IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION GREEN LEAF FARM HOLDINGS, LLC; GREEN THERAPEUTIEX LLC, NEVCANN, LLC; RED EARTH, LLC AND THC NEVADA, LLC, Appellants, vs. THE STATE OF NEVADA, ON RELATION OF ITS DEPARTMENT OF TAXATION; CANNABIS COMPLIANCE BOARD; LONE MOUNTAIN PARTNERS, LLC; DEEP ROOTS MEDICAL, LLC; NEVADA ORGANIC REMEDIES, LLC, Respondents.	Supreme Court Case No: 86071 District Court Case No: A-787004-B

LONE MOUNTAIN PARTNERS, LLC'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nevada Rule of Appellate Procedure ("NRAP") 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. Pursuant to NRAP 26.1, Respondent Lone Mountain Partners, LLC ("Lone Mountain") states that it is a Nevada limited liability company. Lone Mountain's sole member is Verano Nevada, LLC, a Nevada limited liability company. The sole member of Verano Nevada, LLC is Verano Holdings, LLC, a Delaware limited liability company. Verano Holdings, LLC has one corporation as a member, and that corporation is Verano Holdings USA Corp., a Delaware corporation. The ultimate parent company of Lone Mountain is Verano Holdings Corp., a publicly traded British Columbia corporation (VRNO.NE; VRNOF), which indirectly owns more than 10% of stock. In the district court proceedings and the proceedings before this Court, Hone Law appears for Lone Mountain.

Dated this 22nd day of January 2024.

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Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 28(b), Respondent Lone Mountain Partners, LLC ("Lone Mountain"), by and through its counsel, submits its answering brief in response to the opening brief ("Opening Brief") filed by Appellants Green Leaf Farm Holdings, LLC, Green Therapeutics, LLC, NevCann, LLC, Red Earth LLC, and THC Nevada, LLC (collectively, "Appellants").

ROUTING STATEMENT

The Supreme Court of Nevada should retain this appeal pursuant to NRAP 17(a)(9) as a case originating in business court.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. The district court did not abuse its discretion in determining that Lone Mountain was a prevailing party entitled to an award of costs pursuant to NRS 18.020.

2. The district court did not abuse its discretion in determining that Lone Mountain's costs were recoverable under one or more of the types of actions enumerated in NRS 18.020.

STATEMENT OF FACTS

A. Overview of the Licensing Application Process at Issue

Following the passage of Ballot Question 2 ("BQ2") by Nevada voters in 2016 to legalize recreational marijuana, the State of Nevada ex rel. the Nevada Department of Taxation and the Cannabis Compliance Board (collectively, the "Department") were tasked with the responsibility to issue licenses to operate retail

recreational marijuana establishments ("RMEs") in various jurisdictions throughout the State of Nevada. (6 AA 1419, 1421, 1423, and 1425.)[1]

During the 2018 RME licensing process, all licensees holding a medical marijuana license for the cultivation, production, or sale of marijuana were permitted to obtain one recreational marijuana license of the same type. NRS 453D.210(2); NAC 453D.265. All such licensees were also permitted to apply for RME licenses in a competitive application process administered by the Department. NAC 453D.268. (6 AA 1426-1427.)

While more than 400 applications for RME licenses were submitted in the competitive application process, only a limited number of licenses were available. (6 AA 1433, 1437.) Because the number of applications exceeded the number of available RME licenses, applications were subject to an "impartial and numerically scored competitive bidding process to determine which Application or Applications among those competing will be approved." NRS 453D.210(6).

B. The Parties

Appellants are a group of unrelated commercial entities who applied for, but failed to receive, RME licenses in various jurisdictions throughout the State of Nevada in the 2018 RME competitive licensing application process. (6 AA 1421.)

Lone Mountain is one of the successful applicants who applied for licenses in the 2018 RME competitive licensing application process. (1 RA 005.)

[1] "AA" refers to the appendix filed by the Appellants. The number before "AA" is the volume of the appendix and the number after "AA" is the page number of the specific referenced document. "RA" refers to the respondent's appendix filed by Lone Mountain and follows the same protocol.

Specifically, Lone Mountain applied for thirteen RME licenses in various jurisdictions throughout the State and was awarded eleven RME licenses. (3 RA 706.)

