

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,

v.

DEEP ROOTS MEDICAL, Respondent / Cross-
Appellant and LONE MOUNTAIN PARTNERS,
LLC, and NEVADA ORGANIC REMEDIES
LLC, Respondents.

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Case No. J86071 2024 03:00 PM
District Court Case No. A-19-787004
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court of the State of Nevada
District Court Case No. A-19-787004-B

**APPENDIX TO RESPONDENT DEEP ROOTS HARVEST, INC.'S
ANSWERING AND OPENING BRIEF**

VOLUME 1 OF 3

Submitted for Respondent / Cross-Appellant Deep Roots Harvest, Inc. by:

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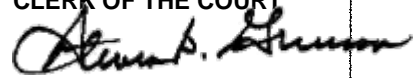
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, over the age of 18, and not a party within this action.

I further certify that on the 19th day of January 2024, I electronically filed the foregoing **APPENDIX TO RESPONDENT DEEP ROOTS HARVEST, INC.'S ANSWERING AND OPENING BRIEF** with the Clerk of the Court by using the electronic filing system, which served the same on all parties listed on the court's master service list.

/s/ Teresa W. Stovak

An Employee of Robertson, Johnson, Miller & Williamson



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DISTRICT COURT

CLARK COUNTY, NEVADA

MM DEVELOPMENT COMPANY, INC., a
Nevada corporation,

Plaintiff,

vs.

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

Defendants.

Case No.: A-18-785818-W

Dept. No.: Department 18

**COMPLAINT AND PETITION FOR
JUDICIAL REVIEW OR WRIT OF
MANDAMUS**

Arbitration Exemption Claimed:

- *Involves Declaratory Relief*
- *Presents Significant Issue of
Public Policy*
- *Involves Equitable or
Extraordinary Relief*

COMES NOW Plaintiff, MM DEVELOPMENT COMPANY, INC., by and through their
counsel of record, Kemp, Jones & Coulthard, LLP, and hereby complains against Defendants STATE
OF NEVADA, DEPARTMENT OF TAXATION, and Does I through X, and petitions this Court for
Writ of Mandamus as follows:

I.
PARTIES & JURISDICTION

1. Plaintiff, MM DEVELOPMENT COMPANY, LLC., is a Nevada corporation duly
licensed under the laws of the State of Nevada.

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

3. The true names and capacities, whether individual, corporate, association or otherwise of the Defendants DOES 1 through 10 and/or ROE CORPORATIONS 1 through 10, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and thereupon allege, that each of the Defendants designated herein as DOES and/or ROE CORPORATIONS is responsible in some manner for the events and happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true names and capacities of said Defendants DOES 1 through 10 and/or ROE CORPORATIONS 1 through 10, inclusive when the same have been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join such Defendants in this action.

II. GENERAL ALLEGATIONS

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

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

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

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

7 8. If the Department received more than one application for a license for a recreational
8 marijuana retail store and the Department determined that more than one of the applications was
9 complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department was required to
10 rank the applications within each applicable locality for any applicants in a jurisdiction that limits the
11 number of retail marijuana stores in order from first to last. Ranking is based on compliance with the
12 provisions of R092-17 Sec. 80, NRS 453D and on the content of the applications relating to:

- 13 a. Operating experience of another kind of business by the owners, officers or
14 board members that has given them experience which is applicable to the
15 operation of a marijuana establishment.
- 16 b. Diversity of the owners, officers or board members.
- 17 c. Evidence of the amount of taxes paid and other beneficial financial
18 contributions.
- 19 d. Educational achievements of the owners, officers or board members.
- 20 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
21 sale.
- 22 f. The financial plan and resources of the applicant, both liquid and illiquid.
- 23 g. The experience of key personnel that the applicant intends to employ.
- 24
- 25
- 26
- 27
- 28

h. Direct experience of the owners, officers or board members of a medical marijuana establishment or marijuana establishment in this State.

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

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

11. Prior to the application process with the Department, Plaintiff was previously scored and ranked in the 2015 licensing procedure, pursuant to NRS 453A, in conjunction with a medical marijuana establishment permit application.

12. At that time, Plaintiff received a score of 203.58 and was ranked as the fourth-highest applicant for a medical marijuana dispensary in unincorporated Clark County, Nevada.

13. The factors used for the 2015 rankings were substantially similar to the factors to be used by the Department for the 2018 rankings for the allocated licenses.

14. The only major difference between the factors assessed for the 2015 rankings and the 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners, officers, board members) to the existing merit criteria.

15. Plaintiff submitted applications for recreational marijuana retail store licenses to own and operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; and Nye County, Nevada.

18. Plaintiff is informed and believes that the Department improperly granted more than one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership groups.

FIRST CLAIM FOR RELIEF
(Declaratory Relief)

20. A justiciable controversy exists that warrants a declaratory judgment pursuant to

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

23. Further, the Department's improper ranking of the other applicants for a recreational marijuana establishment license and the Department's subsequent, improper issuance to each of a "conditional" license also affects the rights of Plaintiff afforded it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

1 24. The Department's actions and/or inactions also have created an actual justiciable
2 controversy ripe for judicial determination between Plaintiff and the Department with respect to the
3 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17 as to
4 Plaintiff. Plaintiff has been harmed, and will continue to be harmed, by the Defendants' actions.

5 25. The Department's actions and/or inactions failed to appropriately address the necessary
6 considerations and intent of NRS 453D.210, designed to restrict monopolies.
7

8 26. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 9 a. That the Department improperly denied Plaintiff six (6) "conditional" licenses
10 for the operation of a recreational marijuana establishment in the following
11 jurisdictions: unincorporated Clark County, Nevada; Las Vegas, Nevada; North
12 Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; and Nye County,
13 Nevada.
14
15 b. The denial of a "conditional" license to Plaintiff is void *ab initio*;
16
17 c. The procedures employed in the denial violated Plaintiff's procedural due
18 process rights and equal protection rights under the Nevada and United States
19 Constitutions and, therefore, the denial is void and unenforceable;
20
21 d. The denial violates Plaintiff's substantive due process rights and equal
22 protection rights under the Nevada and United States Constitutions and,
23 therefore, the denial is void and unenforceable;
24
25 e. The denial is void for vagueness and therefore unenforceable;
26
27 f. Defendant acted arbitrarily and capriciously or in contravention of a legal duty
28 and Plaintiff is therefore entitled to a writ of mandamus;
29
30 g. Plaintiff is entitled to judicial review; and
31
32 h. The Department's denial lacked substantial evidence.

1 27. Plaintiff also seeks a declaration from this Court that the Department must issue
2 Plaintiff six (6) "conditional" license for the operation of a recreational marijuana establishment in
3 unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite,
4 Nevada; Reno, Nevada; and Nye County, Nevada since Plaintiff's score issued by the Department
5 would have ranked high enough to entitle it to a "conditional" license had the Department properly
6 applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

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

12 29. Plaintiff has found it necessary to retain the legal services of Kemp, Jones & Coulthard,
13 LLP, to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs
14 therefor.
15

16 **SECOND CLAIM FOR RELIEF**
17 **(Injunctive Relief)**

18 30. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

19 31. The Department's flawed interpretation of the provisions of NRS 453D, NAC Chapter
20 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the law constitute
21 and cause continuing and irreparable harm to Plaintiff with no adequate remedy at law.

22 32. The purpose of this refusal was and is to unreasonably interfere with Plaintiff's
23 business and causing Plaintiff to suffer irreparable harm.

24 33. The Department will suffer no harm by following the law with respect to issuing
25 "conditional" licenses.
26

27 34. The Department's interpretation of NRS 453D, NAC Chapter 453D, and R092-17 is
28 flawed and Plaintiff is likely to succeed on the merits in this litigation.

1 35. The public interest favors Plaintiffs because in the absence of injunctive relief, the
2 consumers who would have benefitted will have less available options from which they can receive
3 recreational marijuana.

4 36. Therefore, Plaintiffs is entitled to preliminary injunctive relief, and after a trial on the
5 merits, permanent injunctive relief, ordering the Department to issue “conditional” licenses to Plaintiff
6 in accordance with NRS 453D, NAC 453D, and R092-17.
7

8 **THIRD CLAIM FOR RELIEF**
9 **(Violation of Procedural Due Process)**

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

11 38. The procedures employed by the Department in denying Plaintiff’s applications have
12 deprived Plaintiff of due process of law as guaranteed by the Nevada Constitution and the United
13 States Constitution.

14 39. The process in which denial was considered, noticed to the public, and passed failed to
15 provide Plaintiff a meaningful opportunity to be heard at a consequential time and was fundamentally
16 unfair and violated the due process requirements of the Nevada and United States Constitutions.
17

18 40. The Constitutional infirmity of this entire process renders the denial void and
19 unenforceable, and Plaintiff is entitled to a declaration as to the denials’ ineffectiveness and an order
20 enjoining its enforcement.

21 41. Plaintiff is also entitled to damages for these due process violations.

22 42. As the action of the Department necessitated that Plaintiff retain the legal services of
23 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiff is also entitled
24 to attorneys’ fees and costs of suit.

25 43. Plaintiff has found it necessary to bring this action, and Plaintiff is entitled to recover
26 its reasonable attorneys’ fees and costs therefor.
27
28

FOURTH CLAIM FOR RELIEF
(Violation of Substantive Due Process)

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

45. The denial violates Plaintiff's substantive due process rights guaranteed by the Nevada Constitution and the United States Constitution.

46. The Constitutional infirmity of this entire process and the Department's denial renders the denial void and unenforceable, and Plaintiff is entitled to a declaration as to the denials' ineffectiveness and an order enjoining its enforcement.

47. Plaintiff is also entitled to damages for these due process violations.

48. As the action of the Department necessitated that Plaintiff retain the legal services of Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiff is also entitled to attorneys' fees and costs of suit.

FIFTH CLAIM FOR RELIEF
(Equal Protection Violation)

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

50. The denial violates Plaintiff's right to equal protection under the Nevada and United States Constitutions.

51. The denial divides up marijuana applications into two or more classes.

52. This classification and disparate treatment is unconstitutional because there is no rational relationship between the disparity of this treatment and any legitimate governmental purpose.

53. The constitutional infirmity of this denial renders it void and unenforceable, and Plaintiff is entitled to a declaration as to the denials' ineffectiveness and an order enjoining its enforcement.

1 54. As the action of the Department necessitated that Plaintiff retain the legal services of
2 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiff is also entitled
3 to attorneys' fees and costs of suit.

4 **SIXTH CLAIM FOR RELIEF**
5 **(Petition for Judicial Review)**

6 55. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

7 56. The Department, in misinterpreting and incorrectly applying NRS 453D, NAC 453D
8 and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing "conditional"
9 licenses to applicants that do not merit "conditional" licenses under NRS 453D, NAC 453D, and
10 R092-17.

11 57. Plaintiff is aggrieved by the decision of the Department to deny Plaintiff's application
12 without proper notice, substantial evidence, or compliance with NRS 453D, NAC 453D, R092-17, and
13 other Nevada state laws or regulations.

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

17 59. Accordingly, Plaintiff petitions this Court for judicial review of the record on which the
18 Department's denial was based, including but not limited to:
19
20

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

25 60. Plaintiff has found it necessary to retain the legal services of Kemp, Jones & Coulthard,
26 LLP, to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs
27 therefor.
28

SEVENTH CLAIM FOR RELIEF
(Petition for Writ of Mandamus)

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

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

63. The Department failed to perform various acts that the law requires including but not limited to:

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

b. Arbitrarily and capriciously denying the application for no legitimate reason.

64. The Department acted arbitrarily and capriciously in the denial by performing or failing to perform the acts enumerated above and because, *inter alia*:

a. The Board lacked substantial evidence to deny the application; and

b. The Board denied the application solely to approve other competing applicants without regard to the merit of Plaintiffs’ application.

65. These violations of the Defendants’ legal duties were arbitrary and capricious actions that compel this Court to issue a Writ of Mandamus directing the Department to review the application on its merits and/or approve it.

66. As a result of the Defendants’ unlawful and arbitrary and capricious actions, Plaintiff has been forced to retain legal counsel to prosecute this action and is therefore also entitled to its damages, costs in this suit, and an award of attorneys’ fees pursuant to NRS 34.270.

IV.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For declaratory relief as set forth above;

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

V.
JURY DEMAND

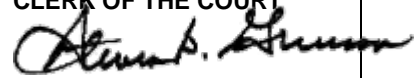
Trial by jury is hereby demanded on all claims and issues so triable.

DATED this December 11, 2018

KEMP, JONES & COULTHARD LLP



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

MM DEVELOPMENT COMPANY, INC., a
Nevada corporation, LIVFREE WELLNESS
LLC, dba The Dispensary, a Nevada Limited
liability company,

Plaintiff,

vs.

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

Defendants,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

NEVADA ORGANIC REMEDIES, LLC,

Counterclaimant,

vs.

MM DEVELOPMENT COMPANY, INC., a
Nevada corporation, LIVFREE WELLNESS
LLC, dba The Dispensary, a Nevada Limited
liability company.

Counter-Defendants

Case No. A-18-785818-W
Dept. No. 9

**ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT
AND COUNTERCLAIM**

1 Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") files its Answer
2 to Plaintiff's Complaint as follows:

3 **I. PARTIES & JURISDICTION**

4 1. NOR does not have sufficient knowledge or information as to the truth or
5 falsity of these allegations and on that basis denies these allegations.

6 2. NOR does not have sufficient knowledge or information as to the truth or
7 falsity of these allegations and on that basis denies these allegations.

8 3. NOR admits the allegations of paragraph 3.

9 4. NOR does not have sufficient knowledge or information as to the truth or
10 falsity of these allegations and on that basis denies these allegations.

11 **II. GENERAL ALLEGATIONS**

12 5. To the extent this paragraph contains legal conclusions or statements
13 regarding the content of the laws or regulations referenced, no response is necessary. To
14 the extent the allegations accurately state the laws or regulations referenced, NOR admits
15 the allegations.

16 6. To the extent this paragraph contains legal conclusions or statements
17 regarding the content of the laws or regulations referenced, no response is necessary. To
18 the extent the allegations accurately state the laws or regulations referenced, NOR admits
19 the allegations.

20 7. To the extent this paragraph contains legal conclusions or statements
21 regarding the content of the laws or regulations referenced, no response is necessary. To
22 the extent the allegations accurately state the laws or regulations referenced, NOR admits
23 the allegations.

24 8. To the extent this paragraph contains legal conclusions or statements
25 regarding the content of the laws or regulations referenced, no response is necessary. To
26 the extent the allegations accurately state the laws or regulations referenced, NOR admits
27 the allegations.

1 9. To the extent this paragraph contains legal conclusions or statements
2 regarding the content of the laws or regulations referenced, no response is necessary. To
3 the extent the allegations accurately state the laws or regulations referenced, NOR admits
4 the allegations.

5 10. To the extent this paragraph contains legal conclusions or statements
6 regarding the content of the laws or regulations referenced, no response is necessary. To
7 the extent the allegations accurately state the laws or regulations referenced, NOR admits
8 the allegations.

9 11. NOR does not have sufficient knowledge or information as to the truth or
10 falsity of these allegations and on that basis denies these allegations.

11 12. NOR does not have sufficient knowledge or information as to the truth or
12 falsity of these allegations and on that basis denies these allegations.

13 13. NOR does not have sufficient knowledge or information as to the truth or
14 falsity of these allegations and on that basis denies these allegations.

15 14. NOR does not have sufficient knowledge or information as to the truth or
16 falsity of these allegations and on that basis denies these allegations.

17 15. NOR does not have sufficient knowledge or information as to the truth or
18 falsity of these allegations and on that basis denies these allegations.

19 16. NOR does not have sufficient knowledge or information as to the truth or
20 falsity of these allegations and on that basis denies these allegations.

21 17. NOR does not have sufficient knowledge or information as to the truth or
22 falsity of these allegations and on that basis denies these allegations.

23 18. NOR denies the allegations contained in this paragraph to the extent such
24 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
25 NOR does not have sufficient knowledge or information as to the truth or falsity of these
26 allegations and on that basis denies these allegations.

27 19. NOR denies the allegations contained in this paragraph to the extent such
28 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,

1 NOR does not have sufficient knowledge or information as to the truth or falsity of these
2 allegations and on that basis denies these allegations.

3 20. NOR denies the allegations contained in this paragraph to the extent such
4 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
5 NOR does not have sufficient knowledge or information as to the truth or falsity of these
6 allegations and on that basis denies these allegations.

7 **FIRST CLAIM FOR RELIEF**

8 **(Declaratory Relief)**

9 21. NOR repeats and reasserts all prior responses as though fully set forth
10 herein.

11 22. This paragraph contains legal conclusions, and no response is necessary. To
12 the extent a response is necessary, NOR denies the allegations.

13 23. This paragraph contains legal conclusions, and no response is necessary. To
14 the extent a response is necessary, NOR denies the allegations.

15 24. This paragraph contains legal conclusions, and no response is necessary.
16 To the extent a response is necessary, NOR denies the allegations.

17 25. NOR denies the allegations contained in this paragraph to the extent such
18 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
19 this paragraph contains legal conclusions, and no response is necessary. To the extent a
20 response is necessary, NOR denies the allegations.

21 26. This paragraph contains legal conclusions, and no response is necessary. To
22 the extent a response is necessary, NOR denies the allegations.

23 27. This paragraph contains legal conclusions, and no response is necessary. To
24 the extent a response is necessary, NOR denies the allegations.

25 28. This paragraph does not contain factual allegations or legal conclusions, and
26 no response is necessary. To the extent a response is necessary, NOR denies the allegations.

27 29. This paragraph does not contain factual allegations or legal conclusions, and
28 no response is necessary. To the extent a response is necessary, NOR denies the allegations.

1 30. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 31. NOR does not have sufficient knowledge or information as to the truth or
4 falsity of these allegations and on that basis denies these allegations.

5
6 **SECOND CLAIM FOR RELIEF**
7 **(Injunctive Relief)**

8 32. NOR repeats and reasserts all prior responses as though fully set forth
9 herein.

10 33. This paragraph contains legal conclusions, and no response is necessary.

11 34. NOR does not have sufficient knowledge or information as to the truth or
12 falsity of these allegations and on that basis denies these allegations.

13 35. NOR admits the allegations contained in this paragraph.

14 36. This paragraph contains legal conclusions, and no response is necessary. To
15 the extent a response is necessary, NOR denies the allegations.

16 37. This paragraph contains legal conclusions, and no response is necessary. To
17 the extent a response is necessary, NOR denies the allegations.

18 38. This paragraph contains legal conclusions, and no response is necessary.
19 To the extent a response is necessary, NOR denies the allegations.

20 **THIRD CLAIM FOR RELIEF**
21 **(Violation of Procedural Due Process)**

22 39. NOR repeats and reasserts all prior responses as though fully set forth
23 herein.

24 40. This paragraph contains legal conclusions, and no response is necessary. To
25 the extent a response is necessary, NOR denies the allegations.

26 41. This paragraph contains legal conclusions, and no response is necessary. To
27 the extent a response is necessary, NOR denies the allegations.

28 42. This paragraph contains legal conclusions, and no response is necessary. To
the extent a response is necessary, NOR denies the allegations.

1 43. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 44. NOR does not have sufficient knowledge or information as to the truth or
4 falsity of these allegations and on that basis denies these allegations.

5 45. This paragraph contains legal conclusions, and no response is necessary. To
6 the extent a response is necessary, NOR denies the allegations.

7
8 **FOURTH CLAIM FOR RELIEF**
9 **(Violation of Substantive Due Process)**

10 46. NOR repeats and reasserts all prior responses as though fully set forth
11 herein.

12 47. This paragraph contains legal conclusions, and no response is necessary. To
13 the extent a response is necessary, NOR denies the allegations.

14 48. This paragraph contains legal conclusions, and no response is necessary. To
15 the extent a response is necessary, NOR denies the allegations.

16 49. This paragraph contains legal conclusions, and no response is necessary. To
17 the extent a response is necessary, NOR denies the allegations.

18 50. This paragraph contains legal conclusions, and no response is necessary. To
19 the extent a response is necessary, NOR denies the allegations.

20 **FIFTH CLAIM FOR RELIEF**
21 **(Equal Protection Violation)**

22 51. NOR repeats and reasserts all prior responses as though fully set forth
23 herein.

24 52. This paragraph contains legal conclusions, and no response is necessary. To
25 the extent a response is necessary, NOR denies the allegations.

26 53. This paragraph contains legal conclusions, and no response is necessary. To
27 the extent a response is necessary, NOR denies the allegations.

28 54. This paragraph contains legal conclusions, and no response is necessary. To
the extent a response is necessary, NOR denies the allegations.

1 55. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 56. This paragraph contains legal conclusions, and no response is necessary. To
4 the extent a response is necessary, NOR denies the allegations.

5
6 **SIXTH CLAIM FOR RELIEF**
 (Petition for Judicial Review)

7 57. NOR repeats and reasserts all prior responses as though fully set forth
8 herein.

9 58. This paragraph contains legal conclusions, and no response is necessary. To
10 the extent a response is necessary, NOR denies the allegations.

11 59. This paragraph contains legal conclusions, and no response is necessary. To
12 the extent a response is necessary, NOR denies the allegations.

13 60. This paragraph contains legal conclusions, and no response is necessary. To
14 the extent a response is necessary, NOR denies the allegations.

15 61. This paragraph does not contain factual allegations or legal conclusions, and
16 no response is necessary.

17 62. This paragraph contains legal conclusions, and no response is necessary. To
18 the extent a response is necessary, NOR denies the allegations.

19
20 **SEVENTH CLAIM FOR RELIEF**
 (Petition for Writ of Mandamus)

21 63. NOR repeats and reasserts all prior responses as though fully set forth
22 herein.

23 64. This paragraph contains legal conclusions, and no response is necessary. To
24 the extent a response is necessary, NOR denies the allegations.

25 65. This paragraph contains legal conclusions, and no response is necessary. To
26 the extent a response is necessary, NOR denies the allegations.

27 66. This paragraph contains legal conclusions, and no response is necessary. To
28 the extent a response is necessary, NOR denies the allegations.

1 67. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 68. This paragraph contains legal conclusions, and no response is necessary. To
4 the extent a response is necessary, NOR denies the allegations.

5 **GENERAL DENIAL**

6 To the extent a further response is required to any allegation set forth in the
7 Complaint, NOR denies such allegation.

8
9 **AFFIRMATIVE DEFENSES**

10 **AFFIRMATIVE DEFENSE NO. 1**

11 The First Amended Complaint and each claim for relief fails to state a claim upon
12 which relief can be granted.

13 **AFFIRMATIVE DEFENSE NO. 2**

14 The actions of Defendants the State of Nevada and Nevada Department of
15 Taxation were all official acts that were done in compliance with applicable laws and
16 regulations.

17 **AFFIRMATIVE DEFENSE NO. 3**

18 Plaintiffs' claims are barred because Plaintiff has failed to exhaust administrative
19 remedies.

20 **AFFIRMATIVE DEFENSE NO. 4**

21 Plaintiffs have failed to join necessary and indispensable parties to this litigation
22 under NRCP 19 as the Court cannot grant any of Plaintiffs' claims without affecting the
23 rights and privileges of those parties who received the licenses at issue as well as other
24 third parties.

25 **AFFIRMATIVE DEFENSE NO. 5**

26 The actions of Defendants the State of Nevada and Nevada Department of
27 Taxation were not arbitrary or capricious, and Defendants had a rational basis for all of
28 the actions taken in the licensing process at issue.

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AFFIRMATIVE DEFENSE NO. 6

The Defendants the State of Nevada and Nevada Department of Taxation are immune from suit when performing the functions at issue in this case.

AFFIRMATIVE DEFENSE NO. 7

Plaintiffs have no constitutional rights to obtain privileged licenses.

AFFIRMATIVE DEFENSE NO. 8

Injunctive relief is unavailable to Plaintiffs, because the Nevada Department of Taxation has already completed the tasks of issuing the conditional licenses.

AFFIRMATIVE DEFENSE NO. 9

Mandamus is not available to compel the members of the executive branch to perform non-ministerial, discretionary tasks.

AFFIRMATIVE DEFENSE NO. 10

Plaintiffs are not entitled to Judicial Review on the denial of a license.

AFFIRMATIVE DEFENSE NO. 11

Declaratory relief will not give the Plaintiffs the relief that they are seeking.

