25
26 ¹ In choosing to simply join the TGIG Plaintiffs’ Opening Brief in Support of Petition for Judicial Review (“Opening
27 Brief”), HSH avoided the necessary legal research culminating in twenty-four (24) case citations, twenty-three (23)
28 statute citations, two (2) other authority citations, one (1) rule citation, two (2) constitutional provision citations, and
seven (7) code citations in the TGIG Plaintiffs’ Opening Brief. Certainly, these citations were the result of substantial
legal research and while HSH chose to simply piggyback on the TGIG Plaintiffs’ Opening brief, it does not negate
the necessity of such legal research in preparing and opposing these briefs.

1 and papers which were filed with the Court; long distance telephone call fees were incurred for
2 making long-distance phone calls related to this matter; postage fees were incurred for mailing
3 correspondence, pleadings, and papers to Deep Roots and the Court in this matter; travel fees were
4 incurred for Deep Roots' counsel to travel to Las Vegas to attend hearings, pretrial events, and
5 trial in this matter; miscellaneous fees incurred were to cover a mediation, the cost of which was
6 split between the parties; computerized legal research fees were incurred in order for Deep Roots'
7 counsel to conduct necessary and appropriate legal research in order to present a complete defense
8 in this matter; and trial technology services were incurred for the trial services before and during
9 Phases 1 and 2 of the trial which were necessary in this matter. (See Deep Roots' Verified
10 Memorandum of Costs, filed August 8, 2022.)

11 All of the enumerated costs were necessary and appropriate in order for Deep Roots to
12 defend itself in this matter. None of the costs are excessive nor unreasonable considering the high
13 stakes of this litigation: that Deep Roots could lose its provisional licenses issued by the DOT.
14 Accordingly, Deep Roots' costs must be awarded to it as the prevailing party.

15 **D. By Naming Deep Roots, Natural Medicine, LLC Caused Deep Roots to Incur**
16 **Costs Related to its Petition for Judicial Review**

17 Plaintiff Natural Medicine, LLC ("Natural Medicine") argues separately that because it
18 only named Deep Roots "based on the procedural requirements for judicial review," Deep Roots
19 cannot recover its costs. (Natural Medicine, LLC's Joinder to High Sierra Holistics, LLC Motions
20 to Retax and Settle Costs Re: Clear River LLC, Deep Roots Harvest, Inc. and Thrive Entities Filed
21 on August 11, 2022, filed August 12, 2022 at 2:12-20.) This argument does not hold water. First,
22 Natural Medicine's suggestion that because Deep Roots was only named pursuant to a procedural
23 rule, Deep Roots did not fully participate in its own defense is undercut by the record in this action.
24 Deep Roots was highly involved in its defense and understandably so: Natural Medicine sought to
25 undo the 2018 recreational marijuana licensing process such that Deep Roots would be stripped of
26 its provisional licenses. Deep Roots thus incurred costs related to Natural Medicine's claim against
27 Deep Roots, and Natural Medicine cannot be excused from such costs – especially when the Court
28 expressly ruled against Natural Medicine.

Moreover, the Nevada Supreme Court recently affirmed an award of costs to a nominal party such as Deep Roots in this action. See Cotter on behalf of Reading Int’l, Inc. v. Kane, 136 Nev. 559, 567, 473 P.3d 451, 458 (2020). There a corporation was named as a nominal defendant in a derivative action – much like Deep Roots was named a nominal defendant by a variety of the plaintiffs in this action. The Supreme Court ultimately held that “[e]ven though a corporation is a nominal defendant in a derivative action, it is not precluded from recovering expenses it incurred as a result of the action,” Id. As a similarly situated nominal defendant, Deep Roots also is not precluded from recovering its costs here.

E. Phase 1 and Phase 2 Were So Intertwined That Costs Need Not Be Apportioned Between These Two Phases

Plaintiffs Clark Natural Medicinal Solutions LLC, Nye Natural Medicinal Solutions LLC, Clark NMSD LLC, and Inyo Fine Cannabis Dispensary L.L.C. joined HSH’s Motion and further argued that because Deep Roots’ costs were not apportioned between Phase 1 and Phase 2 of the trial, the costs may not be awarded at all against parties who did not participate in Phase 1. This argument fails in light of the extent to which Phase 1 and Phase 2 were intertwined.

Apportionment is not necessary when the trial court concludes the claims are so “inextricably intertwined” that it is “impracticable, if not impossible” to separate and apportion costs between various claims. Mayfield v. Koroghli, 124 Nev. 343, 353, 184 P.3d 362, 368-69 (2008) (internal citations omitted). The court must, however, attempt to apportion the costs before determining that such cost is impracticable. Id.

Here, the costs incurred for court filing fees, reporters’ fees, expert witness fees, photocopies, long distance telephone calls, postage, travel and lodging, miscellaneous fees, legal research, and trial technology are so inextricably intertwined because they were incurred in preparing for and attending trial in this matter. Although the trial was split into phases where only certain claims were heard, the underlying discovery and preparation for trial for Phases 1 and 2 were essentially the same, such that the costs incurred cannot be practicably apportioned to the respective phases. See, e.g., id. (where buyer brought claims against sellers of commercial real

1 estate and their real estate agent, claims were so intertwined that costs could not practicably be
2 apportioned).

3 **V. CONCLUSION**

4 Deep Roots should never have been made a party to this consolidated matter to begin with.
5 Because Deep Roots was dragged into this case by a number of parties and was forced to expend
6 resources successfully defending itself, however, Deep Roots is entitled to recover its costs. HSH,
7 as a non-prevailing party in this matter, must be jointly and severally responsible for Deep Roots'
8 costs. Accordingly, as Deep Roots was the prevailing party in this litigation, Deep Roots requests
9 the Court award its costs.

10 **AFFIRMATION**

11 Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding
12 document does not contain the social security number of any person.

13 DATED this 24th day of August, 2022.

14 ROBERTSON, JOHNSON,
15 MILLER & WILLIAMSON
16 50 West Liberty Street, Suite 600
17 Reno, Nevada 89501

18 By: /s/ Richard D. Williamson
19 Richard D. Williamson, Esq.
20 *Attorneys for Deep Roots Harvest, Inc.*
21
22
23
24
25
26
27
28

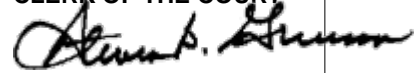
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of
4 eighteen, and not a party within this action. I further certify that I e-filed and served the foregoing
5 **DEEP ROOTS HARVEST, INC.'S OPPOSITION TO HIGH SIERRA HOLISTICS, LLC'S**
6 **MOTION TO RETAX AND SETTLE COSTS** to all parties listed on the Court's Master Service
7 List via the Clerk of the Court by using the electronic filing system on the 24th day of August,
8 2022.

9 DATED this 24th day of August, 2022.

10 /s/ Stefanie E. Smith

11 An Employee of Robertson, Johnson, Miller & Williamson
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 **OPPM**

2 **HONE LAW**

3 Eric D. Hone, NV Bar No. 8499

ehone@hone.law

4 Joel Z. Schwarz, NV Bar No. 9181

jschwarz@hone.law

5 Jamie L. Zimmerman, NV Bar No. 11749

jzimmerman@hone.law

6 701 N. Green Valley Parkway, Suite 200

Henderson, NV 89074

7 Phone 702-608-3720

Fax 702-608-7814

8 *Attorneys for Defendant/Intervenor*

Lone Mountain Partners, LLC

9 EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 In Re: D.O.T. Litigation

Case No. A-19-787004-B

Consolidated with A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

Dept. No. XI

16 **Date of Hearing: September 16, 2022**

Time of Hearing: 9:00 a.m.

18 **LONE MOUNTAIN PARTNERS, LLC'S OPPOSITION TO**
19 **THE TGIG PLAINTIFFS' MOTION TO RETAX AND SETTLE COSTS**

20 Defendant/Intervenor Lone Mountain Partners, LLC ("Lone Mountain"), by and through
21 its attorneys of record, Hone Law, hereby opposes the Motion to Retax and Settle Costs (re: Lone
22 Mountain Partners, LLC's Memorandum of Costs Pursuant to NRS 18.110 filed on August 9,
23 2022) ("the Motion") filed by Plaintiffs TGIG, LLC, Nevada Holistic Medicine, LLC, GBS
24 Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC,
25 and Medifarm IV, LLC (collectively, the "TGIG Plaintiffs"), including all associated joinders to
26 same.

27 ///

28 ///



1 This opposition is based upon the following memorandum of points and authorities and
2 supporting exhibits; the pleadings and papers on file and the record herein; and any oral argument
3 allowed by the Court.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I. INTRODUCTION

6 The TGIG Plaintiffs' motion to retax Lone Mountain's Memorandum of Costs (the
7 "Memo of Costs") is meritless and it should be summarily denied. The TGIG Plaintiffs are a
8 group of applicants who applied for recreational marijuana dispensary licenses in Nevada's 2018
9 application process and were unsuccessful due to deficiencies and in some instances significant
10 red flags in their applications. By comparison, Lone Mountain was the most successful applicant
11 in the 2018 application process, receiving 11 licenses. When the TGIG Plaintiffs (and various
12 other plaintiffs) filed suit against the State challenging the validity of the State's 2018 recreational
13 marijuana licensing process—including seeking to overturn the entire licensing process and
14 revoke all of the licenses awarded to the successful applicants—Lone Mountain had no choice but
15 to move to intervene in order to protect its rights in its licenses, including licenses awarded in
16 jurisdictions where the TGIG Plaintiffs had not even applied.

17 Contrary to the TGIG Plaintiffs' desperate attempts to mislead the Court with revisionist
18 history, the fact of the matter is that Lone Mountain is clearly a prevailing party entitled to
19 recover statutory costs and the TGIG Plaintiffs most certainly are not. The TGIG Plaintiffs
20 unequivocally did not prevail as against Lone Mountain, as it successfully retained its licenses
21 and all of the TGIG Plaintiffs' myriad efforts to overturn the State's 2018 recreational marijuana
22 licensing process failed. Further, the fact that the TGIG Plaintiffs failed to succeed on *any*
23 *significant issue* in the litigation is plainly evidenced by the fact that they have appealed Judge

24 ///

25 ///

26 ///

27 ///

28 ///



1 Gonzalez’s findings of fact and conclusions of law entered following Phase 1 and Phase 2 of
2 trial.¹

3 Additionally, the TGIG Plaintiffs’ contention that costs should not be awarded because a
4 petition for judicial review purportedly does not fall within the parameters of NRS 18.020 is a red
5 herring argument intended to conflate straightforward issues. To clarify, Lone Mountain’s
6 requested costs were incurred relating to Phase 2 (claims for due process, equal protection,
7 declaratory relief, and injunctive relief), *not* Phase 1 (judicial review claim). Thus, the TGIG
8 Plaintiffs’ petition for judicial review argument is entirely irrelevant.