C. Appellants Filed Suit to Overturn the Results of the 2018 RME Licensing Application Process, Including Seeking to Void the Licenses Awarded to Lone Mountain

Unwilling to accept the results of the 2018 RME licensing application process, a multitude of plaintiffs, including Appellants, filed suit challenging the entirety of the application process, including seeking to overturn the results of the licensing process altogether and *to void the licenses* awarded to Lone Mountain and the other successful license applicants ("Successful Applicants"). (*See generally* 6 AA 1294-1389; *see also* 6 AA 1416-1418 (identifying all plaintiffs in the consolidated action.))

Appellants challenged the 2018 RME licensing process on numerous grounds including, but not limited to, a myriad of complaints relating to the Department's review and scoring process, the Department's issuance of a revised application, and a host of complaints regarding purported deficiencies in the applications submitted by the Successful Applicants. (6 AA 1303-1305.)

To protect their interests in their respectively awarded RME licenses, Lone Mountain and numerous other Successful Applicants had no choice but to intervene as defendants in the consolidated district court actions. (*See generally* 1 RA 001-021; *see also* 6 AA 1419-1421) (identifying the "Industry Defendants")).

Appellants' operative complaint named the Department and the Successful Applicants, including Lone Mountain, as defendants. (6 AA 1296-1299.)

Appellants asserted the following causes of action: (1) Violation of Substantive Due Process (against the Department); (2) Violation of Procedural Due Process (against the Department); (3) Violation of Equal Protection (against the Department); (4) Declaratory Judgment (against all defendants, including Lone Mountain); (5) Petition for Judicial Review (against all defendants, including Lone Mountain); and (6) Petition for Writ of Mandamus (against the Department). (6 AA 1306-1317.)

For their Declaratory Judgment claim, Appellants requested that the district court enter declaratory judgment as follows:

> (1) the Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive bidding process;
>
> (2) the [Department] applied the Factors to Plaintiffs' Applications in a wholly arbitrary and irrational manner;
>
> (3) the Factors were not applied equally and fairly to all applicants;
>
> (4) *several of the Successful Applicants had incomplete or deficient applications, making the grant of a conditional license to them void*;
>
> (5) the [Department] violated NAC 453D.272(5) by issuing multiple retail marijuana licenses to the same entity or group of persons; and
>
> (6) the denial notices did not comply with NRS 453D.210(4)(b).

(6 AA 1315, 1317) (emphasis added). Only Appellants' fourth request for declaratory relief seeking to *void the licenses* issued to the Successful Applicants was asserted against Lone Mountain; all other aspects of Appellants' requested declaratory relief were asserted solely against the Department.

Notably, Appellants did not assert any specific allegations against Lone Mountain, but instead generally alleged that "some or all of the Successful Applicants' applications were not complete when submitted to the [Department] as required by NAC 453D.268," including the alleged failure to disclose "all owners, officers, and board members of the applicant entity." (6 AA 1304.)

D. The District Court Granted Partial Summary Judgment Regarding the Department's Adoption of the Five Percent Rule

BQ2 was enacted by the Nevada Legislature and codified at NRS 453D. BQ2 mandated the Department to "conduct a background check of *each* prospective owner, officer, and board member of a marijuana establishment license applicant." NRS 453D.200(6) (emphasis added). The Department promulgated a regulation that replaced the requirement for a background check of *each* prospective owner with a *five percent* or greater ownership interest standard ("Five Percent Rule"). NAC 453D.255(1).

By way of the order entered on August 17, 2020, the district court determined that the Five Percent Rule was an impermissible modification of BQ2 and granted partial summary judgment against the Department as follows: "[T]he [Department] acted beyond the scope of its authority by replacing the requirement for a background check of each prospective owner with the 5 percent or greater standard in NAC 453D.255(1)." (6 AA 1420-1421.)

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E. Appellants Failed to Adduce Evidence at Phase 2 of Trial Supporting the Claims Asserted Against Lone Mountain

The district court divided the trial and claims in this consolidated action into three phases, with Phase 1 addressing Petitions for Judicial Review,[2] Phase 2 addressing claims relating to the legality of the 2018 RME licensing application process (claims for Equal Protection, Due Process, Declaratory Relief, and Permanent Injunction),[3] and Phase 3 addressing claims asserted against defendant Jorge Pupo.[4] (6 AA 1416; 6 AA 1449.)