AFFIRMATIVE DEFENSE NO. 12

Because this case is in its infancy, NOR has not yet discovered all relevant facts. Additional facts may support the assertion of additional affirmative defenses, including, but not limited to, those enumerated in NRCP 8(c). NOR reserves the right to assert such affirmative defenses as discovery proceeds.

PRAYER FOR RELIEF

WHEREFORE, Defendant-Intervenor prays for judgment as follows:

1. That Plaintiffs take nothing by way of their First Amended Complaint and that the same be dismissed with prejudice;
2. For costs of suit and reasonable attorneys' fees; and

///
///

1 3. For any other such relief as this Court deems just and proper under the
2 circumstances.

3
4 DATED: March 15, 2019

KOCH & SCOW, LLC

5 By: /s/ David R. Koch
6 David R. Koch, Esq.
7 *Attorneys for Nevada Organic*
8 *Remedies, LLC*

9
10 **COUNTERCLAIM**

11 Nevada Organic Remedies, LLC (“NOR”) asserts its Counterclaim against MM
12 Development Company, Inc. (“MM”) and Livfree Wellness, LLC, dba The Dispensary
13 (“Livfree”) and alleges as follows:

14 **PARTIES**

15 1. NOR is, and at all relevant times was, a Nevada limited liability
16 company doing business in Clark County.

17 2. NOR is informed and believes, and on that basis alleges that MM is, and
18 at all relevant times was, a Nevada corporation doing business in Clark County.

19 3. NOR is informed and believes, and on that basis alleges that Livfree is,
20 and at all relevant times was, a Nevada limited liability company doing business in
21 Clark County.

22 **JURISDICTION**

23 4. Jurisdiction is proper in this Court as this Counterclaim is brought in
24 response to an action presently pending before this Court, and pursuant to NRCP
25 8(a)(1), no new jurisdictional support is needed.

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1 *Current Regulations Require NOR to Receive*

2 *Final Inspections Within 12 Months*

3 11. Pursuant to current regulations, NOR has 12 months to receive a final
4 inspection for a marijuana establishment under its conditional licenses. As provided
5 in R092-17, Sec. 87, "If a marijuana establishment has not received a final inspection
6 within 12 months after the date on which the Department issued a license to the
7 marijuana establishment, the marijuana establishment must surrender the license to
8 the Department. The Department may extend the period specified in this subsection if
9 the Department, in its discretion, determines that extenuating circumstances prevented
10 the marijuana establishment from receiving a final inspection within the period
11 specified in this subsection."
12

13 12. Accordingly, NOR intends to proceed with obtaining a final inspection of
14 a marijuana establishment no later than December 4, 2019, in each jurisdiction in which
15 it was awarded a license.

16 *MM and Livfree File the Present Action to Impede*

17 *Licensees' Rights to Open a Marijuana Establishment*

18 13. The present lawsuit is an attempt by MM and Livfree to delay or hinder
19 the process and timing for licensees, such as NOR, of opening a marijuana establishment
20 under their approved conditional licenses. MM and Livfree contend that they had
21 received high scores for medical marijuana establishments during the 2015 application
22 review process, and that the "Department improperly granted 'conditional' licenses to
23 applicants who were ranked substantially lower than Plaintiffs on the 2015 rankings," as
24 if the 2015 rankings should be simply transferred over to the new 2018 application
25 process.
26

27 14. The wholly unfounded claims made by MM and Livfree in this action are
28 an attempt to manufacture a dispute in the hope of undermining the rights of NOR and

1 other successful applicants. MM and Livfree have asserted factually deficient
2 allegations that they should have received one or more of the licenses that were awarded
3 to NOR (or other licensees) without any substantive facts that demonstrate any
4 impropriety or issue with the granting of the licenses to NOR.

5 15. MM and Livfree have not asserted (nor can they assert) any facts specific to
6 NOR to demonstrate that NOR should not have received the conditional licenses that it
7 was granted, yet MM and Livfree have sought relief that might limit or preclude NOR
8 from being able to move forward with obtaining final inspections for marijuana
9 establishments under current regulations.

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Relief)**

12 16. NOR repeats and reincorporates by reference all previous allegations of
13 this Counterclaim.

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

16 18. NOR has received conditional licenses from the Department of Taxation to
17 open marijuana establishments in seven jurisdictions in the State pursuant to statute and
18 regulation.

19 19. MM and Livfree contend that the Department of Taxation "must" issue a
20 conditional license to each of them in at least six jurisdictions, which would necessarily
21 deprive NOR of a license in one or more of the jurisdictions in which it has received a
22 license.

23 20. MM and Livfree have asserted no facts specific to NOR that would provide
24 any valid basis to receive the relief requested as it relates to NOR.

25 21. NOR requests a declaratory judgment to determine its rights, status, or
26 other legal relations under the applicable statutes and regulations with respect to the
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1 unfounded dispute brought by MM and Livfree. Such a declaratory judgment will
2 eliminate any false and untenable impediments that might otherwise potentially delay
3 the opening of a marijuana establishment within the specified regulatory time period.

4 22. NOR has been required to retain counsel to bring these claims and is
5 entitled to recover its fees and costs incurred in pursuit of these claims.

6 **PRAYER FOR RELIEF**

7 Wherefore, NOR prays for relief as follows:

8 1. A declaratory judgment from the Court that NOR has a valid conditional
9 license under applicable statutes and regulations and may proceed with opening and
10 obtaining a final inspection for a marijuana establishment,

11 2. Costs and fees incurred in bringing and pursuing its claims herein, and

12 3. Any further and additional relief that the Court may award.
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14

15 DATED: March 15, 2019

KOCH & SCOW, LLC

16 By: /s/ David R. Koch
17 David R. Koch, Esq.
18 *Attorneys for Counterclaimant*
19 *Nevada Organic Remedies, LLC*
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CERTIFICATE OF SERVICE

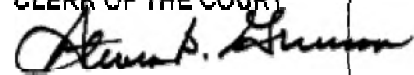
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 15, 2019, I caused the foregoing document entitled: **ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND COUNTERCLAIM** to be served as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and/or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

Michele L. Caro	mcaro@ag.nv.gov
David J. Pope	dpope@ag.nv.gov
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MGA Docketing	docket@mgalaw.com

Executed on March 15, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant(s).

and

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

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

CLERK OF THE COURT

AS
2019

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

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Intervenors.

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

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

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

16 ***PROCEDURAL POSTURE***

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

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

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

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

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

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

8 ***PRELIMINARY STATEMENT***

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

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

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

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

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

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

9 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

(g) Requirements for record keeping by marijuana establishments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRS 453D.020(3).

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

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

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

11. Some of the Task Force’s recommendations appear to conflict with BQ2.⁷

⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

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

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

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

The second recommendation of concern is:

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

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

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

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

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

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

*Use the marijuana establishments governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory documents.

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

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

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

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

1 15. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.⁹

4
5 ⁹ Relevant portions of that provision require that application be made

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

8 ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. The DoT posted the application on its website and released the application for
recreational marijuana establishment licenses on July 6, 2018.¹⁰

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

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

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

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

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

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

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

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

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

23 28. The identified criteria consisted of organizational structure of the applicant (60 points);
24 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
25
26
27
28

1 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
2 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

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

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

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

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

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

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

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

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

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

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

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

16
17 39. For purposes of grading the applicant’s organizational structure and diversity, if an
18 applicant’s disclosure in its application of its owners, officers, and board members did not match the
19 DoT’s own records, the DoT did not penalize the applicant. Rather the DoT permitted the grading, and
20 in some cases, awarded a conditional license to an applicant under such circumstances, and dealt with
21 the issue by simply informing the winning applicant that its application would have to be brought into
22 conformity with DoT records.

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

27
28 ¹¹ Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional
evidentiary proceedings in the assigned department.

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

3 41. NRS 453D.200(6) provides that “[t]he DoT shall conduct a background check of each
4 prospective owner, officer, and board member of a marijuana establishment license applicant.” The
5 DoT departed from this mandatory language in NAC 453D.255(1) and made no attempt in the
6 application process to verify that the applicant’s complied with the mandatory language of the BQ2 or
7 even the impermissibly modified language.
8

9 42. The DoT made the determination that it was not reasonable to require industry to
10 provide every owner of a prospective licensee. The DOT’s determination that only owners of a 5% or
11 greater interest in the business were required to submit information on the application was not a
12 permissible regulatory modification of BQ2. This determination violated Article 19, Section 3 of the
13 Nevada Constitution. The determination was not based on a rational basis.
14

15 43. The limitation of “unreasonably impracticable” in BQ2¹² does not apply to the
16 mandatory language of BQ2, but to the Regulations which the DoT adopted.

17 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
18 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
19 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT’s decision to adopt regulations in
20 direct violation of BQ2’s mandatory application requirements is violative of Article 19, Section 2(3) of
21 the Nevada Constitution.
22

23 ¹² NRS 453D.200(1) provides in part:

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

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

28 ¹⁴ That provision states:

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

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

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

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

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

18
19 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
20 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
21 inspection of their marijuana establishment.

22
23
24
25 ¹⁵ Some applicants apparently provided the required information for each prospective owner, officer and board
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

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

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

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

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

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

55. The secondary market for the transfer of licenses is limited.¹⁶

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

CONCLUSIONS OF LAW

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

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

¹⁶ The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BO2.

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

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

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

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

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

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

...

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

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

6 (Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 80. The DoT made licensure conditional for one year based on the grant of power to create
22 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a
23 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's
24 discretion.
25
26
27

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

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

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

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

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

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

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

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

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

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

7 90. Therefore, a security bond already ordered in the amount of \$400,000 is sufficient for
8 the issuance of this injunctive relief.¹⁸
9

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

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

ORDER

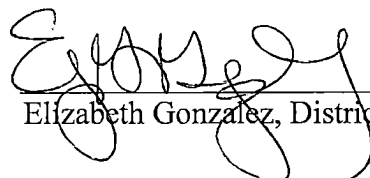
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

The State is enjoined from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits.¹⁹

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

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

DATED this 23rd day of August 2019.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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


Dan Kutinac

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

District Court

CLARK COUNTY, NEVADA

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

Plaintiffs/Petitioners,

vs.

STATE EX REL. DEPARTMENT OF
TAXATION; STATE EX REL. NEVADA TAX
COMMISSION; 3AP INC., a Nevada limited
liability company; 5SEAT INVESTMENTS LLC, a
Nevada limited liability company; ACRES
DISPENSARY LLC, a Nevada limited liability
company; ACRES MEDICAL LLC, a Nevada
limited liability company; AGUA STREET LLC, a
Nevada limited liability company; ALTERNATIVE
MEDICINE ASSOCIATION LC, a Nevada limited
liability company; BIONEVA INNOVATIONS OF
CARSON CITY LLC, a Nevada limited liability
company; BLOSSUM GROUP LLC, a Nevada
limited liability company; BLUE COYOTE
RANCH LLC, a Nevada limited liability company;
CARSON CITY AGENCY SOLUTIONS L.L.C., a
Nevada limited liability company; CHEYENNE
MEDICAL, LLC, a Nevada limited liability
company; CIRCLE S FARMS LLC, a Nevada
limited liability company; CLEAR RIVER, LLC, a
Nevada limited liability company; CN LICENSECO
I, Inc., a Nevada corporation; COMMERCE PARK
MEDICAL L.L.C., a Nevada limited liability
company; COMPASSIONATE TEAM OF LAS
VEGAS LLC, a Nevada limited liability company;
CWNEVADA, LLC, a Nevada limited liability
company; D LUX LLC, a Nevada limited liability
company; DEEP ROOTS MEDICAL LLC, a
Nevada limited liability company; DIVERSIFIED
MODALITIES MARKETING LTD., a Nevada
limited liability company; .DP HOLDINGS, INC., a
Nevada corporation; ECONEVADA LLC, a Nevada
limited liability company; ESSENCE
HENDERSON, LLC, a Nevada limited liability

Case No.: A-19-787035-C

Dept No.: VI

SUMMONS

Deep Roots Medical LLC

company; ESSENCE TROPICANA, LLC, a Nevada)
 limited liability company; ETW MANAGEMENT)
 GROUP LLC, a Nevada limited liability company;)
 EUPHORIA WELLNESS LLC, a Nevada limited)
 liability company; EUREKA NEWGEN FARMS)
 LLC, a Nevada limited liability company; FIDELIS)
 HOLDINGS, LLC., a Nevada limited liability)
 company; FOREVER GREEN, LLC, a Nevada)
 limited liability company; FRANKLIN)
 BIOSCIENCE NV LLC, a Nevada limited liability)
 company; FSWFL, LLC, a Nevada limited liability)
 company; GB SCIENCES NEVADA LLC, a)
 Nevada limited liability company; GBS NEVADA)
 PARTNERS, LLC, a Nevada limited liability)
 company; GFIVE CULTIVATION LLC, a Nevada)
 limited liability company; GLOBAL HARMONY)
 LLC, a Nevada limited liability company; GOOD)
 CHEMISTRY NEVADA, LLC, a Nevada limited)
 liability company; GRAVITAS HENDERSON)
 L.L.C., a Nevada limited liability company;)
 GRAVITAS NEVADA LTD., a Nevada limited)
 liability company; GREEN LEAF FARMS)
 HOLDINGS LLC, a Nevada limited liability)
 company; GREEN LIFE PRODUCTIONS LLC, a)
 Nevada limited liability company; GREEN)
 THERAPEUTICS LLC, a Nevada limited liability)
 company; GREENLEAF WELLNESS, INC., a)
 Nevada corporation; GREENMART OF NEVADA)
 NLV, LLC, a Nevada limited liability company;)
 GREENPOINT NEVADA INC., a Nevada)
 corporation; GREENSCAPE PRODUCTIONS LLC,)
 a Nevada limited liability company; GREENWAY)
 HEALTH COMMUNITY L.L.C., a Nevada limited)
 liability company; GREENWAY MEDICAL LLC, a)
 Nevada limited liability company; GTI NEVADA,)
 LLC, a Nevada limited liability company; H & K)
 GROWERS CORP., a Nevada corporation;)
 HARVEST OF NEVADA LLC; a Nevada limited)
 liability company; HEALTHCARE OPTIONS FOR)
 PATIENTS ENTERPRISES, LLC, a Nevada limited)
 liability company; HELIOS NV LLC, a Nevada)
 limited liability company; HELPING HANDS)
 WELLNESS CENTER, INC., a Nevada corporation;)
 HERBAL CHOICE INC., a Nevada corporation;)
 HIGH SIERRA CULTIVATION LLC, a Nevada)
 limited liability company; HIGH SIERRA)
 HOLISTICS LLC, a Nevada limited liability)
 company; INTERNATIONAL SERVICE AND)
 REBUILDING, INC., a domestic corporation; JUST)
 QUALITY, LLC, a Nevada limited liability)
 company; KINDIBLES LLC, a Nevada limited)
 liability company; LAS VEGAS WELLNESS AND)
 COMPASSION LLC; a Nevada limited liability)
 company; LIBRA WELLNESS CENTER, LLC, a)
 Nevada limited liability company; LIVFREE)

WELLNESS LLC, a Nevada limited liability
 company; LNP, LLC, a Nevada limited liability
 company; LONE MOUNTAIN PARTNERS, LLC,
 a Nevada limited liability company; LUFF
 ENTERPRISES NV, INC., a Nevada corporation;
 LVMC C&P LLC, a Nevada limited liability
 company; MALANA LV L.L.C., a Nevada limited
 liability company; MATRIX NV, LLC, a Nevada
 limited liability company; MEDIFARM IV, LLC, a
 Nevada limited liability company; MILLER
 FARMS, LLC, a Nevada limited liability company;
 MM DEVELOPMENT COMPANY, INC., a
 Nevada corporation; MM R & D, LLC, a Nevada
 limited liability company; MMNV2 HOLDINGS I,
 LLC, a Nevada limited liability company; MMOF
 VEGAS RETAIL, INC. a Nevada corporation;
 NATURAL MEDICINE L.L.C., a Nevada limited
 liability company; NCMM, LLC, a Nevada limited
 liability company; NEVADA BOTANICAL
 SCIENCE, INC., a Nevada corporation; NEVADA
 GROUP WELLNESS LLC, a Nevada limited
 liability company; NEVADA HOLISTIC
 MEDICINE LLC, a Nevada limited liability
 company; NEVADA MEDICAL GROUP LLC, a
 Nevada limited liability company; NEVADA
 ORGANIC REMEDIES LLC, a Nevada limited
 liability company; NEVADA WELLNESS
 CENTER LLC, a Nevada limited liability company;
 NEVADAPURE, LLC, a Nevada limited liability
 company; NEVCANN LLC, a Nevada limited
 liability company; NLV WELLNESS LLC, a
 Nevada limited liability company; NLVG, LLC, a
 Nevada limited liability company; NULEAF
 INCLINE DISPENSARY LLC, a Nevada limited
 liability company; NV 3480 PARTNERS LLC, a
 Nevada limited liability company; NV GREEN
 INC., a Nevada corporation; NYE FARM TECH
 LTD., a Nevada limited liability company;
 PARADISE WELLNESS CENTER LLC, a Nevada
 limited liability company; PHENOFARM NV LLC,
 a Nevada limited liability company; PHYSIS ONE
 LLC, a Nevada limited liability company; POLARIS
 WELLNESS CENTER L.L.C., a Nevada limited
 liability company; PURE TONIC
 CONCENTRATES LLC, a Nevada limited liability
 company; QUALCAN L.L.C., a Nevada limited
 liability company; RED EARTH, LLC, a Nevada
 limited liability company; RELEAF
 CULTIVATION, LLC, a Nevada limited liability
 company, RG HIGHLAND ENTERPRISES INC., a
 Nevada corporation; ROMBOUGH REAL ESTATE
 INC., a Nevada corporation; RURAL REMEDIES
 LLC, a Nevada limited liability company;
 SERENITY WELLNESS CENTER LLC, a Nevada
 limited liability company; SILVER SAGE

WELLNESS LLC, a Nevada limited liability company; SOLACE ENTERPRISES, LLLP, a Nevada limited-liability limited partnership; SOUTHERN NEVADA GROWERS, LLC, a Nevada limited liability company; STRIVE WELLNESS OF NEVADA, LLC, a Nevada limited liability company; SWEET GOLDY LLC, a Nevada limited liability company; TGIG, LLC, a Nevada limited liability company; THC NEVADA LLC, a Nevada limited liability company; THE HARVEST FOUNDATION LLC, a Nevada limited liability company; THOMPSON FARM ONE L.L.C., a Nevada limited liability company; TRNVP098 LLC, a Nevada limited liability company; TRYKE COMPANIES RENO, LLC, a Nevada limited liability company; TRYKE COMPANIES SO NV, LLC, a Nevada limited liability company; TWELVE TWELVE LLC, a Nevada limited liability company; VEGAS VALLEY GROWERS LLC, a Nevada limited liability company; WAVESEER OF NEVADA, LLC, a Nevada limited liability company; WELLNESS & CAREGIVERS OF NEVADA NLV, LLC, a Nevada limited liability company; WELLNESS CONNECTION OF NEVADA, LLC, a Nevada limited liability company; WENDOVERA LLC, a Nevada limited liability company; WEST COAST DEVELOPMENT NEVADA, LLC, a Nevada limited liability company; WSCC, INC., a Nevada corporation; YMY VENTURES LLC, a Nevada limited liability company; ZION GARDENS LLC, a Nevada limited liability company; and DOES 1-300.

Defendants/Respondents.

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
 - a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
 - b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading.

Issued at the direction of:

STEVEN D. GRIERSON
CLERK OF THE COURT

/s/



DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA M. DICKEY

Nevada Bar No. 6621

SARAH E. HARMON

Nevada Bar No. 8106

KELLY B. STOUT

Nevada Bar No. 12105

BAILEY ♦ KENNEDY

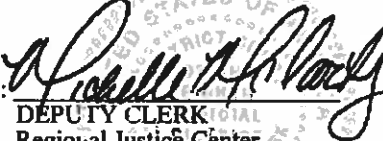
8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

(702) 562-8820 Telephone

(702) 562-8821 Facsimile

By:



DEPUTY CLERK
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Michelle McCarthy

9/10/2019

Date

Attorneys for Plaintiffs/Petitioners

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

SHOPPE; CLARK NATURAL MEDICINAL

SOLUTIONS LLC, d/b/a NuVEDA; NYE NATURAL

MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA; and

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

INYO FINE CANNABIS DISPENSARY

NOTE: When service is by publication, add a brief statement of the object of the action. See Rules of Civil Procedure, Rule 4(b).

STATE OF _____)
) ss.
COUNTY OF _____)

AFFIDAVIT OF SERVICE

_____, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received ___ copy (ies) of the Summons and Complaint,

on the ____ day of _____, 20____, and served the same on the ____ day of _____, 20____ by:

(affiant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant
at (state address) _____.
2. serving the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at: (state address) _____.
3. serving the defendant _____ by personally delivering and leaving a copy at (state address) _____.
 - a. with _____ as _____, an agent lawfully designated by statute to accept service of process;
 - b. with _____ pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):
☐ ordinary mail
☐ certified mail, return receipt requested
☐ registered mail, return receipt requested

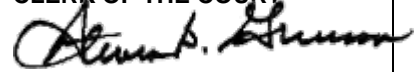
addressed to the defendant _____ at the defendant's last known address which is (state address) _____.

SUBSCRIBED AND SWORN to before me this
____ day of _____, 20 ____.

NOTARY PUBLIC in and for said County and State

Appointment No. _____

My commission expires:
(SEAL)



ANAC
Richard D. Williamson, Esq.
State Bar No. 9932
Jonathan Joel Tew, Esq.
State Bar No. 11874
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
Attorneys for Defendant Deep Roots Medical LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

D.H. FLAMINGO, INC., d/b/a THE
APOTHECARY SHOPPE, a Nevada corporation;
et al.

Plaintiffs,

vs.

STATE EX REL. DEPARTMENT OF
TAXATION et al.

Defendants.

Case No.: A-19-787035-C

Department: XIII

**DEFENDANT DEEP ROOTS MEDICAL
LLC'S ANSWER TO FIRST AMENDED
COMPLAINT AND PETITION FOR
JUDICIAL REVIEW AND/OR WRITS OF
CERTIORARI, MANDAMUS, AND
PROHIBITION**

Defendant Deep Roots Medical LLC ("Defendant"), by and through its undersigned counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby answers Plaintiffs' First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition ("Complaint") as follows:

JURISDICTION AND VENUE

1. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 1 and 2 of the Complaint and, therefore, denies same.

THE PARTIES

2. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 3-6 of the Complaint and, therefore, denies same.

3. Defendant admits the allegations in paragraph 7 of the Complaint.

4. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 8-12 of the Complaint and, therefore, denies same.

5. Defendant admits the allegations in paragraph 13 of the Complaint.

6. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 14-26 of the Complaint and, therefore, denies same.

7. Defendant admits the allegations in paragraph 27 of the Complaint as they relate to Deep Roots Medical LLC. Defendant is presently without sufficient information to form a belief as to the truth of the remaining allegations in paragraph 27 of the Complaint and, therefore, denies same.

8. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 28-136 of the Complaint and, therefore, denies same.

FACTUAL ALLEGATIONS

9. Defendant admits the allegations in paragraphs 137 and 138 of the Complaint.

10. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 139-142 of the Complaint and, therefore, denies same.

11. Defendant denies the allegations in paragraph 143 of the Complaint.

12. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 144-170 of the Complaint and, therefore, denies same.

13. There is no text in Plaintiffs' Complaint for paragraph 171. To the extent that a response is required, Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraph 171 of the Complaint and, therefore, denies same.

14. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 172-254 of the Complaint and, therefore, denies same.

15. Defendant denies the allegations in paragraph 255 of the Complaint.

16. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 256-258 of the Complaint and, therefore, denies same.

17. Defendant denies the allegations in paragraph 259 of the Complaint.

18. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraph 260 of the Complaint and, therefore, denies same.

19. Defendant denies the allegations in paragraph 261 of the Complaint.

20. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 262-268 of the Complaint and, therefore, denies same.

21. To the extent that a response is required, Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraph 269 of the Complaint and, therefore, denies same.

CLAIMS FOR RELIEF

First Claim for Relief: Petition for Judicial Review

22. To the extent that paragraph 270 of the Complaint requires a response, Defendant incorporates herein its responses to all previous and subsequent paragraphs of the Complaint.

23. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 271 and 272 of the Complaint and, therefore, denies same.

24. Defendant denies the allegations in paragraph 273 of the Complaint.

25. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 274-277 of the Complaint and, therefore, denies same.

Second Claim for Relief: Petition for Writ of Certiorari

26. To the extent that paragraph 278 of the Complaint requires a response, Defendant incorporates herein its responses to all previous and subsequent paragraphs of the Complaint.

27. Defendant denies the allegations in paragraph 279 of the Complaint.

28. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 280-282 of the Complaint and, therefore, denies same.

Third Claim for Relief: Petition for Writ of Mandamus

29. To the extent that paragraph 283 of the Complaint requires a response, Defendant incorporates herein its responses to all previous and subsequent paragraphs of the Complaint.

30. Defendant is presently without sufficient information to form a belief as to the truth of the allegations in paragraphs 284-286 of the Complaint and, therefore, denies same.

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

2 31. To the extent that paragraph 287 of the Complaint requires a response, Defendant
3 incorporates herein its responses to all previous and subsequent paragraphs of the Complaint.

4 32. Defendant is presently without sufficient information to form a belief as to the truth of
5 the allegations in paragraphs 288-290 of the Complaint and, therefore, denies same.

6 **AFFIRMATIVE DEFENSES**

7 As separate and affirmative defenses to each cause of action, claim and allegation contained in
8 Plaintiffs' Complaint, Defendant alleges as follows:

9 **FIRST AFFIRMATIVE DEFENSE**

10 Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 Plaintiffs are precluded from recovery by the doctrine of Estoppel.

13 **THIRD AFFIRMATIVE DEFENSE**

14 Plaintiffs are precluded from recovery by the doctrine of Waiver.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Plaintiffs, with full knowledge of all the complained facts surrounding the application process,
17 nonetheless participated in and thereby ratified and confirmed in all respects the acts of Defendants.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 As a result of Plaintiffs' acts, actions, omissions, failures to act and knowledge, Plaintiffs are
20 estopped from bringing this action, from proving the allegations of the Complaint and from recovering
21 any judgment against Defendant.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 Defendant acted within its scope of authority and has no duty or liability to Plaintiffs.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 Plaintiffs' Complaint should be dismissed or, alternatively, venue should be transferred
26 because venue in this judicial district is improper.

27 **EIGHTH AFFIRMATIVE DEFENSE**

28 Defendant's conduct was privileged, proper, lawful, necessary and/or justified.

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NINTH AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint and the claims for relief contained therein alleged against Defendant for are barred by the doctrine of *volenti non fit injuria*.

TENTH AFFIRMATIVE DEFENSE

Defendant has, at all times, acted in good faith and has complied with each and every one of its obligations under all statutes and regulations; as a consequence, Plaintiffs are barred from bringing this Complaint, from proving the allegations contained therein and from recovering a judgment against Defendant or otherwise interfering with Defendant’s rights.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims are barred based on Plaintiffs’ failure to satisfy conditions precedent.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs’ damages, if any, are the result of its own illegal, fraudulent, improper, insufficient and/or inequitable conduct.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert the claims set forth in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint and each and every claim for relief alleged therein against Defendant is barred by the doctrines of Res Judicata, Claim Preclusion, Issue Preclusion, and Stare Decisis.

FIFTEENTH AFFIRMATIVE DEFENSE

A petition for judicial review is inappropriate and unavailable under the facts of this case and the statutory scheme at issue.

SIXTEENTH AFFIRMATIVE DEFENSE

A petition for writ of certiorari is inappropriate and unavailable under the facts of this case and the statutory scheme at issue.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant incorporates by this reference the affirmative defenses enumerated in NRCP Rule 8(c) to avoid waiver thereof.

1 EIGHTEENTH AFFIRMATIVE DEFENSE

2 Pursuant to NRCP Rule 11, all possible affirmative defenses may not have been alleged herein
3 insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's
4 Answer to Plaintiffs' Complaint and, therefore, Defendant reserves the right to amend this Answer to
5 allege additional affirmative defenses if subsequent information so warrants.

6 PRAYER FOR RELIEF

7 WHEREFORE, Defendant prays for judgment against Plaintiffs, and each of them, as follows:

- 8 1. That Plaintiffs take nothing by reason of their Complaint and that the same be
9 dismissed with prejudice;
10 2. That Defendant receives judgment for its costs and attorneys' fees incurred herein; and
11 3. For such other and further relief as the Court deems just and proper in this case.

12 AFFIRMATION

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

15 DATED this 12th day of November, 2019.

16 ROBERTSON, JOHNSON,
17 MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
18 Reno, Nevada 89501

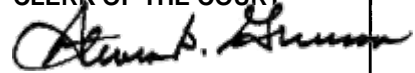
19
20 By: /s/ Richard D. Williamson
Richard D. Williamson, Esq.
Jonathan Joel Tew, Esq.
21 *Attorneys for Defendant Deep Roots Medical LLC*
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller
3 & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of eighteen, and
4 not a party within this action. I further certify that on the 12th day of November, 2019, I electronically
5 filed the foregoing **DEFENDANT DEEP ROOTS MEDICAL LLC'S ANSWER TO FIRST**
6 **AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW AND/OR WRITS OF**
7 **CERTIORARI, MANDAMUS, AND PROHIBITION** with the Clerk of the Court by using the ECF
8 system, which served all parties currently on the electronic service list on November 12, 2019.

9
10 /s/ Stefanie E. Smith

11 An Employee of Robertson, Johnson, Miller & Williamson
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DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B

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

Dept No.: XI

**ORDER GRANTING JOINT MOTION
TO CONSOLIDATE**

Date of Hearing: October 29, 2019

Time of Hearing: 9:00 a.m.

The Joint Motion to Consolidate Pursuant to EDCR 2.50(c), and all Joinders to the same, having come on for hearing before this Honorable Court on October 29, 2019; David R. Koch, Esq., of the law firm Koch & Scow LLC, appearing on behalf of Nevada Organic Remedies, LLC; Eric D. Hone, Esq., of the law firm H1 Law Group, appearing on behalf of Lone Mountain Partners, LLC; Adam K. Bult, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP,

1 appearing on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green
2 Leaf Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice Inc., Just Quality, LLC,
3 Libra Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red
4 Earth LLC, THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc.'s (collectively,
5 "ETW Plaintiffs"); Dominic P. Gentile, Esq. and Ross J. Miller, Esq., of the law firm Clark Hill
6 PLC, appearing on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline
7 Dispensary, LLC, Nevada Holistic Medicine, LLC, TRYKE Companies SO NV, LLC, TRYKE
8 Companies Reno, LLC, Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis
9 Holdings, LLC, Gravitas Nevada, LLC, Nevada Pure, LLC, Medifarm, LLC (collectively,
10 "Serenity Plaintiffs"); William S. Kemp, Esq. of the law firm Kemp, Jones & Coulthard LLP,
11 appearing on behalf of MM Development Company, Inc. and LivFree Wellness LLC; Steven G.
12 Shevorski, Esq., of the Office of the Nevada Attorney General, appearing on behalf of the State of
13 Nevada, Department of Taxation; Todd L. Bice, Esq., of the law firm Pisanelli Bice, appearing on
14 behalf of Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana,
15 LLC, Essence Henderson, LLC; Jared Kahn, Esq., of the law firm JK Legal & Consulting, LLC,
16 appearing on behalf of Helping Hands Wellness Center, Inc.; Alina M. Shell, Esq., of the law
17 firm McLetchie Law, appearing on behalf of GreenMart of Nevada NLV LLC; Dennis Prince,
18 Esq., of the law firm Prince Law Group, appearing on behalf of CPCM Holdings, LLC d/b/a
19 Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC;
20 Rusty Graf, Esq. and Brigid Higgins, Esq., of the law firm Black & Lobello, appearing on behalf
21 of Clear River, LLC; Theodore Parker, III, Esq. and Mahogany Turfley, Esq. of the law firm
22 Parker Nelson & Associates, appearing on behalf of Nevada Wellness Center, LLC; Peter
23 Christiansen, Esq. and Whitney Barrett, Esq., of the law firm Christiansen Law Offices, appearing
24 on behalf of Qualcan LLC; Dennis L. Kennedy, Esq. and Stephanie J. Glantz, Esq., of the law
25 firm Bailey Kennedy, appearing on behalf of D.H. Flamingo, Inc.; and all other appearances
26 noted in the record, and upon the Court's consideration of the pleadings and papers on file herein,
27 including any joinders and oppositions, the arguments of counsel, and good cause appearing,
28 makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. At least eight cases have been filed in the Eighth Judicial District Court that center on the Department of Taxation's method of awarding recreational marijuana licenses and whether that method violated the Constitution of the United States of America, the Nevada Constitution and NRS Chapter 453D.

2. The case numbers for the eight cases are listed in chronological order as follows: (1) A-18-785818-W, (2) A-18-786357-W, (3) A-19-786962-B; (4) A-19-787004-B; (5) A-19-787035-C; (6) A-19-787540-W; (7) A-19-787726-C; (8) A-19-801416-B.

3. The first case (Case No A-18-785818-W) was filed in Department VIII on December 10, 2018, and was brought by MM Development Company, Inc.

4. The most recent case (Case No. A-19-801416-B) was filed in Department XIII on September 5, 2019, and was brought by Qualcan, LLC.

5. Although it was not the first filed case, due to an absence in Department VIII, the case filed by Serenity Wellness Center LLC, et al. (Case No. A-19-786962-B) in Department XI became the lead case for these disputes.

6. To date, Department XI has heard various dispositive motions, including a motion for preliminary injunction, which was coordinated amongst a majority of the cases, and motions for summary judgment.

7. In total, Department XI has heard 20 days' worth of evidentiary hearings.

8. Additionally, Department XI has a trial setting for March 2020, which will resolve all of these disputes prior to the June 2020 extension for the recreational marijuana license awardees to open their businesses.

9. Although Department VIII has had its case for longer, it has heard fewer hearings and is not as far along in the litigation process as Department XI.

10. The plaintiffs in all of these cases allege substantially similar claims against the Department of Taxation and request substantially similar remedies to rectify the Department of Taxation's alleged wrongdoings.

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

CONCLUSIONS OF LAW

12. NRCP 42(a) allows for the consolidation of actions when there is “a common question of law or fact” among the actions that a party seeks to consolidate.

13. The purpose behind consolidation of actions is “to promote efficiency or preserve fairness.” *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 852, 124 P.3d 530, 541 (2005).

14. Actions share common questions of law or fact when “there is some commonality of issues,” even if there is not “perfect identity” between all the claims in the actions. *Krause v. Nevada Mut. Ins. Co.*, No. 2:12-CV-00342-JCM-CW, 2013 WL 6524657, at *3 (D. Nev. Dec. 10, 2013).

15. If there is commonality of issues among the cases, then this Court must weigh the benefits that consolidation will produce against the inconvenience, prejudice, delay, or confusion to the parties that may result from consolidation. *Id.*

16. Under the local rules, consolidation motions are generally heard by the judge assigned to the first action that was commenced, and if the actions are consolidated, then the new consolidated case is generally heard before that same judge. EDCR 2.50(a).

17. However, EDCR 2.50(c) provides that the Chief Judge of the Eighth Judicial District Court has “the authority to order consolidation or coordination of any cases pending in the district,” regardless of “any other provisions in [the Eighth Judicial District Court Rules].”

18. Given that EDCR 2.50(c) gives this Court the authority to consolidate any cases pending in the district regardless of the other provisions in the local rules, this Court exercises that authority to consolidate these cases into Department XI

19. These cases all share common questions of law and fact, in that the claims and the prayers for relief mirror each other in each of the actions.

1 20. These commonalities justify consolidating all of the above listed cases pending
2 before the Eighth Judicial District Court, in order to promote efficiency, preserve fairness, and
3 avoid conflicting results. *Shuette*, 121 Nev. at 852, 124 P.3d at 541.

4 21. Moreover, due to how far along Department XI is in the litigation process, this
5 Court exercises its authority under EDCR 2.50(c) to consolidate the pending cases into
6 Department XI as opposed to Department VIII for the purpose of judicial efficiency.

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

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

ORDER

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Joint Motion to Consolidate is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following cases are consolidated for all purposes before the Eighth Judicial District Court, Department XI: (1) A-18-785818-W, (2) A-18-786357-W, (3) A-19-786962-B; (4) A-19-787004-B; (5) A-19-787035-C; (6) A-19-787540-W; (7) A-19-787726-C; (8) A-19-801416-B.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following case no. is the lead case no. as this matter proceeds forward: A-19-787004-B.


DATED this 5th day of December, 2019.


LINDA MARIE BELL, CHIEF JUDGE, EIGHTH JUDICIAL DISTRICT COURT

WS

Submitted by:

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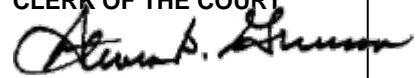
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DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE: DOT

Case No.: A-19-787004-B

Department: XI

CONSOLIDATED WITH:

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

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

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

A-19-801416-B

Hearing Requested

DEEP ROOTS MEDICAL LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant DEEP ROOTS MEDICAL LLC ("Deep Roots"), by and through its undersigned counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby files this Motion for Partial Summary Judgment ("Motion"), which seeks to dismiss all or portions of six of the approximately twelve claims for relief alleged by the myriad of plaintiffs ("Plaintiffs")¹ in this case.

///

¹ "Plaintiffs" refers to all parties that have filed complaints, amended complaints, or complaints in intervention in the consolidated action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Although the various Plaintiffs began this consolidated action with a bang of sensational headlines about corruption, they are closing discovery with a whimper of gripes and unsubstantiated allegations. Indeed, they have produced no evidence to support the barrage of accusations levied filed to date against the State of Nevada’s Department of Taxation (“DOT”) and the other defendants. Therefore, the Court can and should enter summary judgment as to all of the Plaintiffs’ various causes of action.

More simply, however, there are some inescapable legal realities that no amount of bluff and bluster can avoid. Without even needing to wade into the merits weighing against all of the Plaintiffs’ various unproven accusations, there are several claims on which the Court must enter judgment as a matter of law, including every claim for: Unjust Enrichment, Procedural Due Process, 42 USC § 1983, Substantive Due Process, Equal Protection, Judicial Review, and Writ of Prohibition – in addition to several aspects of the requests for declaratory relief. If this case must proceed through trial, the Court should at the very least summarily adjudicate these entirely unsustainable causes of action.

II. STATEMENT OF RELEVANT FACTS

All Plaintiffs dispute the DOT’s denial of their respective recreational marijuana dispensary applications and contest the award of conditional licenses to the winners, including Deep Roots. All Plaintiffs assert substantially similar causes of action:

Plaintiffs²	Claims for Relief
DH Flamingo, Inc.; Clark Natural Medicinal Solutions LLC; NYE Natural Medicinal Solutions LLC; Clark NMSD LLC; and INYO Fine Cannabis Dispensary (collectively, “ DH Flamingo ”)	(1) Petition for Judicial Review; (2) Petition for Writ of Certiorari; (3) Petition for Writ of Mandamus; (4) Petition for Writ of Prohibition.

² As the Court is aware, several Plaintiffs are now seeking to voluntarily dismiss and/or otherwise withdraw their claims. Due to the imminent deadline for filing dispositive motions and the uncertainty regarding whether all parties will move forward, however, Deep Roots seeks an entry of judgment as to all Plaintiffs involved in this case.

Compassionate Team of Las Vegas, LLC (“ Compassionate Team ”) ³	(1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; and (7) Petition for Writ of Mandamus.
ETW Management Group LLC; Global Harmony LLC; Green Leaf Farms Holdings LLC; Green Therapeutics LLC, Herbal Choice Inc.; Just Quality, LLC, Libra Wellness Center, LLC; Rombough Real Estate Inc.; Nevcan LLC; Red Earth LLC; THC Nevada LLC; Zion Gardens LLC; and MMOF Vegas Retail, Inc. (collectively, “ ETW Group ”)	(1) Violation of Substantive Due Process; (2) Violation of Procedural Due Process; (3) Violation of Equal Protection; (4) Declaratory Judgment; (5) Petition for Judicial Review; (6) Petition for Writ of Mandamus.
High Sierra Holistics, LLC (“ High Sierra ”)	(1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; (7) Petition for Writ of Mandamus.
MM Development Company, Inc.; LivFree Wellness, LLC (collectively, “ MM Development ”)	(1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; (7) Petition for Writ of Mandamus.
Natural Medicine LLC (“ Natural Medicine ”)	(1) Declaratory Relief; (2) Petition for Judicial Review; (3) Petition for Writ of Certiorari; (4) Petition for Writ of Mandamus; (5) Petition for Writ of Prohibition.
Nevada Wellness Center, LLC (“ Natural Wellness ”)	(1) Declaratory Relief; (2) Injunctive Relief; (3) Violation of Procedural Due Process;

³ Although Deep Roots has not been served by Compassionate Team of Las Vegas, LLC or High Sierra Holistics, LLC with any complaint, or even named in their complaints, to the extent these parties are still in this consolidated case and seek to pursue any of their legal claims, the Court should also enter judgment against them. Similarly, to the extent there are any other Plaintiffs inadvertently not specifically named in this Motion who have and seek to pursue similar claims to those as challenged herein, the Court should also enter judgment against them.

	(4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; (7) Petition for Writ of Mandamus; (8) Violation of 42 USC 1983; (9) Unjust Enrichment.
Qualcan, LLC (“ Qualcan ”)	(1) Declaratory Relief; (2) Injunctive Relief; (3) Intentional Interference with Prospective Economic Advantage; (4) Intentional Interference with Contractual Relations; (5) Petition for Judicial Review; (6) Petition for Writ of Mandamus; (7) Violation of Procedural Due Process; (8) Violation of Substantive Due Process; (9) Equal Protection Violation.
Rural Remedies, LLC (“ Rural Remedies ”)	(1) Declaratory Relief; (2) Permanent Injunction; (3) Violation of 42 USC 1983; (4) Petition for Judicial Review; (5) Petition for Writ of Mandamus; (6) Unjust Enrichment.
Serenity Wellness Center, LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies So NV LLC; Tryke Companies Reno, LLC; GBS Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, Ltd; Nevada Pure, LLC; Medifarm, LLC; Medifarm IV, LLC (collectively, “ Serenity Wellness ”)	(1) Violation of Civil Rights - Due Process, Deprivation of Property; (2) Violation of Civil Rights - Due Process, Deprivation of Liberty; (3) Violation of Civil Rights - Equal Protection; (4) Petition for Judicial Review; (5) Petition for Writ of Mandamus; (6) Declaratory Relief.
Strive Wellness of Nevada, LLC (“ Strive Wellness ”)	(1) Declaratory Relief; (2) Petition for Judicial Review; (3) Petition for Writ of Certiorari; (4) Petition for Writ of Mandamus; (5) Petition for Writ of Prohibition.

III. LEGAL STANDARD

“Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court

1 demonstrate that no genuine issue of material fact exists, and the moving party is entitled to
2 judgment as a matter of law.” Wood v. Safeway, Inc., 121 Nev. 724, 732, 121 P.3d 1026, 1031
3 (2005); see also NRCP 56(a). Courts are not to unfavorably view summary judgment motions
4 and are urged to view them as an integral part of the rules of civil procedure which, as a whole,
5 are designed to “secure the just, speedy and inexpensive determination of every action.” Celotex
6 Corp. v. Catrett, 477 U.S. 317, 327 (1986).

7 The party moving for summary judgment bears the burden of production to establish that
8 no genuine issues of material fact exist. Cuzze v. Univ. & Cmty. Coll. Sys., 123 Nev. 598, 602,
9 172 P.3d 131, 134 (2007). If such a showing is made by the moving party, “then the party
10 opposing summary judgment assumes a burden of production to show the existence of a genuine
11 issue of material fact.” Id. “The manner in which each party may satisfy its burden of
12 production depends on which party will bear the burden of persuasion on the challenged claim at
13 trial.” Id. If, as in this case,

14 the nonmoving party will bear the burden of persuasion at trial, the party
15 moving for summary judgment may satisfy the burden of production by either
16 (1) submitting evidence that negates an essential element of the nonmoving
17 party’s claim, or (2) pointing out [] that there is an absence of evidence to
18 support the nonmoving party’s case. In such instances, in order to defeat
summary judgment, the nonmoving party must transcend the pleadings and, by
affidavit or other admissible evidence, introduce specific facts that show a
genuine issue of material fact.

19 Id. at 602–03, 172 P.3d at 134. In other words, once the moving party establishes its initial
20 burden and the burden shifts, then the nonmoving party must “do more than simply show there is
21 some metaphysical doubt as to the operative facts” to preclude entry of summary judgment and
22 is “not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.”
23 Wood, 121 Nev. at 732, 121 P.3d at 1031.

24 **IV. LEGAL ARGUMENT**

25 **A. Defendants are Entitled to Summary Judgment on Unjust Enrichment**

26 Plaintiffs Nevada Wellness and Rural Remedies both seek relief, in the alternative, when
27 all of their other claims fail, that they are entitled to recoup their recreational marijuana
28 application fees paid to the DOT because “it would be unjust for the DOT to retain the benefit of

1 Plaintiff's expenditures to apply for the recreational marijuana licenses." (Nevada Wellness
2 Amended Complaint (on file) at ¶ 282; Rural Remedies Complaint in Intervention (on file) at ¶
3 115.) This claim for relief is absurd.

4 In Nevada, unjust enrichment exists "when the plaintiff confers a benefit on the
5 defendant, the defendant appreciates such benefit, and there is acceptance and retention by the
6 defendant of such benefit under circumstances such that it would be inequitable for him to retain
7 the benefit without payment of the value thereof." Certified Fire Prot. Inc. v. Precision Constr.,
8 128 Nev. 371, 381, 283 P.3d 250, 257 (2012) (internal quotations and citations omitted).

9 Here, there can be no question that a claim of unjust enrichment by any plaintiff is wholly
10 without merit. To begin, NRS 453D.230(1) plainly mandates that the "Department *shall require*
11 each applicant for a marijuana establishment license to pay a one-time application fee of
12 \$5,000." (Emphasis added). Consistent with this statutory mandate, the regulations confirm that
13 this is a "*nonrefundable* application fee of \$5,000." NAC 453D.268(1) (emphasis added).

14 Equally as critical, section 5.2.13.1 of the Recreational Marijuana Establishment License
15 Application dated July 6, 2018 ("Application") clearly requires each applicant to "[i]nclude with
16 this packet the \$5,000.00 *non-refundable application fee per NRS 453D.230(1)*." (Application,
17 attached hereto as **Exhibit 1**, at DOT041379 (emphasis added).)⁴ In short, Plaintiffs were on full
18 notice – through the Nevada Revised Statutes, the Nevada Administrative Code, and the plain
19 terms of the very Application they submitted – that they were required to pay a *non-refundable*
20 application fee of \$5,000. As a result, Plaintiffs can make no viable argument that it would be
21 "inequitable" for the DOT to retain all Application fees received. Plaintiffs voluntarily paid the
22 non-refundable fees to the DOT and cannot now claim the DOT has been unjustly enriched.
23 Thus, this entire claim should be summarily dismissed from these proceedings.

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27 ⁴ On July 31, 2018, the DOT issued an "OFFICIAL ANNOUNCEMENT" to "All Retail Store License
28 Applicants" regarding clarifications to the Application. A sentence was added to section 5.2.13.1, but the non-
fundable language remained in place. (See Email re Application, attached hereto as **Exhibit 2**, at DOT 021465.)

1 **B. Defendants are Entitled to Summary Judgment on Procedural Due Process**

2 Eight Plaintiffs (or Plaintiff groups) claim there has been a violation of procedural due
3 process afforded by the Fourteenth Amendment to the Constitution of the United States and
4 Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.⁵ Those Plaintiffs are
5 Compassionate Team, ETW Group, High Sierra, MM Development, Nevada Wellness, Qualcan,
6 Rural Remedies,⁶ and Serenity Wellness.⁷

7 Analysis of a procedural due process claim involves a two-step process: first, “whether
8 there exists a liberty or property interest which has been interfered with by the State, ... [and
9 second] whether the procedures attendant upon that deprivation were constitutionally
10 sufficient.” Malfitano v. County of Storey By & Through Storey County Bd. of County
11 Commissioners, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (quoting Ky. Dep’t of Corr. v.
12 Thompson, 490 U.S. 454, 460, (1989) (alterations in original)).