9 Lastly, the Court should deny the motion to retax because the TGIG Plaintiffs do not
10 dispute that Lone Mountain’s costs were reasonable and necessarily incurred.

11 **II. LEGAL ARGUMENT**

12 **A. Lone Mountain Is the Prevailing Party**

13 It is well-established that prevailing parties are entitled to recover costs. NRS 18.020
14 provides that “[c]osts must be allowed of course to the prevailing party against any adverse party
15 against whom judgment is rendered.” In determining the prevailing party, the court must ascertain
16 which parties are adverse to each other to determine who won against who. *See Copper Sands*
17 *Homeowners v. Flamingo 94 Ltd.*, 130 Nev. Adv. Op. 81, 335 P.3d 203, 206 (2014) (holding third
18 party defendants were adverse to plaintiff HOA and entitled to costs as prevailing parties).

19 “A party prevails if it succeeds on *any significant issue* in litigation which achieves some
20 of the benefit it sought in bringing suit.” *Las Vegas Metro. Police Dep’t v. Blackjack Bonding,*
21 *Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (internal quotation marks omitted) (emphasis
22 added); *see also Las Vegas Rev.-J. v. City of Henderson*, 137 Nev. Adv. Op. 81 (2021).

23 Notably, a defendant who avoids a judgment against it qualifies as a prevailing party. *145*
24 *E. Harmon II Tr. v. Residences at MGM Grand - Tower A Owners’ Ass’n*, 136 Nev. 115, 120, 460

25
26 ¹ By way of the Amended Trial Protocol No. 2 entered on July 2, 2020, Judge Gonzalez bifurcated the trial of this
27 consolidation action into three separate phases. Phase 1 addressed plaintiff’s petitions for judicial review. Phase 2
28 addressed the “[l]egality of the 2018 recreational marijuana application process (claims for Equal Protection, Due
Process, Declaratory Relief, Intentional Interference with Prospective Economic Advance, Intentional Interference
with Contractual Relations, and Permanent Injunction).” Phase 3 originally contemplated plaintiff’s mandamus
claims. (Amended Trial Protocol No. 2, July 2, 2020, at § VIII(B), on file herein.)



1 P.3d 455, 459 (2020). Nevada law recognizes that a plaintiff may prevail against some defendants
2 but not others, allowing the successful defendants to recover costs against the plaintiff. *See*
3 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 832, 712 P.2d 786, 789 (1985).

4 Here, the TGIG Plaintiffs were adverse to the State, as well as Lone Mountain and other
5 successful applicants who intervened in the action. Critically, judgment was *not* rendered in favor
6 of the TGIG Plaintiffs and Lone Mountain was *not* subject to any adverse judgment in this case.
7 Lone Mountain is a prevailing party because the State’s award of licenses was not disturbed and
8 Lone Mountain successfully retained its licenses. The TGIG Plaintiffs’ assertion that they are
9 prevailing parties is readily undone given that their myriad efforts to overturn the 2018
10 recreational marijuana application process all failed and the petitions for judicial review were
11 denied in their entirety. Indeed, the Court need only observe the fact that the TGIG Plaintiffs are
12 currently appealing the Phase 1 and Phase 2 orders to discern that the TGIG Plaintiffs are not
13 prevailing parties in this case.

14 Specifically, after a multi-week phased trial, the TGIG Plaintiffs failed to prove any of
15 their unfounded complaints concerning the State’s application licensing process. Judge Gonzalez
16 denied all relief with one exception, finding that the State acted beyond its authority in adopting a
17 regulation requiring background checks only for prospective owners, officers, and board members
18 with a 5% or greater ownership stake (the “Five Percent Rule”), as opposed to requiring
19 background checks for all of the foregoing regardless of a threshold ownership interest. (FFCL
20 entered on September 3, 2020, at 29.) Judge Gonzalez granted the equal protection claim in part
21 based on “the decision by the [the State] to arbitrarily and capriciously replace ... the background
22 check of each owner, officer and board member with the 5 percent or greater standard in NAC
23 453.255(1), [the State] created an unfair process.” (*Id.*) Notably, no damages were awarded due to
24 the “speculative nature of the potential loss of market share.” (*Id.*) Judge Gonzalez narrowly
25 enjoined this regulatory requirement; however, the injunction did not apply to or otherwise impact
26 Lone Mountain.

27 Importantly, the injunction relating to the Five Percent Rule had no effect on Lone
28 Mountain or many other successful applicants whose prospective owners, officers, and board



1 members all underwent the requisite background checks. On this point, it is critical to note that
2 neither the TGIG Plaintiffs nor any other plaintiff adduced any evidence at trial concerning Lone
3 Mountain's ownership, let alone any evidence that could tend to establish Lone Mountain failed
4 to properly disclose its owners, officers, and board members. (See Trial Transcript, August 18,
5 2020, relevant portions attached hereto as **Exhibit A**, at pp. 43-44.) Consequently, the TGIG
6 Plaintiffs most certainly are *not* prevailing parties vis-à-vis Lone Mountain because they failed
7 entirely in their efforts to overturn the licensing process and revoke the licenses awarded to Lone
8 Mountain.

9 What is more, as was established in closing arguments during Phase 2 of trial, the
10 plaintiffs all but ignored Lone Mountain during trial. (*Id.*, pp. 41-42.) Why? Because Lone
11 Mountain's very existence undermined nearly every flawed legal theory advanced by the
12 plaintiffs. (*Id.* at pp. 42-48.)

13 Lastly, it must be noted that, while Lone Mountain facilitated and is a party to the partial
14 settlement among certain of the plaintiffs and defendants, Lone Mountain had no choice but to
15 proceed to the conclusion of the Phase 2 trial with the remaining non-settling plaintiffs. Those
16 plaintiffs included the TGIG Plaintiffs, whom other plaintiffs referred to as the "toxic plaintiffs."
17 (See Hearing Transcript, July 31, 2020, relevant portions attached hereto as **Exhibit B**, at pp.
18 12-15) (Mr. Ritter is the principal of a TGIG Plaintiff).

19 In short, the TGIG Plaintiffs did not win on any issue or claim against Lone Mountain.
20 Rather, Lone Mountain was forced to intervene in the action to protect its rightfully awarded
21 licenses, then was named as a defendant and participated in a trial wherein the TGIG Plaintiffs
22 fell woefully short of meeting their burden of proof with respect to the claims asserted against
23 Lone Mountain. Thus, as to the TGIG Plaintiffs, Lone Mountain unequivocally prevailed. The
24 Court should deny the TGIG Plaintiffs' motion accordingly.

25 **B. The Petition for Judicial Review Argument Is a Red Herring**

26 The TGIG Plaintiffs dedicate the majority of their motion to the proposition that costs
27 related to a petition for judicial review may not be awarded under NRS 18.020. (See Motion, pp.
28 3-6.) This argument is entirely irrelevant because Lone Mountain's requested costs were *not*



1 incurred relating to Phase 1 (judicial review claim). Indeed, the TGIG Plaintiffs make this very
2 same point in their motion, asserting that “the vast majority – nearly all – of the claimed costs
3 have nothing to do with the Petition for Judicial Review claim.” (*Id.*, p. 6.)

4 Of course, the petition for judicial review claim was not the TGIG Plaintiffs’ only claim
5 asserted in this case. By way of their operative Second Amended Complaint filed November 26,
6 2019, the TGIG Plaintiffs asserted six claims, the majority of which were litigated and tried
7 during Phase 2 (claims for due process, equal protection, declaratory relief, and injunctive relief).
8 Dispositive of the matter, Lone Mountain’s requested costs were incurred relating to discovery
9 and trial pertaining to Phase 2, not Phase 1. What is more, the TGIG Plaintiffs do not assert any
10 arguments contesting the recoverability of costs incurred related to Phase 2 in the instant motion.

11 In sum, the TGIG Plaintiffs’ petition for judicial claim argument related to Phase 1 is a
12 nonstarter and the Court should properly deny the instant motion.

13
14 **C. The TGIG Plaintiffs Do Not Dispute that Lone Mountain’s Costs were Reasonable and Necessarily Incurred**

15 Noticeably absent from the TGIG Plaintiffs’ motion is any argument challenging the
16 reasonableness of Lone Mountain’s costs or the adequacy of the documentation supporting same.
17 The TGIG Plaintiffs’ silence operates as a concession that Lone Mountain’s costs were reasonable
18 and necessarily incurred to defend this action. As such, the motion to retax should be denied and
19 Lone Mountain should be awarded all costs itemized in its Memo of Costs.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1 **III. CONCLUSION**

2 For the foregoing reasons, Lone Mountain respectfully requests that the Court deny the
3 TGIG Plaintiffs' motion to retax Lone Mountain's Memo of Costs.

4 Dated this 25th day of August 2022.

5 HONE LAW

6
7 Eric D. Hone, NV Bar No. 8499
ehone@hone.law
8 Joel Z. Schwarz, NV Bar No. 9181
jschwarz@hone.law
9 Jamie L. Zimmerman, NV Bar No. 11749
jzimmerman@hone.law
10 701 N. Green Valley Parkway, Suite 200
Henderson, NV 89074

11 *Attorneys for Defendant/Intervenor*
12 *Lone Mountain Partners, LLC*

13
14 **CERTIFICATE OF SERVICE**

15 The undersigned, an employee of Hone Law, hereby certifies that on the 25th day of
16 August 2022, she caused a copy of the foregoing to be transmitted by electronic service in
17 accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey
18 E-File & Serve system.


19 
20 Karen M. Morrow, an employee of HONE LAW



EXHIBIT A

A P P E A R A N C E S

FOR THE PLAINTIFFS:

ADAM K. BULT, ESQ.
SIGAL CHATTAH, ESQ.
PETER S. CHRISTIANSEN, ESQ.
NICOLAS R. DONATH, ESQ.
MARK S. DZARNOSKI, ESQ.
DOMINIC P. GENTILE, ESQ.
WILLIAM S. KEMP, ESQ.
ROSS J. MILLER, ESQ.
JAMES W. PUZEY, ESQ.
NATHANAEL R. RULIS, ESQ.
CRAIG D. SLATER, ESQ.
STEPHANIE J. SMITH, ESQ.
AMY L. SUGDEN, ESQ.