Critically, neither Appellants nor any other plaintiff adduced evidence at Phase 2 of trial concerning Lone Mountain's ownership, let alone any evidence to establish that Lone Mountain failed to properly disclose its owners, officers, and board members on its applications. (3 RA 707-708.) Indeed, Lone Mountain's RME license applications were not even admitted into evidence at trial and no witness was subpoenaed or called to testify at trial on behalf of Lone Mountain. (3 RA 705, 707.) In short, Appellants all but ignored Lone Mountain during trial. (3 RA 705-706.)

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[2] While the Phase 1 Judgment is not at issue on this appeal because Lone Mountain did not seek costs in connection with this phase, it is worth noting that Appellants did not succeed on this claim filed against all defendants, including Lone Mountain. (6 AA 1460: "Plaintiff's Petitions for Judicial Review under NRS 223B.130 is denied in its entirety.")

[3] The Order Awarding Costs at issue in this appeal concerns Phase 2 of trial. (11 AA 2595: "The Findings of Fact and Conclusions of Law entered by the Court on September 3, 2022 following the Phase II trial in this matter does not grant the Non-settling Plaintiffs the relief they sought with respect to Lone Mountain.")

[4] No claims were asserted against Lone Mountain in Phase 3 and it was not party to this phase of the proceedings.

F. The District Court's Findings of Fact, Conclusions of Law, and Permanent Injunction for Phase 2 of Trial

After completing Phase 2 of trial, the district court entered its Findings of Fact, Conclusions of Law and Permanent Injunction ("Phase 2 Judgment"). (6 AA 1413-1445.)

The Phase 2 Judgment denied the vast majority of relief Appellants requested by way of their claims tried in Phase 2 of the proceedings. (6 AA 1444.) However, the district court found in Appellants' favor on the singular issue that the *Department* acted beyond its authority in adopting NAC 435.255(1) requiring background checks based on the Five Percent Rule, as opposed to requiring background checks for each prospective owner regardless of a threshold ownership interest as required by BQ2. (*Id.*)

Based on its ruling regarding the Five Percent Rule, the district court granted Appellants' equal protection claim, in part, and granted limited declaratory relief as follows:

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

(*Id*.) (emphasis added). In addition, the district court narrowly enjoined the Department with respect to the Five Percent Rule:

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

(6 AA 1444.)[5]

The Phase 2 Judgment denied Appellants' requested declaratory relief sought against Lone Mountain to void the licenses awarded to the Successful Applicants. (6 AA 1315: declaratory relief requested that "(4) several of the Successful Applicants had incomplete or deficient applications, making the grant of a conditional license to them void."; 6 AA 1444: "All remaining claims for relief raised by the parties in this Phase are denied.").)

G. The District Court Entered an Award of Costs in Favor of Lone Mountain as a Prevailing Party

Following the certification of the Phase 2 Judgment as a final judgment, the Successful Applicants, including Lone Mountain, filed memorandums of costs as prevailing parties pursuant to NRS Chapter 18. (7 AA 1735 – 8 AA 1928.) With the plethora of parties involved in the consolidated district court action, scores of motions to retax were filed. (9 AA 2237-2245) (listing all the motions to retax filed by the parties).

Appellants did not move to retax Lone Mountain's Memorandum of Costs. Rather, Appellants filed joinders to the Motion to Retax filed by other plaintiffs in

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[5] For clarification, the permanent injunction in the Phase 2 Judgment applies only to the Department and does not apply to Lone Mountain. (6 AA 1444.)

the consolidated district court action, specifically the TGIG Plaintiffs.[6] (9 AA 2023-2029; 9 AA 2047-2050; 9 AA 2149-2153.)

To clarify, while Appellant THC Nevada, LLC also filed joinders to the motions to retax filed by Plaintiffs High Sierra Holistics, LLC and the Settling Plaintiffs[7] (and included said motions to retax and joinders in Appellants' Appendix; *see* 9 AA 2078-2104, 9 AA 2105-2148, 9 AA 2154-2157), the only order Appellants contest with respect to Lone Mountain in this appeal is the Motion to Retax filed by the TGIG Plaintiffs. (11 AA 2591-2617; *see also* Notice of Appeal filed February 2, 2023, on file herein.)