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15 ⁵ See Compassionate Team Complaint (on file) at ¶¶ 37-43; ETW Group Third Amended Complaint (on file) at
16 ¶¶ 98-115; High Sierra Complaint (on file) at ¶¶ 37-42; MM Development Second Amended Complaint (on file) at
17 ¶¶ 72-83; Nevada Wellness Amended Complaint (on file) at ¶¶ 235-241, 265-277 ; Qualcan Second Amended
18 Complaint (on file) at ¶¶ 139-149; Rural Remedies Complaint in Intervention (on file) at ¶¶ 87-99; and Serenity
19 Wellness Second Amended Complaint (on file) at ¶¶ 53-87.

20 ⁶ Nevada Wellness and Rural Remedies both list as (virtually identical) separate claims, a “Violation of 42 USC
21 1983 by Defendants Jorge Pupo and Department of Taxation” based on both procedural and substantive due process
22 claims. (Nevada Wellness Amended Complaint (on file) at ¶¶ 265-277; Rural Remedies Complaint in Intervention
23 (on file) at ¶¶ 87-99.) A violation of 42 USC § 1983 based on a procedural due process claim requires a plaintiff to
24 establish “(1) a constitutionally protected liberty or property interest; (2) a deprivation of that interest by the
25 government; and (3) the lack of process. Only if Plaintiffs demonstrate the existence of all three elements may the
26 Court entertain their claim.” Clark K. v. Willden, 616 F. Supp. 2d 1038, 1041 (D. Nev. 2007) (citing Portman v.
27 County of Santa Clara, 995 F.2d 898, 904 (9th Cir.1993)). Notably, “a threshold requirement to a substantive or
28 procedural due process claim is plaintiff’s showing of a liberty or property interest protected by the
constitution.” Kulkin v. County of Nye, 207CV1027JCM PAL, 2010 WL 11635775, at *3 (D. Nev. Feb. 2, 2010)
(quoting Wedges/ledges of Cal. v. City of Phoenix, 24 F.3d 56, 62 (9th Cir. 1994)). Because the analysis of any
violation of 42 USC § 1983 claim necessarily involves the same threshold analysis regarding a protected liberty or
property interest, these claims for relief are all addressed in this section, and must be similarly dismissed. It is
nonetheless interesting to note that both Nevada Wellness and Rural Remedies claim that because their “managers
and members” are respectively of African American and Latino descent, that review of their due process claim
warrants strict scrutiny. (Nevada Wellness Amended Complaint at ¶¶ 268; Rural Remedies Complaint in
Intervention at ¶¶ 90.) While the analysis need not move past the first prong for the reasons stated herein,
allegations of any due process violations are rendered meritless because NRS 453D.272 specifically takes into
account the “diversity of the owners, officers or board members of the proposed marijuana establishment,” meaning
that these Plaintiffs were actually given an advantage as a result of their managers’ and members’ heritage.

⁷ Serenity Wellness appears to make two procedural due process claims – one for deprivation of a property
interest, and one for deprivation of a liberty interest. (See Serenity Wellness Second Amended Complaint at ¶¶ 53-
87.) These claims are jointly addressed in this section, as the analysis is the same.

1 Protected property interests are not created by the Constitution; rather, they are created
2 and defined by independent sources such as state statutes and rules entitling a citizen to certain
3 benefits. Goss v. Lopez, 419 U.S. 565, 572-73 (1975) (citing Bd. of Regents v. Roth, 408 U.S.
4 564, 577 (1972)). Notably, “[t]o have a property interest in a benefit, *a person clearly must*
5 *have more than an abstract need or desire for it. He must have more than a*
6 *unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.*”
7 Malfitano, 133 Nev. at 282, 396 P.3d at 819–20 (quoting Bd. of Regents of State Colls. v.
8 Roth, 408 U.S. 564, 577 (1972)) (emphasis added). “A liberty interest may arise from the
9 Constitution itself, by reason of guarantees implicit in the word ‘liberty,’ or it may arise from an
10 expectation or interest created by state laws or policies.” Wilkinson v. Austin, 545 U.S. 209, 221
11 (2005) (internal citations omitted).

12 Here, nearly all of the Plaintiffs⁸ claiming a procedural due process violation concoct two
13 novel property interest theories. The first is that NRS chapter 453D create a statutorily
14 recognized and protected property interest in the recreational marijuana license application
15 process. (See ETW Group Third Amended Complaint at ¶¶ 98-115; High Sierra Complaint at ¶¶
16 37-42; Nevada Wellness Amended Complaint at ¶¶ 235-241, 265-277; Rural Remedies
17 Complaint in Intervention at ¶¶ 87-99.) The second inventive theory is that NRS 598A.210, a
18 provision within Nevada’s Unfair Trade Practices Act, creates a statutorily recognized and
19 protected property interest in the form of a business’s sales and the resulting value of its market
20 share. (See MM Development Second Amended Complaint at ¶¶ 72-83, Qualcan Second
21 Amended Complaint at ¶¶ 139-149, and Serenity Wellness Second Amended Complaint at ¶¶
22 53-87.) The gist of these two theories boils down to the same basic legal question: whether a
23 recreational marijuana license, or simply applying for one, creates a protected property or liberty
24 interest protected by the Constitution? The short answer is no.

25 In Nevada, courts have analyzed a similar question with regard to both liquor licenses
26 and gaming licenses, and in both instances determined these licenses are not a protected property
27

28 ⁸ The term “nearly” is used because neither Compassionate Team nor High Sierra allege any basis on which they
would be entitled to procedural due process (i.e., a protected liberty or property interest).

1 interest. See Malfitano, 133 Nev. at 285, 396 P.3d at 821-822 (concluding that the district court
2 “did not abuse its discretion when it concluded [plaintiff’s] due process and equal protection
3 rights were not violated by the denial of his [liquor] license applications”); Nevada Rest.
4 Services, Inc. v. Clark County, 2:16-CV-0238-GMN-NJK, 2018 WL 1077279, at *5 (D. Nev.
5 Feb. 26, 2018), aff’d, 788 Fed. Appx. 484 (9th Cir. 2019) (holding that a “gaming license is not a
6 vested property right” and granting summary judgment in favor of defendant Clark County
7 because plaintiff applicant “cannot demonstrate a protected property interest with its gaming
8 license”); see also Coury v. Robison, 115 Nev. 84, 88, 976 P.2d 518, 520 (1999) (“the
9 acquisition of a gaming license and use permit *constitutes a privilege and not a property right.*”) (emphasis added).

11 Serenity Wellness makes a separate claim that it was deprived of a liberty interest when
12 the DOT denied a conditional license. As such, the analysis is the same; that is, applying for a
13 recreational marijuana license does not created a protected liberty interest. See Jones v.
14 Lehmkuhl, No. 11-CV-02384-WYD-CBS, 2013 WL 6728951, at *20 (D. Colo. Dec. 20, 2013)
15 (refusing to recognize a liberty interest in the production, use or sale of marijuana); see also Scott
16 v. Vill. of Kewaskum, 786 F.2d 338, 339–42 (7th Cir. 1986) (extensively analyzing liberty
17 interests and determining that denying a liquor license does not implicate a liberty interest).

18 Here, the procedural due process analysis stops after the first prong, as there can be no
19 question that neither a new recreational marijuana license, nor the application for one, is a
20 protected property interest. Similar to the liquor and gaming licenses respectively sought in
21 Malfitano and Clark County, a subjective hope of receiving a conditional recreational marijuana
22 license through a competitive application process is simply not a protected property interest. Not
23 only did none of the Plaintiffs here possess any of the licenses at issue before the application
24 process, but even if they did, the licenses can be revoked. Indeed, NAC 453D.312 sets forth the
25 grounds for revoking a marijuana license, affirming that a revocable marijuana license is not a
26 protected property interest. As a result, Plaintiffs’ procedural due process claims fail as a matter
27 of law and the Court should enter summary judgment against them.

1 **C. Defendants are Entitled to Summary Judgment on All Claims for Violation**
2 **of Substantive Due Process**

3 Six Plaintiffs assert a violation of substantive due process: Compassionate Team, ETW
4 Group, High Sierra, MM Development, Nevada Wellness, and Qualcan.⁹ Notably, five of the six
5 Plaintiffs asserting this claim for relief do not even articulate how there has been a substantive
6 due process violation, and merely proclaim their due process rights have been violated. (See
7 Compassionate Team Complaint at ¶¶ 44-48; High Sierra Complaint at ¶¶ 43-47; MM
8 Development Second Amended Complaint at ¶¶ 84-88; Nevada Wellness Amended Complaint at
9 ¶¶ 242-246; Qualcan Second Amended Complaint at ¶¶ 150-154.)¹⁰

10 “Substantive due process guarantees that no person shall be deprived of life, liberty or
11 property for arbitrary reasons.” Allen v. State, 100 Nev. 130, 134, 676 P.2d 792, 794 (1984).
12 The substantive component of the Fourteenth Amendment to the United States Constitution
13 recognizes certain “fundamental rights” upon which the government’s ability to intrude is
14 sharply limited. See, e.g. Paul v. Davis, 424 U.S. 693, 712–13 (1976). The constitutional
15 guarantee of substantive due process precludes the government from engaging in conduct that
16 “shocks the conscience” or interferes with rights “implicit in the concept of ordered liberty.”
17 United States v. Salerno, 481 U.S. 739, 742 (1987). Substantive due process provides no basis
18 for overturning validly enacted laws unless they are “clearly arbitrary and unreasonable, having
19 no substantial relation to the public health, safety, morals, or general welfare.” Spoklie v.
20 Montana, 411 F.3d 1051 (9th Cir. 2005); see also Richardson v. City and County of Honolulu,
21 124 F.3d 1150, 1162 (9th Cir. 1997). Notably, “[a] party cannot have a property interest in a

23 ⁹ See Compassionate Team Complaint (on file) at ¶¶ 44-48; ETW Group Third Amended Complaint (on file) at
24 ¶¶ 80-97; High Sierra Complaint (on file) at ¶¶ 43-47; MM Development Second Amended Complaint (on file) at
25 ¶¶ 84-88; Nevada Wellness Amended Complaint at ¶¶ 242-246; Qualcan Second Amended Complaint (on file) at
26 ¶¶ 150-154.

27 ¹⁰ For this reason alone, this claim should be summarily dismissed as to those Plaintiffs in accordance with NRCP
28 12(b)(5) (a court may grant a motion to dismiss when the plaintiff fails “to state a claim upon which relief can be
 granted”); see also Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 671-73 (2008)
 (dismissal for failure to state a claim is therefore appropriate when the plaintiff cannot prove any set of facts that
 would entitle it to relief). As described herein, Plaintiffs can prove no set of facts that would entitle them relief on
 their substantive due process claim because there is no “right” that has been violated by the DOT.

1 *discretionary benefit.*” Deja Vu of Nashville, Inc. v. Metro. Gov’t of Nashville, 360 F. Supp. 3d
2 714, 727 (M.D. Tenn. 2019) (emphasis added). More specifically, “*a party cannot possess a*
3 *property interest in the receipt of a benefit when the state’s decision to award or withhold the*
4 *benefit is wholly discretionary.*” Id. (emphasis added).

5 A substantive due process analysis begins “with a careful description of the asserted
6 right.” Reno v. Flores, 507 U.S. 292, 302 (1993). If the asserted right is “deeply rooted” in
7 tradition and history and so “implicit in the concept of ordered liberty” that “neither liberty nor
8 justice would exist if [it] were sacrificed,” the asserted right is a fundamental one. Washington
9 v. Glucksberg, 521 U.S. 702, 721 (1997) (internal quotation marks omitted). A statute that
10 infringes on a fundamental right is subject to strict scrutiny and will be invalidated unless it is
11 “narrowly tailored to serve a compelling state interest.” In re Parental Rights as to D.R.H., 120
12 Nev. 422, 427, 92 P.3d 1230, 1233 (2004) (internal quotation marks omitted). “If the statute
13 does not abridge a fundamental right, it is reviewed under the rational basis test and will be
14 upheld so long as it bears a rational relationship to a legitimate state interest.” State v. Eighth
15 Jud. Dist. Ct. (Logan D.), 129 Nev. 492, 503, 306 P.3d 369, 377 (2013) (citing Allen, 100 Nev.
16 at 134, 676 P.2d at 794–95).

17 Thus, the substantive due process analysis in this case involves a three-part inquiry.
18 First, is there a statute or set of laws alleged to infringe on any constitutional rights? See Logan
19 D., 129 Nev. at 501, 306 P.3d at 375 (analyzing the “constitutionality of a statute” for purposes
20 of a substantive due process claim). Second, does said statute infringe on a fundamental right?
21 See In re Parental Rights as to D.R.H., 120 Nev. at 427, 92 P.3d at 1233 (2004). Third, if there is
22 no fundamental right, does the statute bear a rational relationship to a legitimate state interest?
23 See Logan D., 129 Nev. at 503, 306 P.3d at 377. The Plaintiffs’ claims fail on all three grounds.

24 Here, ETW Group appears to contend that NRS 453D.272, and the “Factors” set forth
25 therein, infringe on substantive due process guarantees. (See ETW Group Third Amended
26 Complaint at ¶¶ 54-55, 91-95.) Making a large assumption they even challenge the statute, the
27 analysis thus moves to whether this statute infringes on a fundamental right.

1 In this matter, only the ETW Group provides any description of their substantive due
2 process claim. Thus, all other Plaintiffs' substantive due process claims fail to even state a claim
3 warranting immediate dismissal. NRC 12(b)(5). As for ETW Group, they appear to contend
4 that "the right to a retail marijuana license" is a "fundamental property right" from which they
5 "have been deprived" in violation of "the substantive due process guarantees of the Nevada and
6 United States Constitutions." (ETW Group Third Amended Complaint at ¶¶ 87-95.)¹¹ As
7 described herein, a retail marijuana license is absolutely not a "fundamental right." The United
8 States Supreme Court has identified fundamental rights as including "the rights to marry, to have
9 children, to direct the education and upbringing of one's children, to marital privacy, to use
10 contraception, to bodily integrity, and to abortion," and possibly the right to "refuse unwanted
11 lifesaving medical treatment." Glucksberg, 521 U.S. at 720 (internal citations omitted).¹²
12 Clearly, a claim to a marijuana license, the application for a marijuana license, or any derivation
13 thereof as further invented by Plaintiffs, is not a fundamental right as recognized by the United
14 States Supreme Court, or one that is "deeply rooted" in tradition and history and so "implicit in
15 the concept of ordered liberty" that "neither liberty nor justice would exist if [it] were
16 sacrificed." Glucksberg, 521 U.S. at 721; see also Jones v. Lehmkuhl, No. 11-CV-02384-WYD-
17 CBS, 2013 WL 6728951, at *20 (D. Colo. Dec. 20, 2013) (finding no historical or legal
18 antecedents that suggest the production, use or sale of marijuana should be elevated to a
19 fundamental constitutional right).

20 As a result, the analysis switches to the rational basis test, and the final step is to
21 determine whether NRS 453D.272 "bears a rational relationship to a legitimate state interest."
22 Logan D., 129 Nev. at 503, 306 P.3d at 377. Notably, when performing this analysis, "[s]tatutes
23

24 ¹¹ ETW Group's Third Amended Complaint at ¶¶ 87-95 appears to conflate procedural and substantive due
25 process allegations, as it initially discusses "protectable property interests," then switches to discussion of
26 "fundamental property rights." Whether viewed under a procedural or substantive due process analysis, the claims
fail because the marijuana license applications create neither a protectable property interest nor a fundamental
property right as discussed herein.

27 ¹² Nevada consistently relies "upon the Supreme Court's holdings interpreting the federal Due Process Clause to
28 define the fundamental liberties protected under Nevada's due process clause." Logan D., 129 Nev. at 503-04, 306
P.3d at 377 (2013) (citing Arata v. Faubion, 123 Nev. 153, 158-59, 161 P.3d 244, 248-49 (2007); Kirkpatrick v.
Eighth Judicial Dist. Court, 119 Nev. 66, 71, 64 P.3d 1056, 1059-60 (2003)).

1 *are cloaked with a presumption of validity and the burden is on the challenger to demonstrate*
2 *that a statute is unconstitutional.* Id. at 501, 306 P.3d at 375 (emphasis added). If there is no
3 fundamental right implicated, the statute “will be upheld if it is rationally related to a legitimate
4 government purpose.” Id. Here, the ETW Group does not even allege that NRS 453D.272 is
5 unconstitutional. Instead, they contend “the DOT’s arbitrary, irrational, and partial application
6 of the Factors [as set forth in NRS 453D.272] to Plaintiff’s applications” resulted in a deprivation
7 of “their fundamental property rights.” (ETW Group Third Amended Complaint at ¶ 95.) As
8 stated above, however, there is no fundamental right implicated, so the analysis must end, as no
9 Plaintiff has alleged that NRS 453D.272, or any other statute in NRS chapter 453D, is not
10 rationally related to a legitimate government purpose. (See generally ETW Group Third
11 Amended Complaint (on file) at ¶¶ 80-97; High Sierra Complaint (on file) at ¶¶ 43-47; MM
12 Development Second Amended Complaint (on file) at ¶¶ 84-88; Nevada Wellness Amended
13 Complaint at ¶¶ 242-246; Qualcan Second Amended Complaint (on file) at ¶¶ 150-154.)

14 Even if such allegations were made, however, there can be no question that chapters
15 453D of both the NRS and NAC, and specifically NAC 453D.272, satisfy the rational basis test.
16 Indeed, NRS 453D.020 states that “[i]n the interest of public health and public safety, and in
17 order to better focus state and local law enforcement resources on crimes involving violence and
18 personal property,” the use, sale, and cultivation of marijuana “should be regulated similar to
19 other legal businesses,” and “strictly controlled through state licensing.” NAC chapter 453D
20 then goes on to specifically address the licensing of marijuana establishments (see NAC
21 453D.250 to NAC 453D.315, inclusive) – one provision of which explicitly deals with the
22 ranking of applications for retail marijuana stores to make the process as fair as possible. This
23 code provision, NAC 453D.272, is the subject of ETW Group’s allegation that the “Factors”
24 contained therein under subsection 1 “violate due process as applied to Plaintiff’s applications.”
25 (ETW Group Third Amended Complaint at ¶ 94.) However, as is plain from a review of the
26 Factors, there can be no question that the law is rationally related to a legitimate government
27 interest. The regulation reads in pertinent part as follows:

1 1. *If the Department receives more than one application for a license for a*
2 *retail marijuana store* in response to a request for applications made pursuant
3 to NAC 453D.260 and the Department determines that more than one of the
4 applications is complete and in compliance with this chapter and chapter 453D of
5 NRS, *the Department will rank the applications*, within each applicable locality
6 for any applicants which are in a jurisdiction that limits the number of retail
7 marijuana stores, *in order from first to last based on compliance with the*
8 *provisions of this chapter and chapter 453D of NRS and on the content of the*
9 *applications relating to:*

10 (a) Whether the owners, officers or board members have experience
11 operating another kind of business that has given them experience which is
12 applicable to the operation of a marijuana establishment;

13 (b) The diversity of the owners, officers or board members of the
14 proposed marijuana establishment;

15 (c) The educational achievements of the owners, officers or board
16 members of the proposed marijuana establishment;

17 (d) The financial plan and resources of the applicant, both liquid and
18 illiquid;

19 (e) Whether the applicant has an adequate integrated plan for the care,
20 quality and safekeeping of marijuana from seed to sale;

21 (f) The amount of taxes paid and other beneficial financial contributions,
22 including, without limitation, civic or philanthropic involvement with this State or
23 its political subdivisions, by the applicant or the owners, officers or board
24 members of the proposed marijuana establishment;

25 (g) Whether the owners, officers or board members of the proposed
26 marijuana establishment have direct experience with the operation of a medical
27 marijuana establishment or marijuana establishment in this State and have
28 demonstrated a record of operating such an establishment in compliance with the
29 laws and regulations of this State for an adequate period of time to demonstrate
30 success;

31 (h) The experience of key personnel that the applicant intends to employ
32 in operating the type of marijuana establishment for which the applicant seeks a
33 license; and

34 (i) Any other criteria that the Department determines to be relevant.

35 NAC 453.272(1) (emphasis added).

36 Each of the above “Factors,” and the entire regulation for that matter, endeavors to put
37 forth reasonable guidelines for the DOT so that it can process and analyze numerous applications
38 and thereby comply with the intent of the entire chapter to protect the “public health and public
39 safety” of the citizens of the State of Nevada and regulate applicants for marijuana licenses.
40 NAC 453D.020. Statutory language that sets up a reasonable vetting process to review
41 marijuana license applications in an effort to protect the health and welfare of Nevada’s citizens
42 is rationally related to a legitimate government purpose. See Deja Vu of Nashville, Inc., 360 F.

Supp. 3d at 728 (dismissing substantive due process claim involving a valet permit applicant because the statutory language “public safety, health, and welfare” gives the permitting authority “broad discretion to deny valet permits,” meaning that plaintiffs “possessed neither a legitimate claim of entitlement to the valet permit, nor a justifiable expectation that the Commission would issue the permit” and thus “possessed no property interest that could support a substantive due process claim”); Midnight Sessions, Ltd. v. City of Philadelphia, 945 F.2d 667, 679 (3d Cir. 1991), abrogated on other grounds by United Artists Theatre Cir., Inc. v. Tws. of Warrington, PA, 316 F.3d 392 (3d Cir. 2003) (finding plaintiffs did not have a property interest in receiving a potential license to operate a dance hall); ESJ Props., LLC v. City of Toledo, 651 F.Supp.2d 743, 755-56 (N.D. Ohio 2009) (“Because the City possessed this discretion, [plaintiff] has no property interest, and its procedural due process claim against defendants fails as a matter of law.”); Marvin v. City of Taylor, 509 F.3d 234, 244 (6th Cir. 2007) (“If there is no constitutional violation, then the plaintiff’s § 1983 claim fails as a matter of law.”)

Thus here, even if Plaintiffs were to make the argument that NAC 453D.272 was unconstitutional,¹³ which no Plaintiff does, that argument would fail. As a result, the entire claim for substantive due process is meritless, warranting summary judgment as a matter of law.

D. Defendants are Entitled to Summary Judgment on Equal Protection Claims

Seven Plaintiffs assert a claim for violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. Only one group of Plaintiffs, ETW Group, claims a fundamental right has been implicated, thus requiring strict scrutiny (see ETW Group Third Amended Complaint at ¶¶ 116-130), while six of the seven Plaintiffs assert there has been an equal protection violation because there is no “rational relationship” between the DOT’s denial of their respective applications and a legitimate government purpose, and thus

¹³ Moreover, the statutory scheme contains a savings clause that limits any claimed infirmities to just the specific provisions at issue and otherwise protects the surrounding regulatory process. See NRS 453D.600 (“If any provision of this chapter, *or the application thereof* to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality *shall not affect the validity or constitutionality of this chapter as a whole or any provision or application of this chapter which can be given effect* without the invalid or unconstitutional provision or application, and to this end the provisions of this chapter are declared to be severable.” (emphasis added)).

1 concede there is no fundamental right implicated. (See Compassionate Team Complaint at
2 ¶¶ 44-48; High Sierra Complaint at ¶¶ 48-53; MM Development Second Amended Complaint at
3 ¶¶ 89-95; Nevada Wellness Amended Complaint at ¶¶ 247-252; Qualcan Second Amended
4 Complaint at ¶¶ 155-162; Serenity Wellness Second Amended Complaint at ¶¶ 88-92.)

5 The due process and equal protection clauses protect distinctly different interests. On the
6 one hand, the “substantive component” of the due process clause “provides heightened
7 protection against government interference with certain fundamental rights and
8 liberty interests,” Glucksberg, 521 U.S. at 720, even when the challenged regulation affects all
9 persons equally. In contrast, “the essence of the equal protection requirement is that the state
10 treat all those similarly situated similarly,” Zeigler v. Jackson, 638 F.2d 776, 779 (5th Cir. 1981),
11 and “the central purpose of the Equal Protection Clause of the Fourteenth Amendment is the
12 prevention of official [i.e., government] conduct discriminating on the basis of race.”
13 Washington v. Davis, 426 U.S. 229, 239, (1976). Accordingly, equal protection only applies if
14 the government treats similarly situated persons differently under the law. See In re Candelaria,
15 126 Nev. 408, 416, 245 P.3d 518, 523 (2010). If the parties are not similarly situated, then the
16 court need not engage any further in the equal protection analysis. See Reel v. Harrison, 118
17 Nev. 881, 887, fn.16, 60 P.3d 480, 483 (2002).