FOR THE DEFENSE:

STEVEN G. SHEVORSKI, ESQ.
AKKE LEVIN, ESQ.
TODD L. BICE, ESQ.
JENNIFER L. BRASTER, ESQ.
J. RUSTY GRAF, ESQ.
JOSEPH A. GUTIERREZ, ESQ.
BRIGID M. HIGGINS, ESQ.
ERIC D. HONE, ESQ.
RICK R. HSU, ESQ.
JARED B. KAHN, ESQ.
DAVID R. KOCH, ESQ.
KIRILL V. MIKHAYLOV, ESQ.
DENNIS M. PRINCE, ESQ.
CHRISTOPHER L. ROSE, ESQ.
JOEL Z. SCHWARZ, ESQ.
ALINA M. SHELL, ESQ.
JORDAN T. SMITH, ESQ.
RICHARD D. WILLIAMSON, ESQ.

ALSO PRESENT:

DIANE L. WELCH, ESQ.
For Jorge Pupo

I N D E X

Closing argument for the Defense by Mr. Graf	5
Closing argument for the Defense by Mr. Schwarz	40
Closing argument for the Defense by Mr. Kahn	49
Closing argument for the Defense by Mr. Williamson	58
Rebuttal argument for the Plaintiffs by Ms. Chattah	67
Rebuttal argument for the Plaintiffs by Ms. Sugden	77
Rebuttal argument for the Plaintiffs by Mr. Miller	82

1 that on behalf of my client we thank the Court and the court
2 staff for its time and attention, patience and cooperation in
3 this trial. I will try to be brief today rather than rehashing
4 old ground. I would like to join in the very effective and
5 eloquent arguments that were made by Mr. Shevorski, Mr. Bice
6 and Mr. Prince and all of the other defendants' counsel
7 yesterday and this morning.

8 Your Honor, the Court simply cannot order a redo of
9 the entire 2018 licensing process when first, the remaining
10 plaintiffs have not even come close to demonstrating that they
11 deserve licenses or would have won under different
12 circumstances.

13 Number 2, you have a roomful of legitimate applicants
14 who did nothing wrong, who followed the process, dotted their
15 I's, crossed their T's and would lose those conditional
16 licenses for no reason.

17 I want to spend my time focusing on the plaintiffs'
18 complete lack of a case when it pertains to my client, Lone
19 Mountain Partners. And I'll ask, Your Honor, what testimony
20 have you heard regarding Lone Mountain Partners during this
21 trial? Next to none. Was there a witness called from Lone
22 Mountain Partners? No. There was never a deposition taken of
23 Lone Mountain Partners. There was no witness subpoenaed for
24 trial. These plaintiffs, the ones that are left didn't even
25 ask for a witness under the trial protocol.

1 So what documents have you seen that even mention
2 Lone Mountain Partners during this trial? Again, almost none.
3 And I think it's really interesting that you've seen so few
4 documents because what limited information is in the record
5 regarding Lone Mountain Partners?

6 You've seen Exhibit 84 over and over again; I'm not
7 going to put it back up. But what you have is Lone Mountain
8 Partners applied for 13 licenses all throughout the State, and
9 it won 11 of those. It was highly successful, 11 licenses:
10 Las Vegas, North Las Vegas, unincorporated Clark County, Reno,
11 Douglas County, Esmeralda County, Eureka County, Lander County,
12 Lincoln County, Mineral County, White Pine County. We were one
13 of the few who was applying in some of the rural jurisdictions,
14 and I'm going to talk about that more in just -- in a few
15 minutes.

16 So the big question is why have you heard and seen so
17 little about someone who won 11 licenses? And the answer is
18 simple; it was on purpose. They didn't want you -- the
19 plaintiffs didn't want you to see or hear much about Lone
20 Mountain Partners. And in fact as was discussed by Mr. Rose
21 yesterday, Ms. Braster yesterday, Ms. Shell yesterday, and I
22 expect there's going to be at least one other person that's
23 going to point this out again today besides me, the plaintiffs
24 really just don't want you spending much time at all
25 considering most of the successful applicants that won licenses

1 because they deserved them.

2 So let's look at the big picture issues that have
3 been what plaintiffs centered their closing arguments around.
4 And I -- I'm -- I think I'm being generous because as Mr. Bice
5 I think pointed out most effectively yesterday, I didn't see a
6 closing argument from anybody that actually focused on any
7 claims or elements of claims. I think I saw scattershot
8 discussion of a few issues of marginal relevance at best.

9 But let's talk about Lone Mountain Partners and the
10 issues that plaintiffs have raised. Alleged insider
11 information and improper conduct. You have no evidence
12 whatsoever, none, when it comes to Lone Mountain Partners on
13 that point. We're the single most successful applicant in
14 terms of numbers in the licenses awarded in 2018, and there's
15 not a single piece of evidence about any communications with
16 anybody at the Department, with any specific employees,
17 anything improper. It's just not there when it comes to Lone
18 Mountain Partners, not at all.

19 Next point is the prospective owners and the
20 5 percent rule. Again, look at the record. What information
21 is there about Lone Mountain on this issue in the record? Have
22 you seen our applications? No, you haven't. So what do you
23 have? You have the Department's notice, which we argued about
24 yesterday morning, and it's -- what has the Department told,
25 Your Honor? There's not an ownership or 5 percent rule issue

1 when it comes to Lone Mountain Partners.

2 You can also take a look at Exhibit 1142, I'm going
3 to discuss that further in just a minute. In that there's a
4 column that says ownership confirmed as to all of the
5 applicants. And what does it say as to Lone Mountain Partners,
6 ownership confirmed for every application? Yes. So in short
7 there's no prospective owner, 5 percent rule issue for Lone
8 Mountain Partners either.

9 Let's next talk about location. As I said, Lone
10 Mountain applied all over the State including some of the rural
11 locations where there were not many applicants. In Lincoln
12 County, Lone Mountain Partners was the only applicant; so of
13 course it won, and that was a noncompetitive bidding process
14 for Lincoln County. Mr. Prince I believe talked about the
15 difference between the competitive versus noncompetitive
16 yesterday.

17 THE COURT: So you didn't have to take the loop on
18 the lower part for Lincoln --

19 MR. SCHWARZ: Nope.

20 THE COURT: -- and Panaca?

21 MR. SCHWARZ: Nope. We were the only applicant. In
22 Eureka County there were two licenses awarded. There were two
23 applicants, Lone Mountain Partners was one of them. So again
24 you had a noncompetitive process; they correctly won.

25 In Lander County there were only five applicants.

1 Lone Mountain Partners had the highest score, and it won. In
2 Mineral County, it was one of two applicants, both awarded
3 licenses. In White Pine County it was one of three applicants,
4 two licenses awarded, again Lone Mountain Partners had the
5 highest score and won.

6 So as you may recall from Ky Plaskon's testimony,
7 among others, it's a matter of public record. There were
8 certain jurisdictions, and as was discussed yesterday there
9 still are certain jurisdictions like Henderson, but we didn't
10 apply in Henderson, but there are certain jurisdictions, cities
11 and counties where there are moratoriums in place that
12 prevented applicants from either owning or leasing real
13 property for the purpose of operating recreational marijuana
14 businesses.

15 If you look at Exhibit 1142, in every jurisdiction
16 where there was no moratorium, Lone Mountain Partners had an
17 actual address where it planned to operate a business. So it
18 complied in all of those locations with NRS 453D210 Sub 5.

19 However, where there was a moratorium in some of the
20 places, for example, Douglas County, Lone Mountain Partners did
21 the only thing, the accurate thing, the right thing which was
22 to correctly and honestly say that the address was TBD, to be
23 determined because it could not get an address. To put an
24 address in there would be representing that you either own that
25 property or you were leasing that property, and you had the

1 ability to legally operate a recreational marijuana business in
2 that address. With the moratoriums in those jurisdictions, you
3 could not do that. So I would submit that anybody who actually
4 put an address in there was not telling the truth. So the
5 jurisdictions where Lone Mountain Partners correctly put in TBD
6 and won were Mineral County, Eureka County and Douglas County.

7 Now, Exhibit 1135 you've been shown by the plaintiffs
8 in closing --

9 THE COURT: Can you put us on mute, please.

10 UNIDENTIFIED SPEAKER: (Audio interference.)

11 THE COURT: Please. Can you please put me on mute.
12 Thank you.

13 Keep going, Mr. Schwartz. Sorry for the
14 interruption.

15 MR. SCHWARZ: Exhibit 1135 you've been shown by the
16 plaintiffs --

17 UNIDENTIFIED SPEAKER: (Audio interference.)

18 THE COURT: Let's just try and power through.

19 MR. SCHWARZ: Okay.

20 Exhibit 1135 you've been shown by plaintiffs it also
21 includes the TBD for Lander County, but I would invite the
22 Court to look at, like, Exhibit 1142, which actually accurately
23 shows that Lone Mountain Partners in Lander County did use an
24 actual address. So Exhibit 1135 is not an accurate document,
25 and I would suggest that the Court not particularly use that

1 considering the inaccuracies in that one. I would suggest 1142
2 is the better document.

3 So Lone Mountain Partners in three rural
4 jurisdictions put TBD in one. It did that accurately, and I
5 would submit to Your Honor, and I'm not going to go through
6 this again because Mr. Shevorski, Mr. Prince and Mr. Bice all
7 squarely addressed New Leaf, this is a New Leaf issue.

8 More importantly, who are the plaintiffs that are
9 left in the room? You have the TGIG plaintiffs, THC and Herbal
10 Choice, none of them were even applicants in those
11 jurisdictions.

12 Now, Green Therapeutics was an unsuccessful applicant
13 in Douglas County, and it said nothing about location issue in
14 its closing argument yesterday, and why is that? Because it
15 put in an address for -- in its Douglas County application that
16 was unsuccessful. Legally, it could not have had an address
17 where it could have operated a recreational marijuana business
18 because the moratorium prevented that.

19 What you end up with is there is not a single
20 applicant in any one of the jurisdictions successful or
21 unsuccessful who is challenging Lone Mountain Partners
22 applications at this trial. And at the end of the day, what is
23 the consequence to the remaining plaintiffs who weren't even
24 applicants? In this case of Lone Mountain Partners and the
25 others who applied in jurisdictions with moratoriums putting in

1 TBD in their applications, what is the consequence of that to
2 these plaintiffs? Absolutely nothing.

3 The last issue that we've seen bandied about in this
4 trial and closings is compliance. Again, no evidence
5 whatsoever about any issues with Lone Mountain Partners'
6 compliance history, no evidence in the record.

7 So summarize, Your Honor, you've heard Mr. Gentile in
8 particular say on more than one occasion during the course of
9 this case in arguing various motions or making comments that
10 really the plaintiffs, their beef is with the State. They
11 didn't intend to have these other successful applicant
12 defendants even in this case. But there's a reason for that,
13 Your Honor, and that is because they didn't want the successful
14 applicants without issues that did everything by the book in
15 the application process and that won fair and square coming in
16 here and shattering this false narrative that has been put
17 forth since the first day of this case.