The TGIG Plaintiffs' Motion to Retax argued two points. First, the Motion to Retax asserted that Lone Mountain was not a prevailing party. (9 AA 2024-2025.) Second, the Motion to Retax argued that costs should not be awarded under the Phase 1 Judgment because a petition for judicial review is not one of the types of cases enumerated in NRS 18.020 that authorizes costs to a prevailing party. (9 AA 2025-2028.) To clarify, the Motion to Retax did not raise any argument concerning whether the claims tried in Phase 2 fell within the parameters of NRS 18.020. (*See generally* 9 AA 2023-2029.) Lone Mountain filed an opposition to the Motion to Retax (9 AA 2194: "[T]he TGIG Plaintiffs do not assert any arguments

[6] The "TGIG Plaintiffs" refers to Plaintiffs TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC and Medifarm IV, LLC. The TGIG Plaintiffs are not parties to this appeal.

[7] The "Settling Plaintiffs" refers to Plaintiffs MM Development Company, Inc., LivFree Wellness LLC, Qualcan, LLC, Natural Medicine, L.L.C., and Nevada Wellness Center, LLC. The Settling Plaintiffs are not parties to this appeal.

contesting the recoverability of costs incurred related to Phase 2 in the instant motion") and the TGIG Plaintiffs filed a reply (9 AA 2189-2216; 9 AA 2226-2233).

Due to the volume of motions to retax that were filed regarding the various parties' memorandums of costs, the district court conducted several hearings and heard arguments on motions impacting similarly situated parties. The district court rejected Appellants' argument contending that the Successful Applicants were not prevailing parties. In its ruling from the bench during oral argument on motions to retax the memorandum of costs filed by the Essence Entities,[8] a similarly situated Successful Applicant to Lone Mountain, the district court determined as follows:

> The Court is going to find in the most analogous circumstance, realistically looking at Vannah versus Golightly [as said], okay, and looking at Nevada Revised Statute, that *the Essence parties are a prevailing party. The Essence parties received and prevailed on their claim to retain their licenses*. *They did not lose any of their licenses*, and by the best kind of analogy, realistically, it would be similar to someone who already has a, what I called a share of the pie in an interpleader action and doesn't lose part of that share of the pie by somebody else filing for priority, i.e., Vannah -- the Vannah case or in a situation in a prevailing defendant, where they get a defense verdict.
>
> I'm just using those as analogies to try and give the concept of why this is a prevailing party because both of those concepts the entity, regardless of how they're titled, and it really doesn't matter if I call them a counter-defendant, a defendant or if I call them the party subject to an interpleader. *In each of those situations, the party has retained what they had when they started with the litigation. Here, Essence has retained, which is what*

[8] The "Essence Entities" refers to Integral Associates LLC, Essence Tropicana, LLC, and Essence Henderson, LLC. The Essence Entities are not parties to this appeal.

> *they're -- makes them prevailing. They retained what they had, and so they did not lose any of their licenses*.
>
> * * *
>
> *Essence did prevail. So it should be awarded costs*.
>
> *It is one of the categories under NRS 18.020, the valued license that you all -- if it was not more than 2500, I wouldn't have this wonderful grouping of attorneys here both in the Court and remotely. So and declaratory relief action also would trigger it*. Okay.

(10 AA 2319-2320) (emphasis added).

The district court's assessment that the value of the RME licenses at issue exceeded $2,500 each is readily corroborated in the record. First, Appellants' operative complaint pleaded that the amount in controversy exceeded $15,000. (6 AA 1219.) Second, the parties paid a non-refundable application fee of $5,000—double the statutory minimum—just to submit an application for a license in the 2018 RME competitive licensing application process. (1 RA 050; 3 RA 601-602.)

Applying its analysis regarding the similarly situated Essence Entities as prevailing parties, the district court likewise determined that Lone Mountain was a prevailing party. To that end, the district court denied the Motion to Retax Lone Mountain's Memorandum of Costs and entered the Order Awarding Costs[9] in favor of Lone Mountain in the amount of $65,321.45 against the Appellants. (11 AA 2596.)