18 “The first step in the equal protection analysis is to determine the appropriate standard of
19 scrutiny to apply according to the rights infringed and the classification created.” Hamm v.
20 Arrowcreek Homeowners' Ass'n, 124 Nev. 290, 301, 183 P.3d 895, 903 (2008). If there are no
21 fundamental rights infringed, or a suspect class is not involved, the statute “will survive an equal
22 protection attack so long as the classification withstands ‘minimum scrutiny,’ i.e., is rationally
23 related to a legitimate governmental purpose.” Arata v. Faubion, 123 Nev. 153, 159, 161 P.3d
24 244, 248 (2007). In other words, “[e]qual protection allows different classifications of
25 treatment,” as long as the classifications are “reasonable” and “related to a legitimate
26 government interest for treating businesses differently.” Flamingo Paradise Gaming, LLC v.
27 Chanos, 125 Nev. 502, 520, 217 P.3d 546, 558 (2009). Notably, “[i]n the area of economics and
28 social welfare, a State does not violate the Equal Protection Clause merely because the

1 classifications made by its laws are imperfect.” State, Private Investigator’s Licensing Bd. v.
2 Taketa, 105 Nev. 4, 6–7, 767 P.2d 875, 876 (1989). Furthermore, courts consistently defer “to
3 legislative determinations as to the desirability of particular statutory discriminations.” City
4 New Orleans v. Dukes, 427 U.S. 297, 303 (1976). Indeed,

5 the judiciary may not sit as a superlegislature to judge the wisdom or desirability
6 of legislative policy determinations made in areas that neither affect fundamental
7 rights nor proceed along suspect lines; in the local economic sphere, it is only the
invidious discrimination, the wholly arbitrary act, which cannot stand consistently
with the Fourteenth Amendment.

8 Id. at 303-304; see also Heller v. Doe, 509 U.S. 312, 319, 321, (1993) (quoting FCC v. Beach
9 Communications, Inc., 508 U.S. at 318, 113 S.Ct. 2096) (“rational-basis review in equal
10 protection analysis ‘is not a license for courts to judge the wisdom, fairness, or logic of
11 legislative choices.’ . . . courts are compelled under rational-basis review to accept a legislature’s
12 generalizations even when there is an imperfect fit between means and ends.”).

13 Here, the ETW Group Plaintiffs claim they “have a fundamental right to engage in a
14 profession or business, including that of retail marijuana establishments,” thus warranting a strict
15 scrutiny review of NAC 453D.272. (ETW Group Third Amended Complaint at ¶¶ 120-127.)
16 However, the U.S. Supreme Court “has held that the right to pursue a calling is *not* a
17 fundamental right for purposes of the Equal Protection Clause.” Country Classic Dairies, Inc. v.
18 State of Mont., Dept. of Commerce Milk Control Bureau, 847 F.2d 593, 596 (9th Cir. 1988)
19 (citing New Orleans v. Dukes, 427 U.S. 297, 303–305 (1976)) (emphasis added). As such,
20 courts may “‘presume the constitutionality of the . . . discriminations and require only that the
21 classification challenged be rationally related to a legitimate state interest.’” Id. (quoting Dukes,
22 427 U.S. at 303). Thus, any claim that a fundamental right has been implicated should be readily
23 dismissed, leaving only the question of whether any “classifications” set forth in NAC 453D.272
24 are rationally related to a legitimate governmental purpose. The unequivocal answer is yes.

25 To begin, it is entirely unclear from the allegations of the six Plaintiffs (or Plaintiff
26 groups) who conceded no fundamental right is implicated what exactly they allege is a violation
27 of equal protection. Each of their complaints generically allege there has been an improper
28 classification resulting in disparate treatment, but do not articulate the statute implicated, let

1 alone how that nameless statute violates the equal protection clause. (See Compassionate Team
2 Complaint at ¶¶ 44-48; High Sierra Complaint at ¶¶ 48-53; MM Development Second Amended
3 Complaint at ¶¶ 89-95; Nevada Wellness Amended Complaint at ¶¶ 247-252; Qualcan Second
4 Amended Complaint at ¶¶ 155-162; Serenity Wellness Second Amended Complaint at ¶¶ 88-92.)
5 As a result, this claim should be summarily dismissed as to those Plaintiffs in accordance with
6 NRCPP 12(b)(5). See also Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181
7 P.3d 670, 671-73 (2008) (dismissal is appropriate when the plaintiff cannot prove any set of facts
8 that would entitle it to relief).

9 In the event these Plaintiffs seek to assert anything similar to the ETW Group Plaintiffs,
10 said assertions would fail for two simple reasons. First, the alleged “classifications” set forth in
11 NAC 453D.272 do not distinguish or otherwise “classify” any applicant into separate categories.
12 See, e.g., Edwards v. City of Reno, 103 Nev. 347, 351, 742 P.2d 486, 488 (1987) (concluding
13 there was no equal protection violation when a city ordinance distinguished between “peddlers”
14 and “solicitors”). Instead, the regulation (apparently) implicated here, requires that if more than
15 one application for a recreational marijuana license is received, the DOT must “rank the
16 applications . . . in order from first to last based on compliance with the provisions of this chapter
17 and chapter 453D of the NRS and on the *content of the applications* relating to” several Factors.
18 NAC 453D.272 (emphasis added). In other words, no applicant was disparately treated because
19 every applicant was simply considered and treated as an applicant for a recreational marijuana
20 license. Thus, as a practical matter, there were no “unreasonable classifications” that took place,
21 contrary to Plaintiffs’ claims. (ETW Group Third Amended Complaint at ¶ 122.) Accordingly,
22 because every applicant sought a recreational marijuana license and was not treated any
23 differently,¹⁴ the equal protection analysis ends. See In re Candelaria, 126 Nev. 408, 416, 245

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¹⁴ Indeed, all recreational marijuana appear to have had equal access to the DOT leading up to the September 2018 application period, meaning there was no favoritism. In fact, at least three of the Plaintiffs and/or their attorneys – Qualcan, Serenity Wellness and Zion Gardens LLC (part of ETW Group) – appear to have had numerous text and email correspondence directly with Jorge Pupo. See Exhibit 3 (Qualcan disclosures containing emails with Jorge Pupo) and Exhibit 4 (Zion Gardens LLC disclosures containing text messages with Jorge Pupo), both attached hereto. Mr. Pupo’s apparent “open door” policy makes clear that all applicants, including Plaintiffs, were treated similarly, thus ending the equal protection analysis.

1 P.3d 518, 523 (2010) (holding that equal protection only applies if the government treats
2 similarly situated persons differently under the law). Plaintiffs can offer no proof to the contrary.

3 However, even if the Factors could somehow be considered to be “classifications,” there
4 is no question that they (and their application by the DOT) are rationally related to a legitimate
5 governmental purpose. Similar to the substantive due process analysis above, NAC 453D.272
6 plainly seeks to present reasonable guidelines for the DOT so that it can process and analyze
7 numerous applications and thereby comply with the intent of chapter 453D of both the NAC and
8 the NRS to protect the “public health and public safety” of the citizens of the State of Nevada.
9 NAC 453D.020. The State of Nevada set up a reasonable vetting process to review marijuana
10 license applications in an effort to protect the health and welfare of Nevada’s citizens, which is
11 rationally related to a legitimate government purpose. See, e.g., Midnight Sessions, Ltd., 945
12 F.2d at 679. There is no proof of any favoritism or violations of any rights to equal protection.
13 Thus, any equal protection claim fails and the Court should enter summary judgment against it.

14 **E. Plaintiffs Should Be Barred from Challenging the Application Process**

15 There is no doubt that all parties knew of and accepted the regulations and application
16 process now under attack. Not only was each and every plaintiff aware of the regulations that
17 they now profess to attack, they actively participated in drafting them. (See, e.g., Exhibit 5.)
18 Likewise, upon receiving the applications in July 2019 – none of the plaintiffs challenged or
19 lodged an objection as to the application’s form or requirements. To be sure, many plaintiffs and
20 some defendants apparently did seek guidance from the DOT, but there was no favoritism and
21 none of the plaintiffs challenged the propriety of the application requirements – until they lost.

22 The legal maxim that “to a willing person, no injury is done” and the doctrine of invited
23 error preclude the plaintiffs from now challenging the regulations and application process at
24 issue in this case. “The “doctrine of invited error is essentially a form of estoppel, which holds:
25 “Where a party by his conduct induces the commission of error, he is estopped from asserting it
26 as a ground for reversal” of an unfavorable outcome. Norgart v. Upjohn Co., 981 P.2d 79, 92
27 (Cal. 1999) (citations omitted). Here, all of the plaintiffs voluntarily participated in the
28 application process. In addition, many of them helped write the rules for that application process

1 and even consulted with the DOT. (See, e.g., Exhibit 3, Exhibit 4, Exhibit 5.) “It would be
2 wholly inappropriate to permit one who creates a procedural problem at the agency level to gain
3 advantage thereby on judicial review. This is a logical extension of the well-established invited
4 error rule.” Catholic Hous. Servs., Inc. v. State Dep’t of Soc. & Rehab. Servs., 886 P.2d 835,
5 840 (Kan. 1994); accord Humbert/Birch Creek Const. v. Walla Walla Cty., 185 P.3d 660, 663
6 (Wash. Ct. App. 2008) (“The invited error doctrine has been applied to administrative actions
7 just as it has trial court proceedings.”).

8 **F. Defendants are Entitled to Summary Judgment on Claims for Judicial Review**

9 Each of the eleven Plaintiffs (or Plaintiff groups) seek a petition for judicial review. (See
10 Compassionate Team Complaint at ¶¶ 55-60; DH Flamingo First Amended Complaint at ¶¶ 270-
11 277; ETW Group Third Amended Complaint at ¶¶ 144-149; High Sierra Complaint at ¶¶ 54-59;
12 MM Development Second Amended Complaint at ¶¶ 96-101; Natural Medicine at ¶¶ 75-81;
13 Nevada Wellness Amended Complaint at ¶¶ 253-258; Qualcan Second Amended Complaint at
14 ¶¶ 127-132; Rural Remedies Complaint in Intervention at ¶¶ 100-105; Serenity Wellness Second
15 Amended Complaint at ¶¶ 93-98; Strive Wellness Complaint in Intervention at ¶¶ 75-81.)

16 The Nevada Supreme Court recently held that “a disappointed applicant for a medical
17 marijuana establishment registration certificate does not have a right to judicial review. State
18 Dep’t of Health & Human Services, Div. of Pub. & Behavioral Health Med. Marijuana
19 Establishment Program v. Samantha Inc., 133 Nev. 809, 815-16, 407 P.3d 327, 332 (2017). The
20 court “previously held that when the statutory scheme governing an administrative proceeding
21 fails to require notice and opportunity for a hearing, the agency’s final decision in that
22 proceeding was not made in a contested case and thus was not subject to judicial review,” id. at
23 813, 407 P.3d at 330, after which the “Legislature codified this interpretation in the context of
24 judicial review of licensing procedures.” Id. To wit, NRS 233B.121 to 233B.150 “do not apply
25 to the grant, denial or renewal of a license unless notice and opportunity for hearing are required
26 by law to be provided to the applicant before the grant, denial or renewal of the license.” NRS
27 233B.127. Accordingly, “the APA only provides for judicial review under NRS 233B.130 of
28 final agency decisions in contested cases,” and necessarily limits the “availability of judicial

1 review for exercises of agency authority” which “is well-established as legislative prerogative.”
2 Samantha, 133 Nev. at 814, 407 P.3d at 330 (citing Richard J. Pierce Jr., *Administrative Law*
3 *Treatise*, 1700 (5th ed. 2010) at 1578: “[e]xcept in the context of constitutional rights, ***the role of***
4 ***the courts is to enforce and to render more effective the limits on administrative discretion***
5 ***created by the politically accountable Branches of government to the extent that those***
6 ***Branches have requested the assistance. . . .***”) (Emphasis added).

7 In fact, the regulations only allow judicial review in the very limited context of
8 disciplinary hearings. See generally NAC 453D.900-453D.996. But, neither NRS chapter 453D
9 nor NAC chapter 453D allow for judicial review in any other context. Certainly, both the
10 legislature and the DOT know how to grant a right to judicial review. Therefore, the lack of
11 judicial review in this context is no accident. Consistent with this intentional omission and the
12 holding in Samantha, there is no right to seek judicial review of the DOT’s denial of an
13 application for a conditional license.

14 As is the case with the provisions of the medical marijuana laws – NRS 453A and
15 NAC 453A – the statutory and regulatory provisions governing recreational marijuana
16 establishments do not envision any form of hearing regarding the DOT’s decisions reviewing
17 and ranking applications for recreational marijuana licenses. See NRS 453D.010, *et seq.* and
18 NAC 453D.001, *et seq.* As a result, the analysis and holding in Samantha is directly on point
19 here, warranting the dismissal of all claims seeking judicial review.

20 “Courts have no inherent appellate jurisdiction over official acts of administrative
21 agencies except where the legislature has made some statutory provision for judicial review.”
22 Crane v. Cont’l Tel. Co. of California, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989). Here,
23 judicial review is only available for disciplinary hearings. NAC 453D.996. If there is no
24 statutory right to judicial review, a truly harmed party might be able to seek redress through
25 mandamus, declaratory relief, or injunctive relief, *if warranted*. Samantha, 133 Nev. at 812, 816,
26 407 P.3d at 329, 332. But there is no dispute that a claim for judicial review is inappropriate.
27 Id., at 133 Nev. at 813, 407 P.3d at 330. Thus, the Court should grant summary judgment
28 against all of the judicial review claims.

1 **G. Defendants are Entitled to Summary Judgment on Writ of Prohibition Claim**

2 Three Plaintiffs – DH Flamingo, Natural Medicine, and Strive Wellness – seek a writ of
3 prohibition to preclude the DOT from “issuing and/or recognizing any new recreational
4 Dispensary licenses (condition or final) for applicants who submitted a license application” in
5 September 2018. (DH Flamingo First Amended Complaint at ¶¶ 287-290; Natural Medicine
6 Complaint in Intervention at ¶¶ 91-94; Strive Wellness Complaint in Intervention at ¶¶ 91-94.)
7 This claim is improper and must be dismissed.

8 A writ of prohibition only operates to arrest the proceedings of a body that is “*exercising*
9 *judicial functions*, when such proceedings are without or in excess of the jurisdiction of such
10 tribunal, corporation, board or person.” NRS 34.320 (emphasis added).

11 “Like the writ of mandamus, [the writ of prohibition] does not serve to correct errors;
12 rather, its purpose is to prevent courts from transcending the limits of their jurisdiction in the
13 exercise of judicial power.” Mineral Cty. v. State, Dep’t of Conservation & Nat. Res., 117 Nev.
14 235, 243, 20 P.3d 800, 805 (2001). And, even when properly directed to a judicial body (which
15 these claims are not) the “writ of prohibition will not issue if the court sought to be restrained
16 had jurisdiction to hear and determine the matter under consideration.” Valladares v. Second
17 Judicial Dist. Court in & for Cty. of Washoe, 112 Nev. 79, 82, 910 P.2d 256, 258 (1996).

18 There is no dispute that the DOT had jurisdiction to receive and review the applications.
19 In fact, *it was legally required to do so*. In addition, as opposed to a disciplinary hearing or some
20 other quasi-judicial process, the DOT was not exercising any judicial functions in receiving,
21 reviewing, scoring, and ranking licenses. Town of Hawk’s Nest v. Cty. Court of Fayette Cty., 48
22 S.E. 205, 206 (W. Va. 1904) (“prohibition does not lie to prohibit the granting of license by
23 county commissioners.”).

24 The Plaintiffs also cannot use a writ of prohibition to interfere with the DOT’s decision
25 awarding licenses for two other reasons. First, the awards are complete and the DOT issued its
26 decisions on December 5, 2018. A writ of prohibition cannot undo an act already taken. Town
27 of Hawk’s Nest, 48 S.E. at 205 (“Prohibition does not lie after action has been had.”). Second,
28 and more importantly, the award of licenses was not the result of any “judicial functions.”

Therefore, the acts complained of do not fall within the scope of a writ of prohibition. NRS 34.320; see also Gladys Baker Olsen Family Tr. By & Through Olsen v. Eighth Judicial Dist. Court In & For Cty. of Clark, 110 Nev. 548, 552, 874 P.2d 778, 781 (1994) (“A writ of prohibition does not serve to correct errors; its purpose is to prevent courts from transcending the limits of their jurisdiction in the exercise of judicial but not ministerial power.”); accord Petition of Green Mountain Post No. 1., Am. Legion, Dep’t of Vt., 73 A.2d 309, 311 (Vt. 1950) (“The weight of authority supports the view that in the absence of a statute authorizing the issuance of the writ of prohibition to restrain ministerial acts, the writ will not lie to prevent the issuance or revocation of a liquor license.”).

A writ of prohibition is not a proper claim for relief in this context. It is to stop a judicial function being exercised without jurisdiction. The authorities are clear that a writ of prohibition does not apply to an administrative licensing process. Therefore, the Court must grant summary judgment against all claims seeking a writ of prohibition.¹⁵

H. Defendants are Entitled to Summary Judgment on Certain Declaratory Relief Claims

Ten of the Plaintiffs seek declaratory relief, including for relief pertaining to the several of alleged claims addressed in this Motion. Specifically, several Plaintiffs seek the following forms of declaratory relief:

Declaratory Relief Sought	Parties Seeking
Procedures employed by DOT in denial of recreational marijuana licenses violated procedural due process and equal protection rights	ETW Group (Third Amended Complaint at ¶ 143); Compassionate Team (Complaint at ¶ 26); High Sierra (Complaint at ¶ 26); MM Development (Second Amended Complaint at ¶ 61); Natural Medicine (Complaint in Intervention at ¶ 70); Nevada Wellness (Amended Complaint at ¶ 223); Rural Remedies (Complaint in Intervention at ¶ 75); Serenity Wellness (Second Amended Complaint at ¶¶ 62, 69, 85, 90); Strive Wellness Complaint in Intervention at ¶ 70).

¹⁵ For all the reasons set forth in the Essence Entities’ Motion to Dismiss or, Alternatively, Motion for Judgment on the Pleadings of All Plaintiffs’ Operative Complaints, filed on February 11, 2020, and the various joinders to that motion, the Court should also grant summary judgment against all of the Plaintiffs’ claims for writ of mandamus.

DOT denials of recreational marijuana licenses violate substantive due process and equal protection rights	ETW Group (Third Amended Complaint at ¶ 143); Compassionate Team (Complaint at ¶ 26); High Sierra (Complaint at ¶ 26); MM Development (Second Amended Complaint at ¶ 61); Natural Medicine (Complaint in Intervention at ¶ 70); Nevada Wellness (Amended Complaint at ¶ 223); Rural Remedies (Complaint in Intervention at ¶ 75); Serenity Wellness (Second Amended Complaint at ¶¶ 62, 69, 85, 90); Strive Wellness Complaint in Intervention at ¶ 70).
Plaintiffs seek judicial review	Compassionate Team (Complaint at ¶ 26); High Sierra (Complaint at ¶ 26); MM Development (Second Amended Complaint at ¶ 61); Natural Medicine (Complaint in Intervention at ¶ 70); Nevada Wellness (Amended Complaint at ¶ 223); Qualcan (Second Amended Complaint at ¶ 92); Rural Remedies (Complaint in Intervention at ¶ 75); Serenity Wellness (Second Amended Complaint at ¶ 69); Strive Wellness Complaint in Intervention at ¶ 70).
DOT denials of recreational marijuana licenses are void for vagueness	Compassionate Team (Complaint at ¶ 26); High Sierra (Complaint at ¶ 26); MM Development (Second Amended Complaint at ¶ 61); Nevada Wellness (Amended Complaint at ¶ 223); Rural Remedies (Complaint in Intervention at ¶ 75).

As set forth in detail in the above sections, Plaintiffs have utterly failed to establish each of the following claims for which they also seek declaratory relief: (1) procedural due process; (2) substantive due process; (3) equal protection; and (4) petition for judicial review. Thus, to the extent their declaratory relief claims seek a declaration from this Court with respect any of those claims, said requested relief must be denied because each claim fails as a matter of law.

With regard to the five Plaintiffs claiming the denials of recreational marijuana licenses are void for vagueness, this claim fails for two reasons. First, there is literally nothing in any of these five complaints supporting such claim; the only “void for vagueness” claim in each complaint is a one-line, passing attempt to invoke this constitutional protection. (See generally **Compassionate Team** Complaint at ¶¶ 26; **High Sierra** Complaint at ¶ 26; **MM Development** Second Amended Complaint at ¶ 61; **Nevada Wellness** Amended Complaint at ¶ 223; **Rural Remedies** Complaint in Intervention at ¶ 75.) Thus, this claim should be summarily dismissed and adjudicated. Second, any claim that “the denial” is void for vagueness is wholly inapplicable here.

1 “It is a basic principle of due process that an enactment is void for vagueness if its
2 prohibitions are not clearly defined.” Grayned v. City of Rockford, 408 U.S. 104, 109
3 (1972); see also Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972). “A statute is
4 void for vagueness if it fails to give a person of ordinary intelligence fair notice that her conduct
5 is forbidden by statute.” Williams v. State, 118 Nev. 536, 545–46, 50 P.3d 1116, 1122 (2002)
6 (explaining that while plaintiff “may not agree with the municipality’s rationale behind the city
7 ordinance in question,” it is “not unconstitutionally vague,” as a “person of ordinary intelligence
8 would not be perplexed by the phrase ‘single serving product.’”); see also United States v.
9 Harriss, 347 U.S. 612, 617 (1954). In fact, statutes must be upheld “when the words utilized
10 have a well settled and ordinarily understood meaning when viewed in the context of the entire
11 statute. *Statutes are presumptively valid and the burden is on those attacking them to show*
12 *their unconstitutionality.*” Williams, 118 Nev. at 546, 50 P.3d at 1122 (emphasis added); see
13 also United States v. Fitzgerald, 882 F.2d 397, 398 (9th Cir. 1989) (“because this action does not
14 involve first amendment rights, this court need only examine the vagueness challenge under the
15 facts of the particular case and decide whether, under a reasonable construction of the statute, the
16 conduct in question is prohibited.” (internal citation omitted)).

17 Here, the Plaintiffs have failed to establish what statute is supposedly “void for
18 vagueness.” Instead, Plaintiffs claim the “denial” of their recreational marijuana license
19 applications are “void for vagueness.” Assuming, *arguendo*, that Plaintiffs are referring to
20 NAC 453D.272, there is no constitutionally protected conduct (i.e., once again, Plaintiffs have
21 no constitutional property/liberty interest or right in a recreational marijuana license), thus
22 lowering the review standard such that this code provision could only be deemed “void for
23 vagueness only if it is vague in all of its applications.” Williams, 118 Nev. at 546, 50 P.3d at
24 1122. A review of NAC 453D.272, however, makes plain that there is nothing vague about the
25 statute. To the contrary, it carefully and deliberately sets forth the procedure for what the DOT
26 must do in the event it receives more than one application for a recreational marijuana license.
27 Any person of ordinary intelligence can read and understand the procedures the DOT is obligated
28 to follow. Accordingly, there is no “void for vagueness” declaratory relief available to Plaintiffs.

1 Accordingly, all of the individual claims for declaratory relief listed above must be
2 dismissed on summary judgment, as Plaintiffs are simply not entitled to any such relief.¹⁶

3 **V. CONCLUSION**

4 Although they had no objections when they filed their applications, the Plaintiffs are now
5 unhappy with the DOT because they did not score high enough to receive any licenses. Their
6 unhappiness, however, does not mean that the process was improper. To be sure, the process
7 was not perfect either. The Court has already acknowledged as much. But, the Plaintiffs have
8 no evidence to justify undoing a process that started in 2016 just so they can get what they want.
9 Accordingly, even if the Court is going to allow any aspect of this case to move forward, it must
10 still enter summary judgment against the claims for Unjust Enrichment, Procedural Due Process,
11 42 U.S.C. § 1983, Substantive Due Process, Equal Protection, Judicial Review, Writ of
12 Prohibition, and every corresponding aspect of the requests for declaratory relief.