18 Lone Mountain Partners is a prime example of the
19 process working, and why plaintiffs should be denied the relief
20 they requested in this matter. Thank you.

21 THE COURT: Thank you, Mr. Schwarz. If you could
22 please wipe down our lectern area.

23 Mr. Kahn.

24 Thank you, Mr. Schwarz.

25 MR. SCHWARZ: Thank you, Judge.


CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

08/19/2020

DATE

EXHIBIT B

IN RE D.O.T. LITIGATION

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

**TRANSCRIPT OF
PROCEEDINGS**

FRIDAY, JULY 31, 2020

TGIG, NATURAL MEDICINE, LLC, AND HIGH SIERRA
 HOLISTICS, LLC'S JOINDER TO QUALCAN LLC'S MOTION TO
 ADMIT INTO EVIDENCE PRIOR TESTIMONY AND DOCUMENTS
 ADMITTED DURING THE PRELIMINARY INJUNCTION HEARING
 ON ORDER SHORTENING TIME

THRIVE AND PUPPO'S LIMITED JOINDER AND SUPPLEMENT TO
QUALCAN, LLC'S MOTION TO AUTHORIZE PRESENTATION OF
TESTIMONY BY ZOOM VIDEOCONFERENCE AND TO REDUCE
7-DAY NOTICE TO 3 DAYS FOR ZOOM WITNESSES AND
NEVADA RESIDENTS ON ORDER SHORTENING TIME.

1

AA2210

A P P E A R A N C E S

FOR THE PLAINTIFFS:

WHITNEY J. BARRETT, ESQ.
ADAM K. BULT, ESQ.
SIGAL CHATTAH, ESQ.
PETER S. CHRISTIANSEN, ESQ.
MARK S. DZARNOSKI, ESQ.
MAXIMILIEN D. FETAZ, ESQ.
DOMINIC P. GENTILE, ESQ.
WILLIAM S. KEMP, ESQ.
ROSS J. MILLER, ESQ.
THEODORE PARKER, III, ESQ.
JAMES W. PUZEY, ESQ.
NATHANAEL R. RULIS, ESQ.
CRAIG D. SLATER, ESQ.
AMY L. SUGDEN, ESQ.

FOR THE DEFENDANT:

STEVEN G. SHEVORSKI, ESQ.
AKKE LEVIN, ESQ.
TODD L. BICE, ESQ.
JENNIFER L. BRASTER, ESQ.
CLARENCE E. GAMBLE, ESQ.
J. RUSTY GRAF, ESQ.
JOSEPH A. GUTIERREZ, ESQ.
JARED B. KAHN, ESQ.
DAVID R. KOCH, ESQ.
KIRILL V. MIKHAYLOV, ESQ.
DENNIS M. PRINCE, ESQ.
CHRISTOPHER L. ROSE, ESQ.
JOEL Z. SCHWARZ, ESQ.
ALINA M. SHELL, ESQ.
JORDAN T. SMITH, ESQ.
STEPHANIE J. SMITH, ESQ.
RICHARD D. WILLIAMSON, ESQ.

ALSO PRESENT:

DIANE L. WELCH, ESQ.
For Jorge Pupo

1 had 30 million in primary insurance, which some of the
2 plaintiffs jumped on, and they took it and said goodbye. Okay.
3 So that explained the partial settlements.

4 After that, we did the global settlement. And the
5 global settlements was the one that needed the good faith
6 motion. And the reason we needed a good faith motion is
7 because there were claims for contribution and indemnity
8 between the settling defendants. There are no claims for
9 contribution and indemnity in this case between the parties,
10 and there's no need for a good faith motion. There hasn't been
11 a good faith motion filed in this case. So to suggest that we
12 can't do a partial settlement and then a global is just flat
13 out wrong.

14 And the problem we have in this case, they call it
15 collusion. I call it toxic plaintiffs, and, you know, I've
16 heard -- when you have a mass disaster or a big case, you have
17 some plaintiffs that nobody's a poly pure heart. Okay. In
18 this case, we have two toxic plaintiff problems that have --
19 has impeded the global settlement. One, we have the client who
20 was arrested two months ago, THC, for a guess what they did was
21 they took it --

22 THE COURT: It doesn't matter what they were arrested
23 for.

24 MR. KEMP: It doesn't matter, but we got, and I think
25 Mr. Kahn attached it to his opposition. He sent an email to

1 that counsel saying, hey, my client just doesn't want to be
2 involved in a settlement with someone that's been arrested for
3 a criminal action that pertains to marijuana. And I think
4 that's a sensible position because how can we ask the State to
5 transfer a license to someone who is probably going to have
6 their license revoked? So that's toxic Plaintiff Number 1.

7 Toxic Plaintiff Number 2 is Mr. Ritter. Some of the
8 defendants feel very strongly about Mr. Ritter. They think he
9 has unclean hands because -- for two reasons. One, this
10 ownership thing where he owns five dispensaries, goes into
11 bankruptcy and some kind of magic he still owns -- maybe he
12 doesn't own. I don't know. Nobody knows. So they think
13 there's an ownership issue there that hopefully the ownership
14 expert today explains a little bit. But also they think the
15 whole theory of the case where Mr. Ritter's attorney allegedly
16 had inside information, gave it to Mr. Ritter, and even though
17 he had the answers to the test, he still lost. They think that
18 makes his claim problematic.

19 But in any event, Your Honor, we have two toxic
20 plaintiffs, and that precludes us from doing a global at this
21 time. I'm still working on it.

22 But, Your Honor, there is no case law that suggests
23 that, you know, it's like the four musketeers, you know,
24 everybody has to be in on it.

25 THE COURT: So you don't have a stand-together

1 agreement?

2 MR. KEMP: Right. We do not have an agreement. You
3 know, we had a shared agreement at one point, but Mr. Gentile
4 became upset about something about a year ago and fired off an
5 email and terminated that. And since then it's just been
6 informal cooperation. So there's no agreement.

7 And then I'd like to, you know, take two seconds to
8 defend Mr. Bult because they accuse him of all these ethical
9 violations. I mean, what is he supposed to do? He's got
10 multiple clients. One's accused of a criminal action. He's
11 got to cut out the bad apple, you know, and to suggest that he
12 has an ethical obligation to include the bad apple that he's
13 cut out in the settlement, I just think there's no basis for
14 that. And, you know, that was unfortunate that we had to get
15 there.

16 But anyway, Your Honor, for this reason there's no
17 grounds for a TRO. You know, and all these statements that the
18 Tax Commission can do this, and the cannabis board can do that,
19 you know, if that's true, my license is no good. You know, I
20 mean, that's my problem. All I can tell you is we went through
21 175 drafts of the settlement agreement. There was input from a
22 lot of people on it. The State had a lot of input on it.
23 These exact same points that counsel brought up was discussed,
24 and I think I have an agreement that's binding upon the
25 cannabis board. But if I don't, you know, that's my problem.

1 In any event, Your Honor, I think there's no basis
2 for a TRO. It's just a desperate attempt to derail a partial
3 settlement because these toxic plaintiffs aren't included.

4 THE COURT: Thank you.

5 MR. KEMP: And so for that reason, I'd ask that the
6 motion be denied.

7 THE COURT: I have several other oppositions. Who
8 wants to go next?

9 Mr. Kemp, I'm not going to make you try and wipe down
10 again.

11 Mr. Shevorski, why don't you come up and show us how
12 to wipe down the area. And then you can close the wipes too.

13 MR. SHEVORSKI: I'll do my best, Your Honor.

14 THE COURT: As a parent of young children, you
15 probably do more of this than the rest of us.

16 MR. SHEVORSKI: But not the good one. But I have had
17 my turn once or twice.

18 Your Honor, first I'd like to respectfully request
19 that you deny the motion. Questions of whether or not the Tax
20 Commission has jurisdiction, those are -- the Tax Commission
21 hasn't even ruled yet. Those are more appropriately addressed
22 to the Tax Commission.

23 With respect to paragraph 13, I released them from
24 it. I have the authority to do so. I released them from it.
25 There is no ethical problem for Mr. Bult. Because that

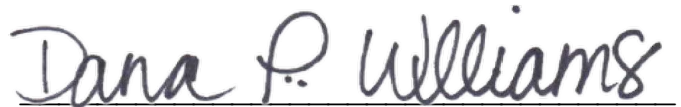
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

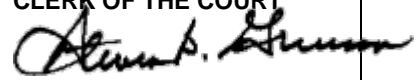
DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

07/31/2020

DATE



David R. Koch (NV Bar #8830)
Daniel G. Scow (NV Bar #14614)
KING SCOW KOCH DURHAM, LLC
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
Telephone: 702.833.1100
Facsimile: 702.833.1107
dkoch@kskdllaw.com
dscow@kskdllaw.com

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

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

IN RE D.O.T. LITIGATION

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

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

DEPT. 31

**NEVADA ORGANIC REMEDIES,
LLC'S OMNIBUS OPPOSITION TO
MOTIONS TO RETAX AND SETTLE
COSTS AND LIMITED JOINDER
TO ESSENCE AND THRIVE'S
OPPOSITIONS**

Hearing Date: September 16, 2022
Hearing Time: 9:00 a.m.

Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") hereby submits this limited joinder to the Essence Entities' Omnibus Opposition to TGIG's Motion to Retax and Settle Costs, MM Motion to Retax, and All Related Joinders and Supplements Thereto, a limited joinder to CPCMHoldings LLC's ("Thrive") Limited Joinder and Supplement to the Essence Entities' Motion and Omnibus Opposition to the Motions to Retax and Settle Costs filed by the TGIG Plaintiffs, High Sierra Holistics, LLC, and MM Development Company, Inc. (the "Motions") and to all related joinders, supplements,

AA2217

1 and motions to retax based on the attached Memorandum of Points and Authorities, the
2 pleadings on file in this action, and any argument that may be permitted.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 In 2018 and 2019, Plaintiffs filed numerous cases against the State seeking to
6 upend the completed recreational marijuana licensing process. Plaintiffs complained
7 that the licensing process was unfair and asked the State to award them licenses that had
8 already been awarded to other parties, including NOR.

9 NOR successfully intervened in the cases. Eventually, NOR settled with a group
10 of Plaintiffs, and that settlement was approved by the State. Other Plaintiffs, including
11 the TGIG Plaintiffs, refused to settle and proceeded to trial to have the licensing process
12 redone. They lost. Their claims were adverse to NOR because they sought to take away
13 NOR's marijuana licenses, constituting personal property with a value much greater
14 than \$2,500. Accordingly, the non-settling Plaintiffs lost their bid to have licenses
15 transferred or revoked, and NOR and the other licensees were prevailing parties that
16 should be awarded their reasonable costs.