13 DATED this 13th day of March, 2020.

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 Jonathan J. Tew, Esq.
21 Anthony G. Arger, Esq.
22 *Attorneys for Deep Roots Medical LLC*

23
24
25
26
27 ¹⁶ To be clear, Deep Roots opposes *all of the declaratory relief sought by every Plaintiff*, and in no way concedes
28 the validity of any such claims made. However, at this summary judgment phase, Deep Roots only seeks a ruling as
to the declaratory relief claims discussed herein.

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DATED this 13th day of March, 2020.

An Employee of Robertson, Johnson, Miller & Williamson

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EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”



BRIAN SANDOVAL
Governor

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

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Recreational Marijuana Establishment License Application

Recreational Retail Marijuana Store Only

Release Date: July 6, 2018

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

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

For additional information, please contact:

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

marijuana@tax.state.nv.us



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APPLICANT INFORMATION

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

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



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1. TERMS AND DEFINITIONS

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

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



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



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



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



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2. APPLICATION OVERVIEW

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

Assembly Bill 422 (AB422):

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

LCB File No. Regulation R092-17:

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

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

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

3. APPLICATION TIMELINE

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

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



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4. APPLICATION INSTRUCTIONS

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

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

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

5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

5.1. General Submission Requirements

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



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5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

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

5.2.1. Tab I – Title Page

The title page must include the following:

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

5.2.2. Tab II – Table of Contents

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

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

The completed Applicant Information Sheet signed by the contact person who is responsible for providing information, signing documents, or ensuring actions are taken pursuant to R092-17, Sec. 74 must be included in this tab.

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

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

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

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

5.2.6. Tab VI – Identifier Legend (Attachment H)

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



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5.2.7. **Tab VII – Confirmation that the applicant has registered with the Secretary of State**
Documentation that the applicant has registered as the appropriate type of business and the Articles of Incorporation, Articles of Organization, Operating Agreements, or partnership or joint venture documents of the applicant must be included in this tab.

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

5.2.8.1. That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and

5.2.8.2. The source of those liquid assets.

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

5.2.9. **Tab IX – Evidence of taxes paid; other beneficial financial contributions**
Evidence of the amount of taxes paid and/or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the establishment must be included in this tab.

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

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

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

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

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

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

5.2.10.5. Narrative descriptions not to exceed 750 words demonstrating the following:

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



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5.2.10.5.2. Any previous experience at operating other businesses or non-profit organizations, including marijuana industry experience.

5.2.10.6. A Request and Consent to Release Application Form for Recreational Marijuana Establishment License(s) for each owner, officer and board member should be completed for each individual named in this application (Attachment D).

5.2.10.7. A copy of each individual's completed fingerprint submission form demonstrating he or she has submitted fingerprints to the Nevada Department of Public Safety. Agent cards will not be accepted.

5.2.11. **Tab XI– Financial plan**

A financial plan must be included in this tab which includes:

5.2.11.1. Financial statements showing the resources of the applicant, both liquid and illiquid.

5.2.11.2. If the applicant is relying on funds from an owner, officer, board member or any other source, evidence that such person has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant.

5.2.11.3. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation.

5.2.12. **Tab XII – Name, signage and advertising plan**

A proposal of the applicant's name, signage and advertising plan which will be used in the daily operations of the recreational marijuana establishment on the form supplied by the Department (Attachment G) must be included in this tab.

Please note: This section will require approval, but will not be scored.

5.2.13. **Application Fee**

5.2.13.1. Include with this packet the \$5,000.00 non-refundable application fee per NRS 453D.230(1). License fee is not required until a conditional license has been awarded.

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

5.3. **Part II – Non-identified Criteria Response**

The NON-IDENTIFIED CRITERIA RESPONSE must include:

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



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

5.3.1. **Tab I – Title Page**

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

The title page must include the following:

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

5.3.2. **Tab II – Table of Contents**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

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

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



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Fax: (702) 486-3377

5.5. Application Packaging and Instructions

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

Department of Taxation

Marijuana Enforcement Division
1550 College Parkway
Carson City, NV 89706

- OR -

Department of Taxation

Marijuana Enforcement Division
555 E. Washington Ave. Ste 1300
Las Vegas, NV 89101

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



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DEPARTMENT OF TAXATION**

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Fax: (702) 486-3377

6. APPLICATION EVALUATION AND AWARD PROCESS

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

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

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

Nevada Recreational Marijuana Application Criteria	Points
The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member including key personnel of the proposed marijuana establishment including the information provided pursuant to R092-17.	60
Evidence of the amount of taxes paid or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.	25
A financial plan which includes: <ul style="list-style-type: none"> Financial statements showing the resources of the applicant, both liquid and illiquid. If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 	30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <ul style="list-style-type: none"> That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. The source of those liquid assets. 	10
Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: <ul style="list-style-type: none"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. <i>Please note: The content of this response must be in a non-identified format.</i>	40
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 	30



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

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

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



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



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

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



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ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

GENERAL INFORMATION

Type of Marijuana Establishment: <input type="checkbox"/> Recreational Retail Marijuana Store			
Marijuana Establishment's proposed physical address if the applicant owns property or has secured a lease or other property agreement (this must be a Nevada address and cannot be a P.O. Box).			
City:	County:	State:	Zip Code:
Proposed Hours of Operation :			
Sunday	Monday	Tuesday	Wednesday
Thursday	Friday	Saturday	

APPLYING ENTITY INFORMATION

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

DESIGNEE INFORMATION

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

Last Name:	First Name:	MI:
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SUPPLEMENTAL REQUESTS

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



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ATTACHMENT A (continued)

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

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

Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
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Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM



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ATTACHMENT A (continued)

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

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

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

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

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

Print Name

Title

Signature

Date Signed

Print Name

Title

Signature

Date Signed



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ATTACHMENT B OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, _____ (PRINT NAME)

Attest that:

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

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

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

All information provided is true and correct.

Signature of Owner, Officer or Board Member

Date Signed

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



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ATTACHMENT C OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

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



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

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

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

Signature of Requestor/Applicant or Designee Date: _____

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



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ATTACHMENT E
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

To be completed by the applicant for the physical address of the proposed marijuana establishment if the applicant owns property or has secured a lease or other property agreement.

Name of Individual or Entity Applying for a Marijuana Establishment License:

Physical Address of Proposed Marijuana Establishment (must be a Nevada address, not a P.O. Box):

City:

County:

State:

Zip Code:

Legal Description of the Property:



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ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

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

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

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

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

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

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

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



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

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

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

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



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ATTACHMENT H IDENTIFIER LEGEND FORM

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

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



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ATTACHMENT I FACILITY JURISDICTION FORM

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

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

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

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



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ATTACHMENT J

FEDERAL LAWS AND AUTHORITIES

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

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

ENVIRONMENTAL:

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

ECONOMIC:

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

SOCIAL LEGISLATION:

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

MISCELLANEOUS AUTHORITY:

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

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”



STATEMME@LISTSERV.STATE.NV.US

Message: [First | Previous | Next | Last]
By Topic: [First | Previous | Next | Last]
By Author: [First | Previous | Next | Last]
Font: Proportional Font

Subject: Dispensary Application Clarification
From: "Nevada Department of Taxation, Marijuana Enforcement Division" <kplaskon@TAX.STATE.NV.US>
Reply-To: STATEMME <STATEMME@LISTSERV.STATE.NV.US>

Date: Mon, 30 Jul 2018 16:16:24 -0700

Content-Type: multipart/mixed
Parts/Attachments: text/plain (26 lines), RecApplicationClarification_DRAFT_7302018.pdf (26 lines), RecreationMarijuanaEstablishmentApplication-DRAFT.pdf (26 lines)

To All Retail Store License Applicants:

The Division has made important clarifications to the application for the upcoming September retail store application period. The following pages of the Recreational Marijuana Establishment License Application, Recreational Retail Marijuana Store Only have been edited:

- Page 12: Section 5.2.13.1, added "License fee is not required until a conditional license has been awarded."
- Page 13: Section 5.3.3, Tab IIV, deleted the words "building and" & "per the lease and property ownership."
- Page 14: Section 5.3.6.1, deleted the word "construction."
- Page 17: Added to the first row of the Nevada Recreational Marijuana Application Criteria, "including key personnel."
- Page 19: Deleted the words "and construction" from scoring review section titled "Documentation concerning the adequacy of the size."
- Page 21: Row 2, added, "if applicant owns property or has secured a lease on property or has a property agreement."
- Page 29: Row 1, added, "if applicant owns property or has secured a lease on property or has a property agreement."
- Page 10: Section 5.2.3 Tab IV, Replace 94 with 74.
- Agent cards will not be accepted in place of fingerprint submission forms. Fingerprint submission forms from applications that resulted in current active agent cards will be accepted.

Please download the latest version for submission:
https://tax.nv.gov/FAQs/Marijuana_License_Applications/

Questions, please contact marijuana@tax.state.nv.us

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- OFFICIAL ANNOUNCEMENT -

7/31/2018

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- Page 14: Section 5.3.6.1, deleted the word "construction."
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Recreational Marijuana Establishment License Application

Recreational Retail Marijuana Store Only

Release Date: July 6, 2018

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

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

For additional information, please contact:

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

marijuana@tax.state.nv.us



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APPLICANT INFORMATION

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

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



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1. TERMS AND DEFINITIONS

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

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



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



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



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



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Phone: (775) 687-9999
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LAS VEGAS OFFICE
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555 E. Washington Avenue
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HENDERSON OFFICE
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Fax: (702) 486-3377

2. APPLICATION OVERVIEW

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

Assembly Bill 422 (AB422):

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

LCB File No. Regulation R092-17:

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

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

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

3. APPLICATION TIMELINE

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

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



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4. APPLICATION INSTRUCTIONS

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

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

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

5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

5.1. General Submission Requirements

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



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5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

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

5.2.1. Tab I – Title Page

The title page must include the following:

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

5.2.2. Tab II – Table of Contents

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

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

The completed Applicant Information Sheet signed by the contact person who is responsible for providing information, signing documents, or ensuring actions are taken pursuant to R092-17, Sec. 74 must be included in this tab.

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

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

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

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

5.2.6. Tab VI – Identifier Legend (Attachment H)

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



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5.2.7. **Tab VII – Confirmation that the applicant has registered with the Secretary of State**
Documentation that the applicant has registered as the appropriate type of business and the Articles of Incorporation, Articles of Organization, Operating Agreements, or partnership or joint venture documents of the applicant must be included in this tab.

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

5.2.8.1. That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and

5.2.8.2. The source of those liquid assets.

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

5.2.9. **Tab IX – Evidence of taxes paid; other beneficial financial contributions**
Evidence of the amount of taxes paid and/or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the establishment must be included in this tab.

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

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

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

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

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

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

5.2.10.5. Narrative descriptions not to exceed 750 words demonstrating the following:

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



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5.2.10.5.2. Any previous experience at operating other businesses or non-profit organizations, including marijuana industry experience.

5.2.10.6. A Request and Consent to Release Application Form for Recreational Marijuana Establishment License(s) for each owner, officer and board member should be completed for each individual named in this application (Attachment D).

5.2.10.7. A copy of each individual's completed fingerprint submission form demonstrating he or she has submitted fingerprints to the Nevada Department of Public Safety. Agent cards will not be accepted.

5.2.11. **Tab XI– Financial plan**

A financial plan must be included in this tab which includes:

5.2.11.1. Financial statements showing the resources of the applicant, both liquid and illiquid.

5.2.11.2. If the applicant is relying on funds from an owner, officer, board member or any other source, evidence that such person has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant.

5.2.11.3. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation.

5.2.12. **Tab XII – Name, signage and advertising plan**

A proposal of the applicant's name, signage and advertising plan which will be used in the daily operations of the recreational marijuana establishment on the form supplied by the Department (Attachment G) must be included in this tab.

Please note: This section will require approval, but will not be scored.

5.2.13. **Application Fee**

5.2.13.1. Include with this packet the \$5,000.00 non-refundable application fee per NRS 453D.230(1). License fee is not required until a conditional license has been awarded.

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

5.3. **Part II – Non-identified Criteria Response**

The NON-IDENTIFIED CRITERIA RESPONSE must include:

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



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

5.3.1. **Tab I – Title Page**

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

The title page must include the following:

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

5.3.2. **Tab II – Table of Contents**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

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

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



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5.5. Application Packaging and Instructions

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

Department of Taxation

Marijuana Enforcement Division

1550 College Parkway

Carson City, NV 89706

- OR -

Department of Taxation

Marijuana Enforcement Division

555 E. Washington Ave. Ste 1300

Las Vegas, NV 89101

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



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6. APPLICATION EVALUATION AND AWARD PROCESS

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

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

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

Nevada Recreational Marijuana Application Criteria	Points
The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member including key personnel of the proposed marijuana establishment including the information provided pursuant to R092-17.	60
Evidence of the amount of taxes paid or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.	25
A financial plan which includes: <ul style="list-style-type: none"> Financial statements showing the resources of the applicant, both liquid and illiquid. If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 	30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <ul style="list-style-type: none"> That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. The source of those liquid assets. 	10
Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: <ul style="list-style-type: none"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. <i>Please note: The content of this response must be in a non-identified format.</i>	40
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 	30



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

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

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



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



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

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



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ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

GENERAL INFORMATION

Type of Marijuana Establishment: <input type="checkbox"/> Recreational Retail Marijuana Store			
Marijuana Establishment's proposed physical address if the applicant owns property or has secured a lease or other property agreement (this must be a Nevada address and cannot be a P.O. Box).			
City:	County:	State:	Zip Code:
Proposed Hours of Operation :			
Sunday	Monday	Tuesday	Wednesday
Thursday	Friday	Saturday	

APPLYING ENTITY INFORMATION

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

DESIGNEE INFORMATION

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

Last Name:	First Name:	MI:
------------	-------------	-----

SUPPLEMENTAL REQUESTS

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



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ATTACHMENT A (continued)

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

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

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

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

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

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

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

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

Print Name

Title

Signature

Date Signed

Print Name

Title

Signature

Date Signed



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ATTACHMENT B OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, _____ (PRINT NAME)

Attest that:

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

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

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

All information provided is true and correct.

Signature of Owner, Officer or Board Member

Date Signed

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



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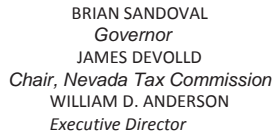
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ATTACHMENT C OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

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



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Has an ownership or financial investment interest in any other MME or ME. ☐ Yes ☐ No
If yes, list the person, the other ME(s) and describe the interest.

[illegible]



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

[illegible]



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

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

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

Signature of Requestor/Applicant or Designee Date: _____

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



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ATTACHMENT E
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

To be completed by the applicant for the physical address of the proposed marijuana establishment if the applicant owns property or has secured a lease or other property agreement.

Name of Individual or Entity Applying for a Marijuana Establishment License:

Physical Address of Proposed Marijuana Establishment (must be a Nevada address, not a P.O. Box):

City:

County:

State:

Zip Code:

Legal Description of the Property:



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ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

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

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

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

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

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

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

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



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

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

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

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



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

[illegible]



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Fax: (702) 486-3377

ATTACHMENT I FACILITY JURISDICTION FORM

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

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

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

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



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

STATE OF NEVADA DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

ATTACHMENT J

FEDERAL LAWS AND AUTHORITIES

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

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

ENVIRONMENTAL:

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

ECONOMIC:

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

SOCIAL LEGISLATION:

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


MISCELLANEOUS AUTHORITY:

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

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

From: Whitney Barrett wbarrett@christiansenlaw.com 
Subject: Fwd: QualCan
Date: March 12, 2020 at 1:20 PM
To:



From: mcristalli@gcmaslaw.com
Sent: Thursday, June 28, 2018 3:39 PM
To: Jorge Pupo <jpupo@tax.state.nv.us>
Subject: Re: QualCan

Mr. Pupo

We are working on our locations for license applications. The question I have is whether we need to secure the location or locations. I am assuming that the company would need the location in whatever jurisdiction that it is applying. If that is the case would it also need architectural drawings, lease, contract, etc... Would a Letter of Intent be sufficient? Can you provide any information as to what the company would need as it relates to a location when applying? I appreciate any guidance on the issue.

Thank you

Michael Cristalli

From: Jorge Pupo <jpupo@tax.state.nv.us>
Date: Thursday, May 10, 2018 at 12:50 PM
To: Michael Cristalli <mcristalli@gcmaslaw.com>
Subject: RE: QualCan

I plan on giving the 45 day notice (business days) the first week of July with the application 10 day window in September

Jorge Pupo
Deputy Executive Director
Marijuana Enforcement Divison
Nevada Department of Taxation
702.486.0606



From: Michael Cristalli [<mailto:mcristalli@gcmaslaw.com>]
Sent: Wednesday, May 09, 2018 12:33 PM
To: Jorge Pupo
Subject: Re: QualCan

Mr. Pupo

Can you remind us of the tentative time frame for when the applications will be released and when the submission date will be. I understand that the dates may be tentative but we are planning our summer schedules around it.

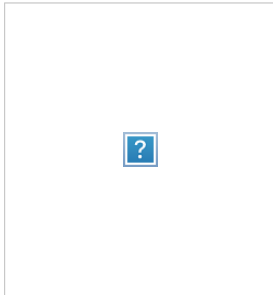
Thank you again

Michael

From: Jorge Pupo <jpupo@tax.state.nv.us>
Date: Thursday, May 3, 2018 at 2:55 PM
To: Michael Cristalli <mcristalli@gcmaslaw.com>
Subject: RE: QualCan

No problem. Anytime

Jorge Pupo
Deputy Executive Director
Marijuana Enforcement Divison
Nevada Department of Taxation
702.486.0606



From: Michael Cristalli [<mailto:mcristalli@gcmaslaw.com>]
Sent: Thursday, May 03, 2018 2:00 PM
To: Jorge Pupo
Subject: QualCan

Mr. Pupo

I wanted to thank you for the meeting with myself and Ross yesterday. The information you provided will be helpful in preparing the company's application. We understand that you are busy and we appreciate the time.

Michael

Michael Cristalli
mcristalli@gcmaslaw.com
Gentile Cristalli Miller Armeni Savarese

410 S. Rampart Blvd.
Suite 420
Las Vegas, NV 89145
Phone: (702) 880-0000
Fax: (702) 778-9709

Gentile Cristalli Miller Armeni Savarese

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Gentile Cristalli Miller Armeni Savarese

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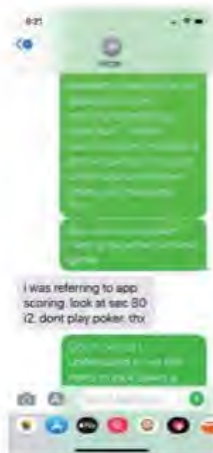
EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”



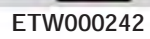
ETW000239

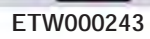


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ETW000241







ETW000244

EXHIBIT “5”

EXHIBIT “5”

EXHIBIT “5”

Governor's Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act

**Final Report
May 30, 2017**



Letter from the Chairs



STATE OF NEVADA

May 30, 2017

Dear Governor Sandoval:

We hereby deliver to you the final report of the Task Force on the Implementation of Ballot Question 2: The Regulation and Taxation of Marijuana Act.

The Task Force, which you established on November 8, 2016, by Executive Order 2017-02, was given the mission to identify the legal, policy, and procedural issues that need to be resolved and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act. The executive order directed the Task Force to complete its work and issue a report of its recommendations and findings to you by May 30, 2017.

The Task Force was composed of 19 members representing diverse interests, including law enforcement, public health, state agencies, the Nevada Legislature, social services, local government, the marijuana industry, and the public. They began their work on March 3, 2017, and met regularly over the course of ten weeks. In addition to the main Task Force, eight topic-focused working groups—made up of Task Force members, subject matter experts, and affected stakeholders—met weekly. The groups worked tirelessly, deliberating issues from every angle, listening to and incorporating public comment, and thoughtfully crafting their recommendations to be heard by the Task Force. The working groups presented a total of 73 recommendations to the Task Force, where they were further deliberated, amended, and adopted by majority vote for inclusion in this report. Every meeting of the Task Force and working groups was open to the public, and the community proved actively engaged, providing frequent input via public comment.

The members of the Task Force and working groups carried out the mission you gave them with full commitment to the spirit and letter of that mission. As the great State of Nevada moves forward to regulate and tax marijuana, the Task Force members share a sense of pride in having contributed to the framework to accomplish that. We look forward to seeing our recommendations refined through the regulatory, executive, and legislative processes, and foresee a tightly regulated program that considers the needs of industry and protects public health and safety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deonne Contine".

Deonne Contine, Chair
Executive Director
Nevada Department of Taxation

A handwritten signature in black ink, appearing to read "Chuck Callaway".

Chuck Callaway, Vice Chair
Director of Office of Intergovernmental Services
Las Vegas Metropolitan Police Department

Acknowledgements

The work of the Task Force would not have been possible without the support of the hard-working administrative staff led by Tina Padovano, Hector Sepulveda and Heidi Fetic. They booked rooms, scheduled all Task Force and working group meetings, created Public Notices, took the minutes and made copies of the all the agendas and recommendations for the convenience of the public and members. We would also like to thank Stephanie Klapstein for posting all the supporting documents to the Department of Taxation website and leading the communication efforts of the Task Force. Thank you for all your efforts!

It is important to recognize the contributions of the State of Colorado and Rebound Solutions to this effort. Their ground-breaking work on implementing the Retail Marijuana Program in Colorado provided the Task Force with a solid starting point and helped to ensure a thorough effort. Similarly, the work done on the Medical Marijuana Program by the Nevada Division of Public and Behavioral Health provided a strong regulatory framework from which to begin crafting a Retail Program in Nevada.

The Task Force would also like to thank our consulting team from QuantumMark, led by Kelly Jessee with the assistance of Michael Kretch. They oversaw the design and execution of the Task Force's recommendation form, process and agendas, kept track of the recommendations, and organized and wrote the final report.

Overview of the Task Force

On November 8, 2016, the voters of the State of Nevada approved Ballot Question 2: The Regulation and Taxation of Marijuana Act (the Act). The Act stated that “the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated like other legal businesses.”¹ The Act provided that:

- Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;
- Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- Individuals must be 21 years of age or older to purchase marijuana;
- Driving under the influence of marijuana will remain illegal; and
- Marijuana sold in the state will be tested and labeled.

The Act directs the Nevada Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of the Act, including accepting applications and issuing licenses for marijuana establishments, not later than January 1, 2018.

On February 3, 2017, the Governor of the State of Nevada issued Executive Order 2017-02 establishing a Task Force to deliberate on and make recommendations regarding policy, legal and procedural issues that must be considered to implement the Act. The Task Force was to report its findings and recommendations to the Governor by May 30, 2017.

Mission Statement

The Task Force’s mission was to identify the legal, policy, and procedural issues that need to be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act.

¹ Ballot Initiative Question 2, “Full Initiative Text--Regulate Marijuana Like Alcohol in Nevada”, <https://www.regulatemarijuanainnevada.org/full-initiative-text/>, November 8, 2016.

Methodology

Task Force members included the Nevada State Senate and Assembly and the Nevada Departments of Taxation, Health and Human Services, Public Safety and Agriculture. Members also included the Nevada Chief Medical Officer, representatives from the Nevada League of Cities and Municipalities and the Nevada Association of Counties. There was representation from the Nevada Medical Marijuana Program, law enforcement, social services agencies, the medical marijuana industry and the general public. All members were appointed by the Governor and adopted at the first meeting. See Appendix C for a complete list of Task Force members.

Deonne Contine and Chuck Callaway were appointed as Chair and Vice-Chair, respectively, to lead the Task Force. Prior to the first Task Force meeting, procedural guidelines were drafted for consideration by the Task Force. These included establishing guiding principles, drafting a comprehensive list of topics for consideration by the working groups and developing the procedural workflow for review of recommendations by the Task Force. Six meetings were held between March 3 and May 12.

The Task Force created eight working groups each chaired by two members of the Task Force and composed of persons with subject matter expertise. Five were established to address operational topics related to Production/Manufacturing, Cultivation, Labs, Retail and Transportation/Storage/Disposal. The remaining three addressed issues related to Law Enforcement, Taxation/Revenue/Regulatory Structure, and Consumer Safety/Education/Health. Each working group met once a week for seven weeks.

Between public meetings, the working group members worked independently to conduct research and develop recommendations. Each recommendation was brought to the entire working group during public meetings for review and consideration. This was an iterative process. The advice and opinion of the full working group provided the feedback needed to direct additional work on the topic. This process continued until there was consensus by the working group on the recommendation. In some instances, where topics overlapped, there was collaboration among working groups to develop the recommendation. Dissenting opinions by any group member(s) were captured within the recommendation.

Once a recommendation was approved by a working group it was presented to the Task Force for consideration. If modifications were requested the recommendation was sent back to the working group for changes. The recommendation was then brought to the Task Force for reconsideration.

In total, the working groups presented 73 recommendations to the Task Force. Each was approved by a majority vote of the Task Force and many were unanimous in their approval.

All meetings of the Task Force and working groups were subject to Nevada's Open Meeting Law. The Task Force endeavored to solicit public comment as part of its consideration of the policy, legal and procedural issues that need to be resolved to implement the Act. To the extent it was deemed appropriate, the Task Force incorporated the public input it received into its recommendations.

Full documentation of the Task Force and working group meetings can be found on the website of the Nevada Department of Taxation (https://tax.nv.gov/Boards/Retail_Marijuana/Retail_Marijuana/).

Summary of Task Force Recommendations

Each of the 73 recommendations is summarized herein to provide a quick overview. These summaries are organized into one of the following fourteen topics:

1. Regulatory Structure
2. Taxation and Revenue
3. Application and Licensing Requirements
4. Inventory Tracking
5. Retail Store Operations
6. Cultivation Operations
7. Production/Manufacturing Operational Requirements
8. Laboratory Operations
9. Distribution and Transportation
10. Packaging, Labeling and Potency Limitations
11. Signage, Marketing and Advertising
12. Education and Research
13. Law Enforcement
14. Public Safety

The full text of the recommendations adopted by the Task Force is included in Appendix D. Reviewing the full text will provide the details necessary to understand the merits of the recommendation. Justifications and actual suggestions for changes to statute or regulations are part of the detailed recommendations.

Regulatory Structure

The recommendations grouped in this section aim to create the regulatory foundation and authority to administer the retail marijuana program at the state and local levels. Consideration was given to establishing a Marijuana Control Board and an Advisory Committee to provide advice, guidance and industry input. Other recommendations deal with ownership interest in marijuana establishments and provisions for businesses to engage in both medical and retail marijuana activities.

Regulatory Organizational Structure

The Task Force recommends that Nevada Revised Statute Chapter 453A and Nevada Administrative Code Chapter 453A (medical marijuana) be used as the regulatory foundation for the retail marijuana program, and that the Department of Taxation oversee the administration of both the medical and retail marijuana programs. State statute and regulations will need to be amended to consolidate all marijuana authority under the Department of Taxation.

There was no dissent on the recommendation.

Transfer of Medical Program to Department of Taxation

The Task Force recommends that, to streamline marijuana regulation and oversight, the Nevada Legislature transfer the regulatory responsibility of the medical marijuana program (including duties, responsibilities and budgets) from the Division of Public and Behavioral Health to the Department of Taxation.

There was no Task Force dissent on the recommendation.

There was dissent in the working group that medical marijuana is currently under the Division of Public and Behavioral Health as it is considered a medicine and as such is treated as a public health matter. Therefore, medical marijuana could continue to be regulated in a manner separate from retail marijuana. If the state prefers that medical marijuana and retail marijuana to be co-located under one department, dissenting opinion suggested the creation of an Alcohol and Marijuana Control Board as is done in other states.

Inspection Requirements

The Task Force recommends that one state agency oversees inspecting both medical and retail operations so that there is a single point for inspection and enforcement. This recommendation would ensure overall consistency in enforcement and be less onerous on marijuana establishments holding dual licenses.

There was no Task Force dissent on the recommendation.

There was a concern in the working group that, should the medical and retail marijuana programs not be merged under the Department of Taxation, a single agency performing state inspections for programs administered by different agencies might be infeasible.

Local Government Regulation

The Task Force recommends that regulations be adopted that make it clear that local governments may regulate retail marijuana establishments on zoning, general business license matters, and fire and building code compliance only. The state should occupy the entire regulatory space on matters involving edibles, packaging, concentrates, dosing, potency, serving size limitations, and product types. This recommendation ensures that state and local regulations do not conflict, and guarantee regulatory uniformity for the industry and reduce enforcement costs for local jurisdictions.

There was Task Force dissent on the recommendation. Dissent regarded the role of local governments that do not want to be restricted on regulatory issues regarding marijuana. Some local governments wish to retain the ability to regulate on matters involving edibles, packaging, concentrates, dosing, potency serving size limitations and product types and want the flexibility to make more restrictive regulations than the state may prescribe.

Marijuana Control Board

The Task Force recommends that the Nevada Legislature create, when feasible, a Marijuana Control Board to provide direct oversight and accountability to the retail and medical marijuana industries. The structure and duties of the Marijuana Control Board would be generally based on Nevada Revised Statute Chapter 463 which establishes authority for the licensing and control of gaming.

There was no dissent on the recommendation.

Ownership Interest

The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the medical marijuana program. No person with a direct or indirect interest in a marijuana testing laboratory can have a direct or indirect financial interest in a marijuana retail store, a production/manufacturing establishment, a cultivation facility or a distributor. The Task Force further recommends that marijuana laboratories be exempted from using a distributor to collect and move testing samples.

There was no dissent on the recommendation.

Advisory Committee

The Task Force recommends the Department of Taxation establish an Independent Marijuana Advisory Committee like the Independent Laboratory Advisory Committee (ILAC) under Nevada Administrative Code 453A.666. The Committee's purpose would be to address changes and challenges that the marijuana industry will face as it matures. The membership of the Committee should include representatives of the Nevada marijuana industry and local and state officials. The Committee would provide recommendations to the Department of Taxation regarding all aspects of the Nevada marijuana industry, make suggestions for any changes to Nevada Revised Statute or Nevada Administrative Code chapters relating to marijuana, and assist in creating and updating marijuana policies and procedures for the Department of Taxation.

There was no dissent on the recommendation.

Ancillary Marijuana Business Licensing

The Task Force recommends in addition to the state, local jurisdictions be allowed to license, regulate and collect fees from ancillary marijuana businesses. Ancillary businesses were defined as any person that has not received a registration certificate under Nevada Revised Statute Chapter 453A, has been licensed as a marijuana establishment under Nevada Revised Statute Chapter 453D and that directly profits from onsite adult use or consumption of marijuana or marijuana-infused products. Examples of ancillary businesses include spas, social clubs and music venues. The recommendation also allows for standardized educational materials pertaining to adult use of marijuana to be prominently displayed in such facilities. Examples include current rules and regulations for smoking, vaping, tobacco and alcohol usage in the facility.

There was Task Force dissent on the recommendation concerning whether ancillary businesses should be allowed.

Co-Location

The Task Force recommends allowing the coexistence of marijuana production, cultivation, retail and distribution establishments within the same facility. It further recommends allowing the coexistence of both retail and medical marijuana establishments within the same facility. Legislative changes in Nevada Revised Statute Chapter 453A.350 would be required to allow for shared use of facility types.

There was no dissent on the recommendation.

Dual Use Medical and Retail

The Task Force recommends that the Department of Taxation and any affected local governments enact regulations and ordinances permitting a medical marijuana establishment and a retail marijuana establishment to operate at the same location and to permit a dual licensee to serve patients and retail consumers in the same

retail area without the need to make changes in the design and construction of licensed medical marijuana dispensaries. Statutory changes would be necessary to Nevada Revised Statute Chapter 453A to allow for dual use of facilities for medical and retail marijuana businesses.

There was no dissent on the recommendation.

Taxation and Revenue

Topics of discussion in this section include using revenue to cover the implementation costs of the program at the state and local levels, and help to support common resources such as police and other public services engaged with the retail marijuana industry.

Taxation – 15% Excise Tax

The Task Force recommends that the excise tax on all wholesale marijuana, medical or retail, be 15% as provided for in Question 2 and that it should be administered in a uniform manner. This tax would replace the current tax structure applied to medical marijuana. Taxing all wholesale marijuana at the same rate allows establishments to treat marijuana and marijuana products in a "single stream" designating its use as medical or retail only at the point of purchase. Nevada Revised Statute Chapter 453A would need to be amended to enact this recommendation.

There was no dissent on the recommendation.

Taxation – Retail Tax 10%

Adopting the recommendation from Governor Sandoval's proposed budget, the Task Force recommends an additional 10% tax on retail marijuana at the point of sale. This recommended tax is in addition to the 15% tax collected at the wholesale level and is consistent with an overall target rate of 30% or less total taxation for the retail product. Other states have concluded that the balance between a healthy, regulated industry and a shrinking black market is around 30% total taxation. The tax structure would also create a significant enough difference in the retail price between retail and medical marijuana that medical patients will have a financial incentive to continue participating in the medical marijuana program.

While the Governor recommended that this tax go to education, the Task Force did not recommend how the new tax should be allocated, citing the understanding that there are impacts on local government, law enforcement, communities and agencies that should all be considered when policy makers decide on allocation. Legislation would need to be enacted to adopt this recommendation.

There was no dissent on the recommendation.

Fees – Local Government Share

The Tax Force recommends that local governments receive a share of revenue generated by the retail marijuana industry so that both the state and local governments share in the financial benefits and can mitigate the impacts from marijuana legalization. This recommendation provides revenue for critical local government services and

affirms that the aggregate tax rate at retail should remain low enough to keep the price disparity between legal regulated businesses and illegal black market operators small enough to discourage a significant black market.

There was both Task Force and working group dissent on the recommendation. Dissent was about the wording of the recommendation, not the intent. The recommendation states that local governments should receive revenue from the sale of retail marijuana, but there is no wording for revenue allocation to local governments in Question 2, rather reimbursement for costs was specified.

Application and Licensing Requirements

Recommendations in this section include topics such as the application and evaluation process, allocation of retail marijuana establishment licenses, the impact of ownership interest below 5% and the most effective method for issuing agent cards.

Application Process

The Task Force recommends that the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations. The Department of Taxation should rank the applicants based on an applicant's qualifications without respect to the planned location of their business. The local governments should be responsible for working with the ranked list of applicants prepared by the Department of Taxation to determine acceptable locations based on requirements within the respective jurisdiction.

If a marijuana establishment is not able to receive local jurisdiction zoning and land use approval within 18 months from the date the Department of Taxation issues the conditional license, the applicant will surrender the license back to the Department for reissuance through another application process.

There was no dissent on the recommendation.

Rating Criteria on Applications

The Task Force recommends that the impartial numerically scored process used by the medical marijuana program be revised for retail marijuana stores to remove consideration of location and focus only on the applicant qualifications for operation of a marijuana establishment. The proposed list of qualifications was ranked in order of importance to give more weight to the most important qualifications.

There was no dissent on the recommendation.

Ownership Issues/ Licensing Requirements

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

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

- Only require owners, officers and board members with 5% or more ownership cumulatively and employees of the company to obtain agent registration cards; and
- Use the marijuana establishment's governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory document.

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

Monopolies - Limitations on the Number of Marijuana Establishments

The Task Force recommends that limitations similar to those in the medical marijuana program for granting establishment registration certificates be used for the retail marijuana licensing process. The recommendation applies this limitation specifically to retail marijuana stores not only in a county whose population is 100,000 or more but also in each local jurisdiction within that county. The recommendation is to adopt regulations like Nevada Revised Statute Chapter 453A.326 which places a limitation on the number of licenses issued to any one person. Suggested language includes: "to prevent monopolistic practices, the Department shall ensure, in a county whose population is 100,000 or more, that it does not issue, to any licensee, the greater of:

- One retail store license; or
- More than 10 percent of the retail store licenses allocable in the county along with the same limitation on the local governmental jurisdiction level."

There was no dissent on this recommendation.

Agent Card Requirements

The Task Force recommends that the Department of Taxation revise the current agent card application process for medical marijuana establishments to improve efficiency by allowing potential employees or volunteers to apply directly to the state to obtain registered agent cards, allow them to work while the card is pending, allow agents to obtain one card for each facility type rather than one for each establishment and allow temporary registration of a person as an establishment agent. Changes to the current Nevada Revised Statute Chapter 453A would be required.

There was Task Force dissent on the recommendation. The concern was that by changing the requirements for attaining an agent card, the state could, for a period, allow employment of an agent who did not fulfill the requirements of the program, and therefore, potentially create a less safe environment in the state.

Retail Store Allocation

The Task Force recommends that the retail marijuana store licenses allocated to the counties be distributed to the local jurisdiction(s) within those counties based on the population in the jurisdiction(s). This recommendation assures even distribution of the retail marijuana licenses to meet the needs of consumers, non-consumers, local government and industry while preventing over or under saturation of retail marijuana stores in specific areas. There would need to be adoption of regulation or statute to address this recommendation.

There was no dissent on the recommendation.

Retail Store Operations

These recommendations consider the priorities for serving medical versus retail consumers. They identify areas in the current medical marijuana regulations that must be revised to incorporate retail marijuana sales.

Operations – Service

The Task Force recommends the Department of Taxation include provisions in regulation to give preference in a dual use licensed facility to holders of a medical marijuana card. The inconvenience for medical marijuana patients due to an increase of traffic in dual use license establishments could result in patients having to wait in long lines with retail consumers, thus creating a hardship on those who are ill and rely on marijuana to ease their symptoms.

There was no dissent on the recommendation.

Retail Regulations

The Task Force recommends that the Department of Taxation apply the medical marijuana program regulations to the retail marijuana store program, with an understanding that many of the medical marijuana dispensary transactional requirements do not fit into the retail model or are not compatible or consistent with Question 2. The following topics will need revision through regulation for retail marijuana stores:

- Application to operate the establishment;
- Entry and identification of patients/retail consumers;
- Maintenance of patient records;
- Method of tracking sales;
- Labeling;
- Purchase limits; and
- Agent responsibilities and training requirements.

There was agreement by the Task Force that retail regulations can be no less strict than the medical marijuana regulations.

There was no dissent on the recommendation.

Task Force Membership

Member	Affiliation
Deonne Contine, Executive Director Nevada Department of Taxation Chair of the Task Force	Executive Director of the Nevada Department of Taxation
Chuck Callaway, Director of Office of Intergovernmental Services, Las Vegas Metropolitan Police Department Co-Chair of the Task Force	Representative from Local Law Enforcement
Richard Whitley, Executive Director Nevada Department of Health and Human Services	Director of the Department of Health and Human Services
Richard “Tick” Segerblom, Senator Nevada State Senate	Member nominated by the Majority Leader of the Nevada State Senate
Joe Hardy, Senator Nevada State Senate	Member nominated by the Minority Leader of the Nevada State Senate
Nelson Araujo, Assemblyman Nevada State Assembly	Member nominated by the Speaker of the Nevada State Assembly
Jill Tolles, Assemblywoman Nevada State Assembly	Member nominated by the Minority Leader of the Nevada State Assembly
James Wright, Executive Director Nevada Department of Public Safety	Director of the Department of Public Safety
Lynn Hettrick, Division Administrator Nevada Department of Agriculture	Director of the Department of Agriculture
Dr. John M. DiMuro, DO Nevada Chief Medical Officer Nevada Department of Health and Human Services	Nevada Chief Medical Officer
Wes Henderson, Executive Director Nevada League of Cities and Municipalities	Representative from the Nevada League of Cities and Municipalities
Dagny Stapleton, Deputy Director Nevada Association of Counties	Representative of the Nevada Association of Counties
Joe Pollock, Deputy Administrator Nevada Division of Public and Behavior Health, Medical Marijuana Program	Representative of the Nevada Medical Marijuana Program
Andrea Zeller, Executive Director Churchill Community Coalition	A member of the general public from a Nevada County with a population of less than 200,000
Tom Robinson, Deputy Chief Reno Police Department	Representative from Local Law Enforcement
Kevin Schiller, Assistant County Manager Washoe County	Representative from Local Social Services Agency
Michael Pawlak, Director Clark County Social Services	Representative from Local Social Services Agency

Task Force Membership	
Member	Affiliation
John Ritter, Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Representative from the Medical Marijuana Industry
Alec Garcia, Managing Partner 374 Labs	Representative from the Medical Marijuana Industry

Working Group - Law Enforcement		
Name	Affiliation	Interests Represented
James Wright	Executive Director, Nevada Department of Public Safety	Law Enforcement
Nelson Araujo	Nevada Assembly	Nevada Legislature - Assembly
Jill Tolles	Nevada Assembly	Nevada Legislature - Assembly
Chuck Callaway	Las Vegas Metropolitan Police Department	Law Enforcement
Brian Sooudi	Assistant City Attorney, City of Reno	Local Government
Terry Johnson	Nevada Gaming Control Board	Gaming
Mark James	CannaCopia Las Vegas	Marijuana Industry
Mike Allen	Sheriff, Humboldt County	Law Enforcement
Josh Cheney	Deputy Sheriff, Carson City Sheriff's Office	Law Enforcement
Todd Raybuck	Las Vegas Metropolitan Police Department	Law Enforcement
Keith Carter	Director, High Intensity Drug Trafficking Area	Law Enforcement
Tina Talim	Deputy District Attorney, Clark County	District Attorney
Adam Page	Captain, Nevada Department of Public Safety, Nevada Highway Patrol	Law Enforcement
Demetri Kouretas	CEO, The Grove	Marijuana Industry
Pamela Del Porto	Inspector General, Nevada Department of Corrections	Corrections
John Piro	Clark County Public Defender	Public Defender
Maggie McLetchie	McLetchie Shell LLC	Attorney
Riana Durrett	Executive Director, Nevada Dispensary Association	Marijuana Industry

Working Group - Operations Retail		
Name	Affiliation	Interests Represented
Wes Henderson	Executive Director, Nevada League of Cities & Municipalities	Local Government
John Ritter	Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Marijuana Industry
Riana Durrett	Executive Director, Nevada Dispensary Association	Marijuana Industry
Dr. John DiMuro	Chief Medical Officer, Nevada Department of Health and Human Services	Public Health
Karalin Cronkhite	Program Supervisor (Auditor), Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Vince Queano	Special Agent, Clark County	Local Government
Paulina Oliver	Deputy Executive Director, Nevada Department of Taxation	Department of Taxation
Jennifer DeLett- Snyder	Join Together Northern Nevada (JTNN)	Substance Abuse Prevention
Andrew Jolley	President, Nevada Dispensary Association, The Source	Marijuana Industry
Mona Lisa Samuelson	Marijuana Patient Advocate	Member of the Public
Tommy Rayl	Marijuana Non-Consumer	Member of the Public

Working Group – Cultivation		
Name	Affiliation	Interests Represented
Lynn Hettrick	Division Administrator, Nevada Department of Agriculture	Department of Agriculture
John Ritter	Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Marijuana Industry
Amanda Connor	Attorney at Connor & Connor PLLC	Marijuana Industry
David Standard	Director of Cultivation, Deep Roots Harvest	Marijuana Industry
Dan Schinhofen	Commissioner, Nye County	Local Government
Tessa Rognier	Compliance Officer, Nevada Department of Agriculture	Department of Agriculture
Patricia Farley	Nevada Senate	Nevada Legislature –Senate
Mike Stewart	Police Officer, Reno Police Department	Law Enforcement
Marla Wilson	Vegas Valley Growers	Marijuana Industry
Jason Strull	Lab Director, 374 Labs	Marijuana Industry
Armen Yemenidjian	Integral Associates II	Marijuana Industry
Wes Henderson	Executive Director, Nevada League of Cities & Municipalities	Local Government

Working Group - Production / Manufacturing		
Name	Affiliation	Interests Represented
Tom Robinson	Deputy Chief, Reno Police Department	Law Enforcement
Andrea Zeller	Executive Director, Churchill Community Coalition	Member of the Public from a County with Less than 200,000
Bill Erlach	Reno Fire Department	First Responders
Jennifer Lazovich	Lawyer and Partner with Kaempfer Crowell	Land Use, Zoning, Legislative Affairs and Marijuana
Chad Westom	Health Bureau Chief, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Bryan Hyun	Production Manager and Owner of The Grove	Marijuana Industry
Amber Howell	Director of Social Services, Washoe County	Social Services
Kelly Zaugg	DB Labs	Marijuana Industry
Jake Ward	President, Pure Tonic Concentrates	Marijuana Industry
Meg Collins	Good Chemistry	Marijuana Industry
Anna Thornley	Deputy Executive Director, Nevada Department of Taxation	Department of Taxation
Alex Woodley	Director of Code Enforcement, City of Reno	Law Enforcement

Working Group – Labs		
Name	Affiliation	Interests Represented
Alec Garcia	374 Labs	Marijuana Industry
Lynn Hettrick	Division Administrator, Nevada Department of Agriculture	Department of Agriculture
Ed Alexander	ILAC - Grow Washoe	Marijuana Industry
Jorge Pupo	Revenue Tax Manager, Nevada Department of Taxation	Department of Taxation
Darin Carpenter	Director of Cultivation, TRYKE	Marijuana Industry
Sarah Chapman	President, Nye County Consultants Association	Marijuana Industry
Shane Johnson	SJ3D Holdings, Inc.	Marijuana Industry
Allison Gigante	Assistant Operations Manager, Clark County Business License Division	Local Government
Darryl Johnson, Ph.D.	Scientific Laboratory Director, Ace Analytical	Marijuana Industry
Benjamin Chew, Ph.D.	Scientific Laboratory Director, MM Lab, Inc.	Marijuana Industry
Sharryn Cohen	Operating Chemist, Nevada Department of Agriculture	Department of Agriculture
David L. Grenz	Microbiologist III, Nevada Department of Agriculture	Department of Agriculture

Working Group - Transportation, Storage and Disposal		
Name	Affiliation	Interests Represented
Dr. John DiMuro	Chief Medical Officer, Nevada Department of Health and Human Services	Public Health
Tom Robinson	Deputy Chief, Reno Police Department	Law Enforcement
Nelson Araujo	Nevada Assembly	Nevada Legislature - Assembly
Joe Pollock	Deputy Administrator, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Mike Harwell	Compliance and Disposal, Clark County	Local Government
David Witkowski	Inspector, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Bob Brown	Director of Security and Transportation, Deep Roots Harvest	Marijuana Industry
Shellie Hughes	Chief Deputy Director, Nevada Department of Taxation	Department of Taxation
Margaret (Peggy) Arquilla	President, West Coast Wine and Spirits	Liquor Wholesaler
Tim Conder	Blackbird Transportation	Transportation / Marijuana Industry
Brett Scolari	General Counsel, Director of Government and Regulatory Affairs, TRYKE	Marijuana Industry
Kurt Brown	Capital Beverages, Inc.	Liquor Wholesaler

Working Group - Taxation/ Revenue/ Regulatory Structure		
Name	Affiliation	Interests Represented
Joe Pollock	Deputy Administrator, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Dagny Stapleton	Deputy Director, Nevada Association of Counties	Local Government
Jacqueline Holloway	Director of Business License Development, Clark County	Local Government
Neil Krutz	Assistant City Manager, City of Sparks	Local Government
Steve Gilbert	Program Manager, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Marla McDade-Williams	Strategies 360	Marijuana Industry
Deonne Contine	Executive Director, Nevada Department of Taxation	Department of Taxation
John Ritter	Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Marijuana Industry
Amanda Connor	Attorney at Connor & Connor PLLC – Marijuana law	Marijuana Industry
Kenny Furlong	Carson City Sheriff	Law Enforcement
David Goldwater	Member, Nevada Dispensary Association	Marijuana Industry
Jennifer Wilcox	Essence Marijuana Dispensary	Marijuana Industry
Karen Abowd	Carson City Board of Supervisors, Taxation	Local Government

Working Group - Consumer Safety, Education and Health		
Name	Affiliation	Interests Represented
Richard Whitley	Executive Director, Nevada Department of Health and Human Services	Medical Marijuana Program
Michael Pawlak	Director, Clark County Social Services	Social Services
Dr. John DiMuro	Chief Medical Officer, Nevada Department of Health and Human Services	Public Health
Dr. Joe Hardy	Nevada Senate	Nevada Legislature - Senate
Kevin Schiller	Assistant County Manager, Washoe County	Local Government
Linda Lang	Nevada Statewide Coalition Partnership	Substance Abuse Resources
Michelle Berry	Center for the Application of Substance Abuse Technologies (CASAT)	Substance Abuse Resources
Dr. Joseph Iser	Chief Health Officer, Southern Nevada Health District	Environmental Health
Jen Solas	Wellness Education Cannabis Advocates of Nevada	Marijuana Education
Shannon Ernst	Director of Social Services, Churchill County	Social Services
Dr. John Packham	Director of Health Policy Research, UNR School of Medicine	Rural Health
Shane Johnson	SJ3D Holdings, Inc.	Marijuana Industry

The Working groups developed recommendations with the aid of a common form to ensure that the format would be consistent for presentation to the Task Force. The form included the following sections:

- Working group name;
- Individual sponsor(s);
- Description of the recommendation;
- Which guiding principle(s) the recommendation supported;
- What provision(s) of Question 2 the recommendation applied to;
- What issue(s) the recommendation resolved;
- Summary of the dissenting opinion regarding the recommendation, if any;
- Action(s) necessary to adopt the recommendation, specifically noting if statute, policy or regulations would need to be addressed; and
- Any additional information (cost of implementation, priority per the recommendations, etc.).