17 To a limited extent, NOR joins in the facts, legal arguments, and conclusions of
18 the Essence Opposition filed August 22, 2022 and the Thrive Joinder and Supplement
19 filed August 25, 2022 to the extent they pertain to the non-settling Plaintiffs. To the
20 extent the Essence opposition seeks relief against the settling Plaintiffs, NOR does not
21 join in the arguments as those claims were settled between the parties.

22 **II. RELEVANT FACTS**

23 In late 2018 and early 2019, the unsuccessful applicants in the State's recreational
24 marijuana licensing process filed at least eight separate cases seeking to overturn the
25 award of licenses. Initially, the losing applicants only named the State as a defendant
26 and tried to obtain the revocation of the winners' licenses without their participation.
27 NOR moved to intervene in the cases, and its request was granted.
28

1 In November 2019, Judge Gonzalez found that all of the successful applicants
2 were necessary and indispensable parties under NRCP 19 and ordered the Plaintiffs to
3 name the successful applicants as parties to their respective complaints. Thus, NOR is
4 party to all of the Plaintiffs' operative complaints. Although the various cases were at
5 first "coordinated," eventually Chief Judge Bell entered an order consolidating all cases
6 in Department 11, the Honorable Judge Gonzalez presiding.

7 Following consolidation, Plaintiffs filed amended complaints naming NOR and
8 other successful applicants as defendants. The complaints asked the Court to enter
9 injunctive relief against the DOT requiring it to redo the entire licensing process. (*See,*
10 *e.g.,* MM & LivFree's Second Am. Compl. and Petition for Judicial Review or Writ of
11 Mandamus, Jan. 29, 2020, on file, ¶¶ 65-71.) Because of the limited number of
12 recreational licenses allowed by regulation, Plaintiffs' requested relief would have
13 necessarily stripped Defendants of the licenses they were granted.

14 Following a preliminary injunction hearing, this Court divided the trial in this
15 case into three phases: (1) petition for judicial review, (2) legality of the 2018 recreational
16 marijuana application process (claims for equal protection, due process, declaratory
17 relief, intentional interference with prospective economic advantage, intentional
18 interference with contractual relations, and permanent injunction), and (3) writ of
19 mandamus for improper scoring errors.

20 Trial for Phase 2 of this case began on July 17, 2020. The trial lasted until August
21 18, 2020, and on September 3, 2020, this Court's entered its Findings of Fact and
22 Conclusions of Law order ("FFCL Order").

23 During Phase 2 of trial, NOR and several other defendants entered into a
24 settlement agreement on July 28, 2020. The agreement was approved by the Cannabis
25 Control Board and was signed by the Department of Taxation. This settlement
26
27
28

1 agreement was entered before the FFCL Order, and the settlement agreement shows the
2 following parties:

3 This Settlement Agreement is entered into as of July __, 2020 (the "Effective Date") (this
4 "Agreement"), among LivFree Wellness, LLC, a Nevada limited liability company ("LivFree"),
5 MM Development Company, Inc., a Nevada corporation, ("MM"); ETW Management Group
6 LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real
7 Estate, Inc., and Zion Gardens LLC, (collectively the "ETW Plaintiffs"); Nevada Wellness Center,
8 LLC, a Nevada limited liability company ("NWC"); Qualcan, LLC, a Nevada limited liability
9 company ("Qualcan") (collectively, "Settling Plaintiffs" or individually, a "Settling Plaintiff");
10 Lone Mountain Partners, LLC, a Nevada limited liability company ("Lone Mountain"); Nevada
11 Organic Remedies, LLC, a Nevada limited liability company ("NOR"); Greenmart of Nevada
12 NLV, LLC, a Nevada limited liability company ("GreenMart"); Helping Hands Wellness Center,
13 Inc., a Nevada corporation ("Helping Hands"); CPCM Holdings, LLC, a Nevada limited liability
14 company, Cheyenne Medical, LLC, a Nevada limited liability company, and Commerce Park
15 Medical, LLC, a Nevada limited liability company (collectively "Thrive"); and the State of
16 Nevada, Department of Taxation ("DOT") (collectively "Settling Defendants" or individually, a
17 "Settling Defendant").

18 All Plaintiffs who did not enter into the settlement agreement are referred to as
19 the "Non-Settling Plaintiffs." The Non-Settling Plaintiffs, including the TGIG Plaintiffs
20 (along with the other plaintiffs), pursued their claims in Phase 2 of trial. They sought
21 either (1) a complete re-do of the 2018 recreational marijuana dispensary licensing
22 process or (2) an award of dispensary licenses for themselves. The Non-Settling Plaintiffs
23 lost and did not obtain relief on their claims. As a result, NOR succeeded in protecting
24 its marijuana dispensary licenses and ultimately prevailed against the TGIG Plaintiffs.

25 Memorandum of Costs filed earlier in this action were "premature under NRS
26 18.110 as there is not a final judgment in this matter." *See* Order Granting Mots. to Retax,
27 dated Aug. 30, 2021. Judge Gonzalez explained that a "[f]inal judgment will be issued
28 following completion of Phase 3 [then] scheduled for a jury trial on June 28, 2021." *Id.*
Then, on August 4, 2022, this Court entered the Order Granting Motion to Certify Trial
Phases 1 and 2 as Final Under NRCP 54(b) on August 4, 2022.

NOR filed its verified Memorandum of Costs on August 9, 2022, seeking
\$22,068.92 in costs. NOR's Memorandum of Costs was also supported by the
Declaration of David R. Koch supporting the amount of costs claimed.

1 **III. LEGAL ARGUMENT**

2 **a. NOR’s Memorandum of Costs was Timely**

3 NRS 18.110 requires a prevailing party to file a memorandum of costs “within 5
4 days after the entry of judgment.” In this case, Judge Gonzalez denied earlier-filed
5 Memoranda of Costs explaining that a “[f]inal judgment will be issued following
6 completion of Phase 3 [then] scheduled for a jury trial on June 28, 2021.” On August 4,
7 2022, this Court entered its Order Granting Motion to Certify Trial Phases 1 and 2 as
8 Final Under NRCP 54(b) on August 4, 2022. NOR filed its Memorandum of Costs on
9 August 9, 2022, 5 days after the order was entered. Accordingly, NOR’s Memorandum
10 of Costs was timely.

11 **b. NOR is Not Seeking Costs Against the Settling Plaintiffs**

12 Pursuant to the terms of the settlement agreement, NOR has agreed not to seek
13 costs or fees against the Settling Plaintiffs. In the settlement agreement, Defendants
14 reserved their right to seek fees and costs from the Non-Settling Plaintiffs. Accordingly,
15 NOR seeks fees and costs against the Non-Settling Plaintiffs only.

16 **c. NOR Is a Prevailing Party Against the Non-Settling Plaintiffs**

17 “Costs must be allowed of course to the prevailing party against any adverse
18 party against whom judgment is rendered.” NRS 18.020 (emphasis added). This
19 mandatory recovery of costs applies “[i]n an action to recover the possession of personal
20 property, where the value of the property amounts to more than \$2,500.” *Id.* Awarding
21 “costs to the prevailing party is mandated where ... damages were sought in an amount
22 in excess of \$2,500.” *Schwartz v. Est. of Greenspun*, 110 Nev. 1042, 1050, 881 P.2d 638, 643
23 (1994).

24 In determining which party prevails, the “district court must determine which
25 issues are common to the main and third-party actions to determine which parties are
26 functionally adverse, and then the court may award the prevailing party costs and fees
27 relating to those issues.” *Copper Sands Homeowners v. Flamingo 94 Ltd.*, 130 Nev. Adv.
28 Op. 81, 335 P.3d 203, 206 (2014). A defendant who avoids a judgment against it qualifies

1 as a prevailing party. *145 E. Harmon II Tr. v. Residences at MGM Grand - Tower A Owners'*
2 *Ass'n*, 136 Nev. 115, 120, 460 P.3d 455, 459 (2020). After aligning the parties, the
3 prevailing party “must win on at least one of its claims” against its adversary. *Golightly*
4 *& Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. 416, 422, 373 P.3d 103, 107 (2016).

5 Here, NOR was a prevailing party against the Non-Settling Plaintiffs. NOR
6 prevailed over TGIG and the other Non-Settling Plaintiffs who proceeded to trial,
7 including TGIG, THC Nevada, Herbal Choice, and the Green Leaf Plaintiffs. After
8 arguing for a complete redo of the licensing process, Judge Gonzalez did not find any
9 basis to reverse the whole licensing effort, nor did Judge Gonzalez require the State to
10 revoke or suspend any licenses from successful applicants.

11 Awarding costs to a prevailing party is required by statute and is not
12 discretionary. The TGIG Plaintiffs filed an appeal, which shows adverse findings were
13 made against it and NOR prevailed. Thus, NOR is the prevailing party.

14 **d. NOR’s Costs Were Reasonable and Permitted by Statute**

15 The statute permits the prevailing party in an action to file a “memorandum of
16 the items of the costs in the action or proceeding, which memorandum must be verified
17 by the oath of the party, or the party’s attorney or agent, or by the clerk of the party’s
18 attorney, stating that to the best of his or her knowledge and belief the items are correct,
19 and that the costs have been necessarily incurred in the action or proceeding.” NRS
20 18.110. “The determination of allowable costs is within sound discretion of the trial
21 court.” *Motor Coach Indus., Inc. v. Khiabani by & Through Rigaund*, 137 Nev. Adv. Op. 42,
22 493 P.3 1007, 1017 (2021) (*quoting Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481,
23 493, 117 P.3d 219, 227 (2005)). NRS 18.005 lists specific categories of recoverable costs,
24 including:

- 25 1. Clerk’s fees.
- 26 2. Reporters’ fees for depositions, including a reporter’s fee for one copy of
27 each deposition.
- 28 3. Jurors’ fees and expenses, together with reasonable compensation of an
officer appointed to act in accordance with NRS 16.120.
4. Fees for witnesses at trial, pretrial hearings and deposing witnesses,
unless the court finds that the witness was called at the instance of the
prevailing party without reason or necessity.

5. Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.
6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

NOR filed its verified Memorandum of Costs on August 9, 2022. Attached to the Memorandum of Costs was the Declaration of David R. Koch, stating that the costs were "true and correct," and "necessarily incurred and paid in this action." Attached to the Memorandum of Costs were exhibits that provided verification and support for the costs requested and should be granted.

The Motions claim the costs are not recoverable because they may relate to certain phases of trial. This argument fails. Discovery in this matter was not bifurcated between phases, and the nature of the Non-Settling Plaintiffs' Phase 2 claims, which tried to upset the entire licensing process, necessarily involved discovery. Moreover, Plaintiffs advocated—over Defendants' objections early in the case—for broad discovery in attempt to show irregularities outside the administrative record in the judicial review phase. *See* NRS 233B.135(1)(b) ("Judicial review of a final decision of an agency must be: [c]onfined to the record. In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the

1 irregularities.”). After insisting on broad discovery and opposing efforts to curtail it, the
2 Plaintiffs cannot complain about the costs NOR necessarily incurred to defend itself.

3 Moreover, none of the Motions point to specific costs that are unreasonable or
4 unnecessary. NOR’s costs are substantially less than other intervenor costs that have
5 been submitted. And tellingly, NOR’s costs are approximately just 6% of the total costs
6 claimed by the TGIG Plaintiffs in their quixotic request for costs. These costs had to be
7 incurred to defend against Plaintiffs’ claims, and each of the categories of expenses
8 claimed is pursuant to the statutory provisions of NRS 18.005 such as filing fees (NRS
9 18.005(1)), photocopies (NRS 18.005(12), and deposition and transcript fees (NRS
10 18.005(2)). Accordingly, the costs claimed by NOR are reasonable, necessary, and
11 verified, and the Court should award all of NOR’s costs, as well as prejudgment interest.
12 These costs should be paid by the Non-Settling Plaintiffs.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the Court should award all of the costs claimed by
15 NOR in its verified Memorandum of Costs and Disbursements.

16
17 DATED: August 25, 2022

KING SCOW KOCH DURHAM LLC

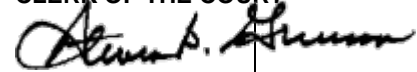
18 By: /s/ David R. Koch
19 David R. Koch
20 *Attorneys for Defendant-Intervenor*
21 *Nevada Organic Remedies LLC*
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify, that on the date filed, this **NEVADA ORGANIC REMEDIES, LLC'S OMNIBUS OPPOSITION TO MOTIONS TO RETAX AND SETTLE COSTS AND LIMITED JOINDER TO ESSENCE AND THRIVE'S OPPOSITIONS** was served on the parties identified on the District Court E-File system e-service list (or alternate method).

Executed on August 25, 2022 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



CLARK HILL PLLC
DOMINIC P. GENTILE (NSBN 1923)
Email: dgentile@clarkhill.com
JOHN A. HUNT (NSBN 1888)
Email: jhunt@clarkhill.com
MARK DZARNOSKI (NSBN 3398)
Email: mdzarnoski@clarkhill.com
A. WILLIAM MAUPIN (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Tel: (702) 862-8300; Fax: (702) 862-8400
Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Date: 9-16-2022
	)	Hearing Time: 9:00 a.m.
)	

**OMNIBUS REPLY
TO
OPPOSITIONS TO MOTIONS TO RETAX**

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC., Plaintiffs in Case A-19-786962-B (“Plaintiffs” or “TGIG Plaintiffs”), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Omnibus Reply (“Reply”) to the following oppositions filed by various opposing parties (collectively “Opposing Parties”):

1. *Omnibus Opposition to TGIG’s Motion to Retax and Settle Cost, MM Motion to Retax, and all Related Joinders and Supplements Thereto* filed August 22, 2022, by Integral Associates

1 LLC, dba Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC
2 (“Essence Entities).

3 2. *Deep Roots Harvest, Inc’s Opposition to TGIG Plaintiffs’ Motion to Retax and Settle*
4 *Costs* filed August 24, 2022.

5 3. *Thrive’s Limited Joinder and Supplement to Essence Omnibus Opposition to TGIG’s*
6 *Motion to Retax and Settle Costs, MM Motion to Retax, and all Related Joinders and*
7 *Supplements Thereto* filed August, 25, 2022.

8 4. *Lone Mountain Partners, LLC’s Opposition to the TGIG Plaintiffs’ Motion to Retax and*
9 *Settle Costs* filed August 25, 2022.

10 5. *Clear River, LLC’s Omnibus Opposition to Motions to Retax and Settle Costs Filed by:*
11 *the TGIG Parties; (2) MM Development Parties; (3) High Sierra; and (4) All Joinders Thereto*
12 *filed August 25, 2022.*

13 6. *Wellness Connection of Nevada, LLC’s Omnibus Opposition to Moving Parties’ Motions*
14 *to Retax and Settle Costs and all Joinders* filed August 25, 2022.

15 This Reply is made and based upon the following points and authorities, the papers and
16 pleadings on file herein, any attached exhibit, and any oral argument the court may allow.

17 POINTS & AUTHORITIES

18 I. 19 REPLY

20 1. To the extent Opposing Parties’ Memo of Costs pertain to the 9-3-2020 FFCL&PI, it
21 should be denied because it is Plaintiffs, not Opposing Parties, who fall within the
22 definition of a “prevailing party” for purposes of an award of costs.

23 A party prevails “if it succeeds on any significant issue in litigation which achieves some
24 of the benefit it sought in bringing suit.” Valley Elec. Ass’n v. Overfield, 121 Nev. 7, 10, 106
25 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not
26 succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d
27 40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on
28 only some of his claims for relief”).

A prevailing party must win on at least one of its claims. See Close v. Isbell Constr. Co.,
86 Nev. 524, 531, 471 P.2d 257, 262 (1970). In Close, the Court held that a party prevailed when

1 it won on its mechanic's lien claim but had its damages reduced significantly by the adverse
2 party's counterclaim. Id. at 525, 531, 471 P.2d at 258, 262. Although Isbell Constr. Co. received
3 net damages significantly less than the award on its successful claim, it nonetheless prevailed. Id.
4 at 531, 471 P.2d at 262. Such analysis is applicable here. Plaintiffs were successful on various
5 claims. As the Court is aware, the 9-3-2020 FFCL&PI granted the claim for declaratory relief,
6 equal protection (in part) and injunctive relief. While it may be argued Plaintiffs did not obtain
7 the greatest relief sought, it did win on these matters and, like with Isbell Constr. Co. in Close
8 which was not awarded all the relief it sought, it did obtain a lesser amount of relief and was
9 declared the prevailing party.

10 Because the 9-3-2020 FFCL&PI granted the claim for declaratory relief, equal protection
11 (in part) and injunctive relief, it is Plaintiffs, not the Opposing Parties, who fall within the
12 definition of a “prevailing party” for purposes of an award of costs. Accordingly, because
13 Opposing Parties are not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, their
14 respective request for costs should be denied.

15 **2. Opposing Parties’ Oppositions fail to refute the argument if their respective Memo**
16 **of Costs are filed in connection with the Findings of Fact, Conclusion of Law and**
17 **Permanent Injunction e-filed and e-served on September 16, 2020, the same should**
be denied because it does not fall within the parameters of NRS 18.020.

18 As noted in Plaintiffs’ underlying motions to retax and settle costs, Plaintiffs alternatively
19 argued if Opposing Parties’ respective Memo of Costs were filed in connection with the *Findings*
20 *of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16,
21 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then Opposing
22 Parties’ Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the
23 Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a
24 prevailing party, pursuant to NRS 18.020. The Essence Entities (Opp., pg. 11, fn. 7), Deep
25 Roots (Opp., 6:13-17, citing Black), Thrive (Opp., 7:14-20), Clear River (Opp., pg. 11, fn. 29),
26 cite to Gilman v. Nevada State Bd. Of Veterinary Med. Examiners, 120 Nev. 263, 273, 89 P.3d
27 1000, 1007 (2004) (“Gilman”), and State, Dep’t of Bus. & Indus., Nevada Transp. Auth. v.
28 Black, 130 Nev. 1249, 2014 WL 3784239, at *2 (2014) (unpublished disposition) (“Black”), for

1 the contention a petition for judicial review is a “special proceeding” under NRS 18.020(4) for
2 which costs are recoverable. Reliance upon Gilman and Black is misplaced.

3 In Gilman, the authority at issue which allowed the Veterinary Board to recover its costs
4 as against its licensee, Gilman, following the disciplinary administrative hearing before the
5 Board was NRS 638.137(10) (repealed 2003) (the statute which allows the Board to recover its
6 costs in taking disciplinary action against a licensee). See Gilman, 129 Nev. at 272, 89 P.3d at
7 1006. Page 273 of Gilman which is cited by Opposing Parties addresses the standard under
8 which the cost recovery statute (i.e., NRS 638.137(10) (repealed 2003)) is to be applied in
9 connection with the Board’s recovery of costs following the disciplinary administrative hearing
10 conducted before the Board. Contrary to the Opposing Parties’ contentions, Gilman does not
11 stand for the proposition a petition for judicial review is a “special proceeding under NRS
12 18.020(4) for which costs are recoverable. Simply put, Gilman did not address or consider such
13 an issue.

14 Reliance upon Black fares no better. The Nevada Supreme Court in Black did not address
15 the issue because appellant was found to have waived the issue:

16 The NTA also argues that a petition for judicial review is not a “special
17 proceeding” in which costs may be awarded under NRS 18.020(4), and therefore
18 the district court abused its discretion by awarding Black costs. However, because
19 the NTA waived appellate review of the award of costs by failing to file a motion
20 to retax costs, **we decline to address this argument.**

21 See Black, 2014 WL 378429, at *2 (citations omitted) (bold emphasis added).

22 Thus, Black too does not stand for the proposition a petition for judicial review is a
23 “special proceeding” under NRS 18.020(4) for which costs are recoverable because, as noted
24 above, the Court in Black explicitly declined to address such an argument.

25 Deep Roots, at 5:26 to 6:2 of its Opposition also cites to T.L. Townsend Builders, LLC v.
26 Nevada State Contractors Bd., 485 P.3d 210 (Table) (Unpublished Disposition), 2021 WL
27 1530073 (April 16, 2021) (“Townsend”) for the contention a case where a party seeks judicial
28 review is a “special proceeding” as set for thin NRS 18.020(4). This argument is without merit.
In Townsend, the Court in its Order of Affirmance, stated, in pertinent part:

1 because the Board was the prevailing party in the district court proceedings and
2 the district court did not abuse its discretion in making the award, we also affirm
3 the award of attorney fees and costs to the Board. See NRS 622.410 (requiring the
4 district court to award reasonable attorney fees and costs when a regulatory body
is a prevailing party); see also NRS 18.020(4) (providing that costs must be
awarded to the prevailing party in a special proceeding);

5 Id. at *2.

6 In Townsend, NRS 622.410¹ provided the Contractor's Board authority to seek an award
7 of attorney's fees and costs. Townsend's unpublished disposition did not further analyze or
8 discuss the applicability of NRS 18.020(4).