Where language changes to existing Nevada Revised Statute or Nevada Administrative Code language were proposed, the changes to current language were reflected in red on the recommendation. New language was also reflected in red for the ease of Task Force review.

The process for discussion and approval of recommendations was also considered and approved by the Task Force so that it would remain consistent for all working groups. The working groups met separately from the Task Force to discuss topics, issues and questions for consideration. Upon reaching consensus or majority opinion, the working groups forwarded their recommendations to QuantumMark to ensure each section was filled out appropriately. The recommendations were then forwarded to the Task Force for further discussion and final approval. When the working groups occasionally disagreed on the recommendation, explanations of the dissenting viewpoints were included. Based on Task Force discussion, the recommendation was either approved for the final report or modifications were requested from the working group. The working groups then presented the modified recommendations to the Task Force. In total, the Task Force approved 73 recommendations.

Full documentation of the recommendations of the Task Force is included in this appendix.

Application and Licensing Requirements

Application Process

1. Working Group Name:

Taxation/Revenue/Regulatory Structure Working Group

2. Individual Sponsor(s):

Amanda Conner, Attorney at Connor & Connor - Marijuana law

Neil Krutz, Assistant City Manager, City of Sparks

Jacqueline Holloway, Director of Business License Development, Clark County

John Ritter, Nevada Dispensary Association

Steve Gilbert, Program Manager, Medical Marijuana Program

3. Describe the Recommendation:

The Taxation/Revenue/Regulatory Structure Working Group recommends that, as described in IP1, the qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment and the impartial and numerically scored bidding process for "retail marijuana stores", be maintained, however, we recommend the local governments be given the responsibility to affirm candidates location(s) based on requirements within the respective jurisdiction. Conceptually, the recommended process would look as follows:

- The Department of Taxation (Department) would receive marijuana establishment applications, score and rank them in each jurisdiction based on an applicant's qualifications as required in IP1.*
- The Department will not require zoning approval to be submitted in the marijuana establishment application. If an applicant does have zoning and land use approval and chooses to include it their application, no extra points or merit will be awarded for it being included.*
- The Department passes each ranked marijuana establishment list on to the applicable local jurisdiction, based on the maximum number of retail establishments allowed under IP1. This list of applicants will be awarded a conditional license from the Department.*
- Each applicant that receives a conditional license from the Department must then get local jurisdiction approval for zoning and land use. If an applicant needs to pursue an alternative location because the original location was denied local approval, the alternative location must be similar in scope with respect to building size, operation, and systems. Licenses will remain conditional until all local requirements have been obtained and submitted to the Department to finalize the application. If all state and local requirements are met, the applicant will be awarded a provisional license allowing them to commence development of their establishment. Licenses will remain provisional until all required audits and inspections have been completed by the Department and the establishment is awarded a final license.*

- *If the marijuana establishment is not able to receive local jurisdiction zoning and land use approval within 18 months from the date the Department issued the conditional license, the applicant will surrender the license back to the department for reissuance through another application process. The Department may extend the 18 months due to extenuating circumstances at the discretion of the Department.*

4. Which Guiding Principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities. Following this application recommendation will ensure the best applicants are awarded a license.

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry. This recommendation will help streamline the application process and potentially avoid costly lawsuits in the future.

Guiding Principle 3 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome. This recommendation will improve upon the medical marijuana application process that was already successfully used. These minor improvements will make it clearer to the applicant, the Department and remove ambiguity.

5. What provision(s) of Question 2 does this recommendation apply to?

Question 2 states the Department of Taxation would be charged with adopting regulations necessary to carry out the provisions of this ballot measure. The regulations must address licensing procedures; licensee qualifications; security of marijuana establishments; testing, labeling, and packaging requirements; reasonable restrictions on advertising; and civil penalties for violating any regulation adopted by the Department.

IP1 Section 10 (5)(e) states:

Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph

The Department shall approve a license application if the locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality.

6. What issue(s) does the recommendation resolve?

This recommendation would resolve the imbalance of the application score and ranking when it comes to the local jurisdiction approval for marijuana establishment locations. The Department will be tasked with scoring applicants based how well they meet the qualifications described in IP1, and the local jurisdiction will be tasked with zoning and land use approval.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

A statue change will not be required.

Regulation language will need to be added defining the application process and requirements.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

None

Rating Criteria on Applications

1. Working group name:

Taxation/Revenue/Regulatory Structure Working Group

2. Individual sponsor(s):

John Ritter, Nevada Dispensary Association and The Grove

Amanda Connor, Attorney Connor & Connor - Marijuana law

3. Describe the recommendation:

The Taxation/Revenue/Regulatory Structure Working Group recommends that the impartial and numerically scored bidding process as described in IP1 for "retail marijuana stores" include the following criteria and weighting to be used for scoring applications. IP1 also requires the department to adopt regulations that include "qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment." Therefore we also recommend that the applicable criteria and weighting shown below that demonstrate those qualifications be included in the regulations.

The following criteria and weighting should be included:

- 1. Applicant has an existing temporary recreational marijuana establishment license that is operational (as defined in the temporary regulations) and in good standing (as defined in the temporary regulations). – Very heavily weighted*
- 2. Applicant has a medical marijuana establishment license that is operational (as defined in the temporary regulations) by December 31, 2017 and is in good standing (as defined in the temporary regulations) - Very Heavily weighted.*
- 3. Owners, officers and/or the management team have direct experience with a medical and/or recreational marijuana establishment for the specific type of marijuana establishment license the applicant is seeking and have demonstrated a track record of operating that establishment in a manner that complies with the requirements of the applicable State regulatory authority overseeing such establishment. Experience in a Nevada marijuana establishment is preferred. – Very Heavily weighted*
- 4. Applicant has demonstrated a track record of paying taxes to the Department of Taxation generated by the operation of a medical or recreational marijuana establishment. - Very heavily weighted*
- 5. Owners, Officers and/or Board members have a demonstrated track record of employing Nevadans and paying state and local taxes and fees in Nevada. - Heavily Weighted*
- 6. Owners, Officers and/or Board members have a demonstrated track record of giving back to the community through their civic and/or philanthropic involvement in Nevada. - Heavily Weighted*
- 7. Owners, Officers, and/or Board members have experience operating another kind of business(s) that has given them applicable experience to running a marijuana establishment in the State of Nevada. - Medium weighted.*

8. *Applicant has submitted a business plan for the operation of the marijuana establishment that demonstrates knowledge and experience with the license type that is being applied for and addresses how the establishment will be operated under the requirements established by regulation of the Department as required by NRS 453D.200 - Medium weighted.*

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments, and the industry.

Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome.

5. What provision(s) of Question 2 does this recommendation apply to?

Question 2 states that there is to be an impartial and numerically scored bidding process for "retail marijuana stores" and that the Department has a duty to use "qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment". The recommendation addresses criteria and weighting to apply to each of those provisions.

6. What issue(s) does the recommendation resolve?

This recommendation resolves the issue of how to determine what criteria and weighting should be considered for issuance of a license.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

There was no dissent regarding this recommendation.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

There would need to be adoption of regulations to address this recommendation.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

None.

Ownership Issues/ Licensing Requirements

1. Working group name:

Taxation/Revenue/Regulatory Structure Working Group

2. Individual sponsor(s):

John Ritter, Advisory Board Member for TGIG, LLC, The Grove

David Goldwater, Inyo Fine Cannabis Dispensary

3. Describe the recommendation:

The Taxation/Revenue/Regulatory Structure Working Group recommends that the following changes relative to recreational marijuana establishment licensee ownership issues be made from the current medical marijuana establishment rules.

a) Require only Owners with 5% or more cumulatively (please see below for a definition of cumulatively), Officers and Board members of the company(s) holding the license(s) to be fingerprinted, be required to undergo a background check and resubmit a new application for license renewal.

[IN ORDER TO MAKE THE MEDICAL PROGRAM CONSISTENT NEED TO CHANGE NRS 453A.332 PARAGRAPH 5]

b) Require all Owners, regardless of ownership, to be fingerprinted, be required to undergo a background check and resubmit a new application only every five years whether for a renewal or not.

[IN ORDER TO MAKE THE MEDICAL PROGRAM CONSISTENT NEED TO CHANGE NRS 453A]

c) Only require Owners with 5% or more ownership cumulatively, Directors and Officers of the company(s) holding the license(s) and employees of the company to obtain agent registration cards.

[FOR MEDICAL: Officers and Board members must obtain agent cards under 453A.410 (2) (a). An Owner with less than 5% interest, that is not an Officer or Board member, does not need to obtain an agent card pursuant to NAC 453A.302.]

d) For the purposes of signing ownership transfers, applications and any other appropriate legal or regulatory documentation, the Department shall look to the governing documents of the company that holds the license to assess who has approval rights and signatory authority. If the documents require a vote to establish that authority then the Department shall have the right to request documentation evidencing that a vote has taken place.

[IN ORDER TO MAKE THE MEDICAL PROGRAM CONSISTENT NEED TO CHANGE NRS 453A]

"Cumulatively" shall mean the cumulative ownership any particular natural person holds in any Nevada company(s) that owns licensed recreational marijuana establishments.

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments, and the industry.

Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome.

5. What provision(s) of Question 2 does this recommendation apply to?

Section 2 (b) of IP1 states that "Business owners are subject to a review by the State of Nevada to confirm that the business owners ... are suitable to produce or sell marijuana;"

Section 5 paragraph 1 of IP1 states that "The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impractical."

6. What issue(s) does the recommendation resolve?

To allow companies that own marijuana establishment licenses in which there are multiple Owners that own less than 5%, in some cases far less, to be able to operate practically and efficiently. To allow companies that own marijuana establishment licenses to function based on their governing documents as companies are allowed to do in other industries.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

There would need to be adoption of a regulation to address this recommendation.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

None

Monopolies - Limitations on the Number of Marijuana Establishments

1. Working group name:

Taxation/Revenue/Regulatory Structure Working Group

2. Individual sponsor(s):

John Ritter, Advisory Board Member for TGIG, LLC, The Grove

Dagny Stapleton, Nevada Association of Counties

Steve Gilbert, Program Manager DPBH Medical Marijuana Program

3. Describe the recommendation:

The Taxation/Revenue/Regulatory Structure Working Group recommends that the same limitations that were applied in the medical program for medical marijuana establishment registration certificates be used for the recreational marijuana licensing process. The recommendation applies this limitation specifically to retail marijuana stores not only in a county whose population is 100,000 or more but also in each local jurisdiction within that county.

The recommendation is to adopt regulations similar to NRS 453A.326: ... limitation on number of licenses issued to any one person; ...

2. To prevent monopolistic practices, the Department shall ensure, in a county whose population is 100,000 or more, that it does not issue, to any licensee, the greater of:

(a) One retail store license; or

(b) More than 10 percent of the retail store licenses allocable in the county along with the same limitation on the local governmental jurisdiction level.

4. As used in this section, "local governmental jurisdiction" means a city or unincorporated area within a county.

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments, and the industry.

Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome.

5. What provision(s) of Question 2 does this recommendation apply to?

Section 5 (a) of IP1 describes that the Department shall adopt all regulations necessary to carry out the provisions of the act including "Procedures for the issuance ... of a license to operate a marijuana establishment."

6. What issue(s) does the recommendation resolve?

To prevent monopolistic practices this recommendation ensures that no one "person" can own or control more than 10% of the retail marijuana store licenses in a county whose population is 100,000 or more and not more than 10% of the retail marijuana store licenses in each local jurisdiction within that county.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

There would need to be adoption of a regulation to address this recommendation.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

None

Agent Card Requirements

1. Working group name:

Taxation/Revenue/Regulatory Structure Working Group

2. Individual sponsor(s):

Jennifer Wilcox, Essence Cannabis Dispensary

Marla. McDade – Williams, Strategies 360

3. Describe the recommendation:

The Taxation/Revenue/Regulatory Structure Working Group recommends that the revised agent card application process as pursuant to Assembly Bill No. 422 be applied to recreational licenses (revised provisions related AB 422 outlined below):

Existing law requires a medical marijuana establishment that wishes to retain as a volunteer or employ or contract with a person to provide labor to the medical marijuana establishment to submit an application to register the person as a medical marijuana establishment agent. (NRS 453A.332)

- ***Section 31** of the AB422 bill allows such a person to submit an application for registration as a medical marijuana establishment agent on his or her own behalf.*
- ***Section 31** also provides for the temporary registration of a person as a medical marijuana establishment agent upon submission of a complete application for registration or renewal of registration.*
- ***Section 31** allows an independent contractor or employee of an independent contractor who is registered as a medical marijuana establishment agent to provide labor to any medical marijuana establishment and any other person who is registered as a medical marijuana establishment agent to work or volunteer at any medical marijuana establishment for which the category of the person's medical marijuana establishment agent card is valid.*

The group recommends applying the proposed revisions above to the recreational marijuana agent card application process.

6. What issue(s) does the recommendation resolve?

This recommendation would ensure efficiency with recreational establishments as it relates to cards for agents and independent contractors:

- *Allows potential employees to apply directly to the State to obtain registered agent card and allows them to work while card is pending;*

- *Allows agents and independent contractors to obtain one card for each type of facility rather than multiple cards*
- *Allows temporary registration of a person as an establishment agent*

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

This recommendation should become part of the final recommendations for recreational marijuana licensing.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

This has been discussed at session (AB422), Assemblyman Araujo agreed to carry the revision of the agent card application process.

Retail Store Allocation

1. Working group name:

Taxation/Revenue/Regulatory Structure Working Group

2. Individual sponsor(s):

John Ritter, Nevada Dispensary Association & Owner

Amanda Connor, Attorney Connor & Connor - Marijuana law

3. Describe the recommendation:

The Taxation/Revenue/Regulatory Structure Working Group recommends that the retail marijuana store licenses allocated to the counties, as described in IP1, be distributed to the local jurisdiction(s) within those counties prorata based on the population in the jurisdiction(s).

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments, and the industry.

Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome.

5. What provision(s) of Question 2 does this recommendation apply to?

Question 2 imposed a limitation on the number of retail stores located in the counties. The recommendation addresses how those retail store licenses should be distributed.

6. What issue(s) does the recommendation resolve?

This recommendation ensures even distribution of the retail marijuana licenses to ensure that the needs to the consumers, non-consumers, local government and industry are met by preventing over or under saturation of retail marijuana stores in particular areas.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

There was no dissent regarding this recommendation.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

There would need to be adoption of a regulation or statute to address this recommendation.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

None

Recommendation	Working Group	Dissent
Regulatory Structure		
Regulatory Organizational Structure	Cultivation	No dissent
Transfer of Medical Program to Department of Taxation	Retail	No Task Force dissent Working group dissent: J. DeLett-Snyder
Inspection Requirements	Production/ Manufacturing	No Task Force dissent Working group dissent: A. Thornley
Local Government Regulation	Production/ Manufacturing	Task Force dissent: J. Tolles, D. Stapleton and W. Henderson No Working group dissent
Marijuana Control Board	Law Enforcement	No dissent
Ownership Interest	Labs	No dissent
Advisory Committee	Labs	No dissent
Ancillary Marijuana Business Licensing	Labs	Task Force dissent: A. Zeller No Working group dissent
Co-Location	Production/ Manufacturing	No dissent
Dual Use Medical and Retail	Retail	No dissent
Taxation and Revenue		
Taxation – 15% Excise Tax	Taxation/Revenue/ Regulatory Structure	No dissent
Taxation – Retail Tax 10%	Taxation/Revenue/ Regulatory Structure	No dissent
Fees – Local Government Share	Taxation/Revenue/ Regulatory Structure	Task Force and Working group dissent: D. Contine
Application and Licensing Requirements		
Application Process	Taxation/Revenue/ Regulatory Structure	No dissent
Rating Criteria on Applications	Taxation/Revenue/ Regulatory Structure	No dissent
Ownership Issues/ Licensing Requirements	Taxation/Revenue/ Regulatory Structure	Task Force dissent: W. Henderson and C. Callaway No Working group dissent
Monopolies - Limitations on the Number of Marijuana Establishments	Taxation/Revenue/ Regulatory Structure	No dissent

Recommendation	Working Group	Dissent
Agent Card Requirements	Taxation/Revenue/ Regulatory Structure	Task Force dissent: C. Callaway No Working group dissent
Retail Store Allocation	Taxation/Revenue/ Regulatory Structure	No dissent
Inventory Tracking		
Inventory Control	Production/ Manufacturing	No dissent
Centralized Inventory Tracking	Production/ Manufacturing	No dissent
Inventory Tracking and Separation of Product	Retail	No Task Force dissent Working Group dissent: J. DeLett-Snyder
Operational Requirements - Retail Stores		
Operations – Service	Retail	No dissent
Retail Regulations	Retail	No dissent
Operational Requirements - Cultivation		
Outdoor Cultivation - Buffer Zone	Cultivation	No dissent
Home Cultivation	Cultivation	No dissent
Pesticide Application and Worker Protection Standards	Cultivation	No dissent
Pesticides	Cultivation	No dissent
Outdoor Cultivation - Security Requirements	Cultivation	Task Force dissent: W. Robinson and W. Henderson Working group dissent: L. Hettrick
Product Acquisition	Cultivation	No dissent
Cultivation Supply Management	Cultivation	Task Force dissent: J. DiMuro, A. Zeller and W. Henderson No Working group dissent
Microbial Testing Limits	Cultivation	No dissent
Internal Product Evaluation Standards and Procedures	Cultivation	No dissent
Operational Requirements - Production/Manufacturing		
Production Outside of Licensed Facilities	Production/ Manufacturing	Task Force dissent: C. Callaway No Working group dissent
Disposal of Marijuana Products and Waste	Transportation/ Storage/Disposal	No dissent
Operational Requirements - Labs		

Recommendation	Working Group	Dissent
Accreditation, Validation and Auditing	Labs	No dissent
Proficiency Testing	Labs	No dissent
Inventory Control - Labs	Labs	No dissent
Sample Sizes for Testing and Retention	Labs	Task Force dissent: J. Ritter No Working group dissent
Homogeneity Testing and Adulterants	Labs	Task Force dissent: J. Pollock No Working group dissent
Operational Requirements - Distribution and Transportation		
Commercial Transportation and Storage – Operational Requirements	Transportation/ Storage/Disposal	No dissent
Storage Requirements	Transportation/ Storage/Disposal	No dissent
Application Process for a Distributor License	Transportation/ Storage/Disposal	No Task Force dissent Working group dissent: K. Brown and M. Arquilla.
Local Jurisdiction Involvement in Transportation	Transportation/ Storage/Disposal	No dissent
Delivery	Retail	No dissent
Packaging, Labeling, Potency Limitations		
Packaging Requirements	Production/ Manufacturing	Task Force dissent: J. Ritter No Working group dissent
Serving Sizes and Packaging Limitations	Production/ Manufacturing	No dissent
Product Types and Their Equivalencies	Production/ Manufacturing	Task Force dissent: C. Callaway No Working group dissent
Serving Size and Labeling of Edibles	Labs	No dissent
Uniform Potency Labeling	Consumer Safety/ Education/Health	No dissent
Signage, Marketing and Advertising		
Signage, Marketing and Advertising	Retail	No Task Force dissent Working group dissent: The Consumer Safety, Education and Health Working group and J. DeLett-Snyder

Recommendation	Working Group	Dissent
Literature Shared with the Patient/Consumer	Retail	No dissent
Education and Research		
Education	Consumer Safety/ Education/Health	No dissent
Research	Consumer Safety/ Education/Health	No dissent
Data Collection	Law Enforcement	No dissent
Oversight and Responsible Agent Training	Consumer Safety/ Education/Health	Task Force dissent: J. Ritter Working group dissent: R. Durrett
Federal Property and Funding	Consumer Safety/ Education/Health	No dissent
Law Enforcement		
Driving Under the Influence of Drugs (DUID)	Law Enforcement	Task Force dissent: T. Robinson No Working group dissent
Statutory Changes for Persons Under 21 Years of Age	Law Enforcement	No dissent
Marijuana in Correctional Facilities	Law Enforcement	No dissent
Open Container and Personal Transport	Law Enforcement	No dissent
Request for Evidentiary Testing	Law Enforcement	No Task Force dissent Working group dissent: J. Piro
Fees for Chemical Testing Associated with DUID	Law Enforcement	No dissent
Restrictions and Minimum Security Standards Regarding Firearms	Law Enforcement	Task Force dissent: J. Tolles and L. Hettrick No Working group dissent
Public Safety		
Preventing Distribution to Minors	Law Enforcement	No dissent
Preventing Diversion to Other States	Law Enforcement	No dissent
Revenue for Public Safety	Law Enforcement	Task Force dissent: J. DiMuro, J. Pollock, W. Henderson, K. Schiller and M. Pawlak No Working group dissent
Dispensing Machines	Law Enforcement	No dissent
Banking	Consumer Safety/ Education/Health	No dissent
Clean Air Act	Consumer Safety/ Education/Health	No dissent
Edible Marijuana	Consumer Safety/ Education/Health	No dissent

Recommendation	Working Group	Dissent
Health and Safety – Medical and Clinical Issues	Consumer Safety/ Education/Health	No dissent
Workers Compensation	Consumer Safety/ Education/Health	No dissent

EXHIBIT “6”

EXHIBIT “6”

1 **DECL**
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Jonathan J. Tew, Esq.
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9

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

12 IN RE: DOT

13 Case No.: A-19-787004-B
14 Department: XI

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

18 Hearing Date:

19 Hearing Time:

20 **DECLARATION OF RICHARD D. WILLIAMSON IN SUPPORT OF DEEP ROOTS**

21 **MEDICAL LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

22 I, Richard D. Williamson, do hereby declare as follows:

- 23 1. I am an attorney licensed to practice law in the State of Nevada.
- 24 2. I am a shareholder with Robertson, Johnson, Miller & Williamson, counsel of
- 25 record for Deep Roots Medical LLC ("Deep Roots").
- 26 3. Attached to Deep Roots' Motion for Partial Summary Judgment ("Motion") as
- 27 **Exhibit 1** is a true and correct copy of the Recreational Marijuana Establishment License
- 28 Application dated July 6, 2018 ("Application").

4. Attached to Deep Roots' Motion as **Exhibit 2** is a true and correct copy of the "OFFICIAL ANNOUNCEMENT" to "All Retail Store License Applicants" dated July 31, 2018 regarding clarifications to the Application.

5. Attached to Deep Roots' Motion as **Exhibit 3** is a true and correct copy of emails between Jorge Pupo of the Department of Taxation ("DOT") and attorney Michael Cristalli whose firm represents the Serenity plaintiffs and which was disclosed with Qualcan's Second Supplement to Initial List of Witnesses and Production of Documents Pursuant to NRCP 16.1.

6. Attached to Deep Roots' Motion as **Exhibit 4** is a true and correct copy of text messages between Mr. Pupo and a representative of Zion Gardens LLC, which were disclosed with the Fourth Supplemental Disclosure of Witnesses and Documents Pursuant to NRCP 16.1 from ETW Management Group LLC *et al.*

7. Attached to Deep Roots' Motion as **Exhibit 5** is a true and correct copy of highlighted excerpts from the Governor's Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Dated this 13th day of March, 2020.

/s/ Richard D. Williamson
Richard D. Williamson, Esq.