9 As noted in Plaintiffs' underlying motions to retax, a Petition for Judicial Review, which
10 is the subject of the 9-16-2020 FFCL&PI, is not within any of the five (5) category of cases
11 listed at NRS 18.020 and, therefore, the same does not provide authority for the Board to seek an
12 award of costs. In Nevada, costs of suit are only recoverable if they are authorized by statute or
13 court rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776,
14 542 P.2d 1072, 1074 (1975). NRS 18.020 allows the prevailing party to receive its costs in the
15 following five actions: (1) an action for the recovery of real property or a possessory right
16 thereto; (2) an action to recover the possession of personal property valued more than \$2,500; (3)
17 an action to recover money or damages of more than \$2,500; (4) a special proceeding; and (5) an
18 action involving title or boundaries of real estate, the legality of any tax, assessment, toll, or
19 municipal fine. Obviously, a petition for judicial review is not one of the five actions noted in
20 NRS 18.020. See Motion, at pgs. 4-5.

21
22
23 ¹ **NRS 622.410 Recovery of attorney's fees and costs incurred by regulatory body in certain judicial**
24 **actions.** A court shall award to a regulatory body reasonable attorney's fees and reasonable costs specified in NRS
25 18.005 that are incurred by the regulatory body to bring or defend in any action if:

26 1. The action relates to the imposition or recovery of an administrative or civil remedy or penalty, the
27 enforcement of any subpoena issued by the regulatory body or the enforcement of any provision of this title which
28 the regulatory body has the authority to enforce, any regulation adopted pursuant thereto or any order of the
regulatory body; and

2. The court determines that the regulatory body is the prevailing party in the action.
(Added to NRS by 2003, 3418; A 2021, 1592)

1 If the Legislature intended that costs be awarded for petitions for judicial review, the
2 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
3 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
4 reference petition for judicial review, but the legislature did not include more expansive phrases
5 in the wording of the statute such as “including but not limited to” or “in other actions where the
6 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
7 only the five cases specified, and the Court must follow the plain language of the statute. See
8 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
9 is significant that the Legislature did not include petitions for judicial review in the types of cases
10 for which a party may recover its costs. The Legislature is presumed to have knowledge of
11 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
12 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
13 57 Nev. 332, 366, 65 P.2d 133 (1937).

14 Chapter 233B of the NRS does not classify a petition for judicial review as a special
15 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
16 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
17 An aggrieved party seeking review of a district court’s decision on a petition for judicial review
18 may appeal which “shall be taken as in other civil cases.” NRS 233B.150. NRS Chapter 233B
19 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
20 a “civil case.”

21 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it
22 allows a court to assess additional costs against a party unreasonably refusing to limit the record
23 to be transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
24 contains no other mention of assessing costs against a party in a petition for judicial review and it
25 doesn’t mention or make reference to NRS Chapter 18.

26 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
27 most recent amendment occurring in 1995 where it added to subsection 4 the following language
28 “except a special proceeding conducted pursuant to NRS 306.040.” 1995 Stat. of Nev., at 2794.

1 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
2 the type of cases for which costs may be awarded, the Court may presume that the Legislature
3 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
4 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
5 dissenting in part) (“[W]e have often said that the legislature is presumed to know what it is
6 doing and purposefully uses the specific language [it chooses].”).

7 Therefore, the Opposing Parties’ respective Memo of Costs should be denied because
8 petitions for judicial review are not special proceedings for purposes of NRS 18.020.

9
10 **II.**
CONCLUSION

11 Wherefore, as addressed above and in Plaintiffs’ underlying motions to retax, the
12 Opposing Parties’ respective Memo of Costs should be denied, and no costs assessed against
13 Plaintiffs.
14

15 Dated this 9th day of September 2022.

16 **CLARK HILL, PLLC**

17
18 By /s/ Mark S. Dzarnoski, Esq.
19 John A. Hunt, Esq. (NSBN 1888)
20 Dominic P. Gentile, Esq. (NSBN 1923)
21 Mark S. Dzarnoski, Esq. (NSBN 3398)
22 A. William Maupin (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Attorneys for TGIG Plaintiffs
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September 2022, I served a true and correct copy of the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Tanya Bain
An Employee of Clark Hill

Alvin P. Hanson

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE D.O.T. LITIGATION

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

FRIDAY, SEPTEMBER 16, 2022

TRANSCRIPT OF HEARING RE:

SEE PAGES 4 THROUGH 12 FOR MATTERS

SEE PAGES 2 THROUGH 3 FOR APPEARANCES

RECORDED BY: LARA CORCORAN, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

A P P E A R A N C E S

FOR MM DEVELOPMENT AND
LIVFREE WELLNESS:

NATHANAEL R. RULIS, ESQ.

FOR THE ETW PLAINTIFFS:

JAMES A. BECKSTROM, ESQ.

TGIG PLAINTIFFS:

MARK S. DZARNOSKI, ESQ.

FOR QUALCAN:

WHITNEY J. BARRETT, ESQ.

FOR HIGH SIERRA HOLISTICS:

JAMES W. PUZEY, ESQ.

FOR GREEN THERAPEUTICS,
GREEN LEAF FARMS HOLDINGS,
NevCANN, AND RED EARTH:

NICOLAS R. DONATH, ESQ.

FOR THC NEVADA:

AMY L. SUGDEN, ESQ.

FOR INYO FINE CANNABIS
AND THE NUVEDA ENTITIES:

CRAIG D. SLATER, ESQ.

FOR HERBAL CHOICE:

SIGAL CHATTAH, ESQ.

FOR DEPARTMENT OF TAXATION
AND CCB:

STEVEN G. SHEVORSKI, ESQ.
Chief Litigation Counsel

FOR INTEGRAL ASSOCIATES
AND THE ESSENCE ENTITIES:

TODD L. BICE, ESQ.
JORDAN T. SMITH, ESQ.

FOR CLEAR RIVER:

J. RUSTY GRAF, ESQ.
BRIGID M. HIGGINS, ESQ.

FOR WELLNESS CONNECTION
OF NEVADA:

CHRISTOPHER L. ROSE, ESQ.

FOR LONE MOUNTAIN PARTNERS:	JOEL Z. SCHWARZ, ESQ. ERIC D. HONE, ESQ.
FOR CPCM HOLDINGS, CHEYENNE MEDICAL, AND COMMERCE PARK MEDICAL:	JOSEPH A. GUTIERREZ, ESQ.
FOR NATURAL MEDICINE:	STEPHANIE J. SMITH, ESQ.
FOR NEVADA WELLNESS CENTER:	THEODORE PARKER, III, ESQ. JENNIFER A. DELCARMEN, ESQ.
FOR DEEP ROOTS HARVEST:	RICHARD D. WILLIAMSON, ESQ. JONATHAN J. TEW, ESQ.
FOR HELPING HANDS WELLNESS CENTER:	JARED B. KAHN, ESQ.
FOR NEVADA ORGANIC REMEDIES:	DAVID R. KOCH, ESQ.
FOR GREENMART OF NEVADA NLV:	LEO WOLPERT, ESQ.
FOR CIRCLE S FARMS, LLC:	BENJAMIN B. GORDAN, ESQ.
FOR JORGE PUPO:	DANIEL C. TETREAULT, ESQ.

M A T T E R S

High Sierra Holistics, LLC's Motion to Retax and Settle Costs

Motion to Retax and Settle Costs (Clear River, LLC)

Motion to Retax and Settle Costs (Thrive)

Motion to Retax and Settle Costs (Deep Roots Harvest)

Motion to Retax and Settle Costs (Lone Mountain)

Motion to Retax and Settle Costs (Nevada Organic Remedies)

Motion to Retax and Settle Costs (Wellness Connection)

Motion to Retax And Settle Costs Regarding Deep Roots Harvest,
Inc.'s Memorandum of Costs

Motion to Retax and Settle Costs Regarding Clear River, LLC's
Memorandum of Costs

Motion To Retax And Settle Costs Regarding CPCM Holdings, LLC
d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and
Commerce Park Medical, LLC

Plaintiffs Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, NevCann, LLC and Red Earth, LLC's Joinder to Motions to Retax and Settle Costs

Rural Remedies, LLC's Joinder to Motions to Retax and Settle Costs

THC Nevada, LLC and Herbal Choice, Inc.'s Joinder to Motion to Retax and Settle Costs

Motion to Retax and Deny Costs to Plaintiffs

Clark Natural Medicinal Solutions, LLC, Nye Natural Medicinal Solutions, LLC, Clark NMSD, LLC And Inyo Fine Cannabis Dispensary, LLC's Omnibus Joinder and Supplement to Motions to Retax

Motion to Retax and Settle Costs Regarding Nevada Organic Remedies, LLC

Motion to Retax and Settle Costs Regarding Lone Mountain Partners, LLC

Motion to Retax and Settle Cost Regarding Wellness Connection of Nevada, LLC

Joinder to the Essence Entities' and CPCM Holdings, LLC's
Motion to Retax TGIG Plaintiffs' Memorandum of Costs and
Disbursements

Lone Mountain Partners, LLC's Motion to Retax TGIG Plaintiffs
Memorandum of Costs and Disbursements

The Essence Entities' Motion to Retax TGIG Plaintiffs'
Memorandum of Costs and Disbursements

Clear River, LLC's Motion to Retax and Settle Costs (TGIG
Plaintiffs)

High Sierra Holistics, LLC's Joinder to Motion to Retax and
Settle Costs

Defendants in Intervention CPCM Holdings, LLC d/b/a Thrive
Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park
Medical, LLC's Motion to Retax Plaintiff TGIG's Memorandum of
Costs and Disbursements

Natural Medicine, LLC's Joinder to High Sierra Holistics, LLC
Motions to Retax and Settle Costs Re: Clear River, LLC, Deep
Roots Harvest, Inc. and Thrive Entities Filed On August 11,

2022

Clear River, LLC's Joinder to Motions to Retax and Settle Costs
Filed by (1) Essence Entities; (2) Thrive Entities (RE: TGIG
Plaintiffs)

Department of Taxation's Motion to Retax and Settle Costs

Motion to Retax and Settle Costs - Deep Roots

Motion to Retax and Settle Costs Regarding Nevada Organic
Remedies, LLC

Plaintiffs' Motion to Retax and Settle Costs Regarding Lone
Mountain Partners, LLC

Plaintiffs' Motion to Retax and Settle Costs Regarding Nevada
Organic Remedies, LLC

Joint Limited Motion to Retax and Settle Costs Regarding TGIG,
LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners,
Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC,
Medifarm, LLC, and Medifarm LV, LLC

TGIG Plaintiff's in Case A786962 Motion to Retax and Settle
Costs

MM Development Company, Inc. and LivFree Wellness, LLC Motion to Retax and Settle Costs

Joinder to TGIG Plaintiffs' Motion to Retax and Settle Costs and Joinder to MM Development Company, Inc., dba Planet 13 ("MM") and LivFree Wellness, LLC dba the Dispensary ("LivFree")'s Motion to Retax and Settle Costs

Rural Remedies, LLC's Joinder in TGIG Plaintiffs' Motion to Retax and Settle Costs

Plaintiffs Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, NevCANN, LLC and Red Earth, LLC's Joinder to TGIG Plaintiffs' Motion to Retax and Settle Costs (Re: The Essence Entities' Memorandum of Costs Filed August 5, 2022) and MM Development Company, Inc. dba the Dispensary's ("LivFree") Motion to Retax and Settle Costs

Rural Remedies, LLC's Joinder In Intervening Defendants CPCM Holdings, LLC D/B/A Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC's Motion to Retax Plaintiff TGIG's Memorandum of Costs and Disbursements

Clark Natural Medicinal Solutions, LLC, Nye Natural Medicinal

Solutions, LLC, Clark NMSD, LLC and Inyo Fine Cannabis
Dispensary, LLC's Joinder and Supplement to Motions to Retax

Rural Remedies, LLC's Joinder in MM and LivFree Plaintiffs'
Motion to Retax and Settle Costs

High Sierra Holistics, LLC's Joinder in TGIG Plaintiffs' Motion
to Retax and Settle Costs

High Sierra Holistics, LLC's Joinder and Supplement to MM
Development Company, Inc. dba Planet 13 ("MM") and LivFree
Wellness, LLC dba the Dispensary ("LivFree"), Qualcan, LLC
("Qualcan") and Natural Medicine, LLC ("Natural Medicine")'s
Motion to Retax and Settle Costs

Natural Medicine, LLC's Joinder To TGIG Plaintiffs' Motion To
Retax and Settle Costs Re: Essence Entities

Nevada Wellness Center, LLC's Joinder and Supplement to Motion
to Retax and Settle Costs

TGIG's Joinder to Motion to Retax and Settle Costs - MM,
LivFree, Qualcan, and Natural Medicine Regarding The Essence
Entities' Memorandum of Costs filed August 5, 2022

Helping Hands Wellness Center, Inc's Joinder to Motions to Retax Filed by Intervening Parties: 1. CPCM Holdings, LLC dba Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC's 2. Essence Parties 3. Clear River, LLC 4. Deep Roots

Lone Mountain Partners, LLC's Joinder to Motions to Retax and Settle Costs

Wellness Connection of Nevada, LLC's Joinder To Motion To Retax and Deny Costs To Plaintiff

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding Lone Mountain Partners, LLC

Deep Roots Harvest, Inc.'s Joinder to Motions to Retax TGIG Plaintiffs' Memorandum of Costs and Disbursements

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding Wellness Connection of

Nevada, LLC

Joinder to Settling Plaintiffs' Motion to Retax and Settle
Costs Regarding Deep Roots Harvest, Inc.'s Memorandum of Costs

Joinder to Settling Plaintiffs' Motion to Retax and Settle
Costs Regarding Clear River, LLC's Memorandum of Costs

ETW Management Group, LLC's Joinder to Settling Plaintiffs'
Motion to Retax and Settle Costs regarding Nevada Organic
Remedies, LLC

Plaintiffs Green Leaf Farms Holdings, LLC, Green Therapeutics,
LLC, NevCANN, LLC, and Red Earth, LLC's Joinder to Motions to
Retax and Settle Costs

THC Nevada, LLC and Herbal Choice, Inc.'s Joinder to Motions to
Retax and Settle Costs

Deep Roots Harvest, Inc.'s Joinder to Essence Entities Omnibus
Opposition to TGIG's Motion to Retax and Settle Cost, MM Motion
to Retax, and All Related Joinders and Supplements Thereto

Defendant Jorge Pupo's Joinder to Department of Taxation's
Motion to Retax and Settle Costs

Greenmart of Nevada NLV, LLC s Joinder to Motions to Retax and Settle Costs

Wellness Connection of Nevada, LLC's Joinder to Deep Roots Harvest, Inc.'s Reply in Support of Motion to Retax and Deny Costs to Plaintiff

Circle S Farms, LLC's Joinder to Motion to Retax and Settle Costs

1 **LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 16, 2022, 9:11 A.M.**

2 * * * * *

3 THE COURT: Okay. We're on Case 787004, In Re:
4 D.O.T. Litigation, and it's, well, lots and lots of pages, 1
5 through 28 for today.

6 So what I ask is counsel, counsel both remotely and
7 we have counsel here in court, so I'm just going to ask
8 starting with the left gallery, could we just do one by one
9 just do your appearances on behalf of your clients. We'll do
10 in court first, and then we will do the order the parties
11 checked in remotely.

12 So go ahead. Who's starting first here in court?
13 Whoever, but we do need you near a microphone so we can make
14 sure we get you a nice clear record. We do appreciate it.
15 Thank you.

16 MS. HIGGINS: Good morning, Your Honor. Brigid
17 Higgins on behalf of Clear River, LLC.

18 THE COURT: Okay. And there's someone on remote who
19 is typing who haven't muted themselves. Please make sure you
20 mute yourself because we've got -- that goes right into my poor
21 court recorder's ears.

22 Go ahead, Counsel, please.

23 MR. RULIS: Good morning, Your Honor. Nate Rulis on
24 behalf of plaintiffs MM Development and LivFree Wellness.

25 THE COURT: Okay. Next, please.

1 MR. BECKSTROM: Good morning, Your Honor. James
2 Beckstrom on behalf of ETW Management Group, Global Harmony,
3 Libra River Center (as said), Rombough Real Estate and Zion
4 Gardens. They're collectively referred to ETW plaintiffs.

5 THE COURT: Okay. Let's go to the other side. Thank
6 you so much.

7 MR. J. SMITH: Good morning, Your Honor. Jordan
8 Smith on behalf of Integral Associates and the Essence
9 entities.

10 MR. BICE: Good morning, Your Honor. Todd Bice on
11 behalf of Integral Associates and the two Essence entities.
12 Thank you.

13 MR. GRAF: Good morning, Your Honor. Rusty Graf,
14 also on behalf of Clear River, LLC.

15 MR. ROSE: Good morning, Your Honor. Christopher
16 Rose, 7500, for Wellness Connection of Nevada.

17 THE COURT: Thank you.

18 MR. SCHWARZ: Good morning, Your Honor. Joel Schwarz
19 on behalf of defendant Lone Mountain Partners.

20 MR. HONE: Your Honor, Eric Hone, also on behalf of
21 defendant Lone Mountain Partners.

22 MR. GUTIERREZ: Good morning, Your Honor. Joseph
23 Gutierrez on behalf of defendant CPCM Holdings, LLC, which is
24 Thrive Cannabis Marketplace; Cheyenne Medical, LLC; and
25 Commerce Park Medical, LLC.

1 THE COURT: Okay. Have we taken care of everyone
2 here in court?

3 (No audible response.)

4 THE COURT: Okay. So we've got now our boxes. I'm
5 going to start -- you all have the same order of boxes that I
6 do. So we're just going to start with the top row and just go
7 across, and then we'll go to the second row, then the third
8 row, then the fourth row. Seems to me it makes the most sense.
9 So assuming you all have the same boxes, let's try this out and
10 see if that works.

11 Go ahead, Counsel. Ms. Smith, that would make you
12 first; right? Because you have the left-hand box.

13 MS. S. SMITH: Apologies, Your Honor. I couldn't
14 tell exactly where I was in line. Stephanie Smith on behalf of
15 Natural Medicine.

16 THE COURT: Oh, you know what, you all may not have
17 this in the same order that I do, right.

18 Well, then, Ms. DelCarmen, go ahead. Let's try it
19 this way.

20 MS. DelCARMEN: Jennifer DelCarmen, Bar Number 1277
21 on behalf of Nevada Wellness Center.

22 THE COURT: Okay. The reason why you see me squint
23 is I'm trying to --

24 THE COURT RECORDER: Sorry. Just one second.

25 Mr. Bice, you guys are right over our mic. If you

1 could just push that last one.

2 MR. BICE: Oh, I apologize, Your Honor.

3 THE COURT RECORDER: It's okay.

4 THE COURT: Pardon?

5 MR. BICE: I did not mean --

6 THE COURT RECORDER: They were over a mic. So I
7 couldn't hear.

8 THE COURT: It's okay. No worries. Sorry. You see
9 now I'm focusing on this, and so I didn't see that.

10 Sorry. Ms. DelCarmen, it seems like we need your
11 name again, please.

12 MS. DelCARMEN: Jennifer DelCarmen, Bar Number 12727
13 on behalf of Nevada Wellness Center.

14 THE COURT: Okay. Mr. Tew. It looks like you're
15 next. Is it T-e-w? It's hard to read.

16 MR. TEW: Oh, yes, Your Honor. This is Jonathan Tew
17 on behalf of Deep Roots Harvest. And I also have Richard
18 Williamson, who's primary counsel on the case. He's a little
19 bit lower down on the boxes.

20 THE COURT: Okay. Do you all have it the same way,
21 boxes? So you've got five on the top, five on the second row,
22 four and four, if we don't, okay. Then I'm just -- so.

23 UNIDENTIFIED SPEAKER: No, Your Honor.

24 THE COURT: No. Okay. It depends on how you've done
25 your screens. Okay. So let's go next to it says --

1 UNIDENTIFIED SPEAKER: Whitney Barrett.

2 THE COURT: Whitney Barrett. Sorry. It's just
3 really, really hard to read these.

4 Go ahead, please.

5 MS. BARRETT: Good morning, Your Honor. Whitney
6 Barrett, Bar Number 13662, on behalf of Qualcan.

7 THE COURT: Thank you. Next it says Holley Driggs,
8 the face at the end of the conference table. So, Counsel.

9 MR. PUZEY: Yes, Your Honor. Jim Puzey, Bar Number
10 5745, representing High Sierra Holistics.

11 THE COURT: Thank you.

12 It looks like it's Mr. Donath's next.

13 MR. DONATH: Good morning, Your Honor. Nick Donath,
14 13106 for Green Leaf Farms Holdings, Green Therapeutics,
15 NevCANN, and Red Earth, all LLCs. Thank you.

16 THE COURT: Thank you.

17 And, Mr. Slater.

18 MR. SLATER: Good morning, Your Honor --

19 MS. SUGDEN: Good morning, Your Honor. Amy Sugden on
20 behalf of THC Nevada.

21 THE COURT: Thank you.

22 Now Mr. Slater.

23 MR. SLATER: I thought I misheard you. Good morning,
24 Your Honor. Craig Slater for Inyo Fine Cannabis and the NuVeda
25 entities. Thank you.