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[9] This Order was also the subject of an appeal filed by the TGIG Plaintiffs, which was later withdrawn. (*See* Case No. 86070: Notice of Withdrawal of Appeal filed December 22, 2023, on file therein.)

As to the primary issue asserted on appeal regarding whether Lone Mountain was a prevailing party, the Order Awarding Costs provides, in relevant part:

> The TGIG Plaintiffs have argued in their Motion to Retax that Lone Mountain was not a prevailing party as to the Non-settling Plaintiffs.[10] The Court disagrees. *The Non-settling Plaintiffs filed complaints and thereafter prosecuted claims against Lone Mountain claiming a competing interest in and/or seeking to rescind conditional recreational cannabis licenses awarded to Lone Mountain*. The Findings of Fact and Conclusions of Law entered by the Court on September 3, 2022 following the Phase II trial in this matter does not grant the Non-settling Plaintiffs the relief they sought with respect to Lone Mountain. *Lone Mountain thus succeeded in its defense of the Non-Settling Plaintiffs' claims, which was its purpose for intervening and defending itself in this action. Lone Mountain is therefore a prevailing party with respect to the Non-settling Plaintiffs*.

(11 AA 2595) (emphasis added).

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion in determining that Lone Mountain is a prevailing party entitled to recover costs under NRS 18.020. Appellants' assertion that they prevailed on their declaratory relief claim vis-à-vis Lone Mountain is factually and substantively unsupported. The singular form of declaratory relief Appellants requested adverse to Lone Mountain was a declaration seeking to void the RME licenses Lone Mountain was awarded in the 2018 RME competitive licensing application process. Appellants did not obtain this relief. Quite the opposite, Lone Mountain prevailed on the declaratory relief

[10] The "Non-settling Plaintiffs" refers to Appellants and other plaintiffs in the district court action that are not parties to this appeal. (11 AA 2593-2594.)

claim because the district court did not void or otherwise disturb Lone Mountain's awarded RME licenses as Appellants requested. Lone Mountain also prevailed on the most significant issue in the litigation and its purpose for intervening in the action, i.e., Lone Mountain successfully defended and retained all its RME licenses that Appellants sought to void in their effort to overturn the results of the 2018 RME licensing process. Therefore, Lone Mountain is unequivocally the prevailing party entitled to recover costs from Appellants.

As for Appellants' argument challenging whether Lone Mountain's costs are statutorily authorized under one of the types of actions enumerated in NRS 18.020, the Court need not consider this argument and should deem the same waived because Appellants did not raise this argument in the district court. Relatedly, the Court also need not consider this argument on the grounds that Appellants' cursory argument on this issue is inadequate.

In the event the Court is inclined to consider Appellants' newly asserted and undeveloped argument under NRS 18.020, the Court should affirm because the district court did not abuse its discretion in awarding costs to Lone Mountain. The fact of the matter is that the record supports an award of costs in favor of Lone Mountain under three of the five enumerated subsections of NRS 18.020: (i) NRS 18.020(2) because the value of the property at issue—Lone Mountain's RME licenses at stake—exceeded $2,500; (ii) NRS 18.020(3) because Appellants sought to recover more than $2,500 in money or damages; and (iii) NRS 18.020(4) because this action was a special proceeding.

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In sum, Appellants have failed to carry their high burden of demonstrating that the district court abused its discretion in awarding costs to Lone Mountain pursuant NRS 18.020. This Court should affirm the Order Awarding Costs accordingly.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DETERMNING THAT LONE MOUNTAIN IS A PREVAILING PARTY

Appellants' assertion that they purportedly prevailed on the declaratory relief claim vis-à-vis Lone Mountain is disingenuous and demonstrably inaccurate. Under the governing Nevada law and the record in this case, Lone Mountain is unequivocally the prevailing party vis-à-vis Appellants. The district court did not abuse its discretion in making this determination and the Order Awarding Costs should be affirmed.

It is well-established that prevailing parties are entitled to recover costs. NRS 18.020 provides that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered." In determining the prevailing party, the court must ascertain which parties are adverse to each other to determine who won against who. *See Copper Sands Homeowners v. Flamingo 94 Ltd*., 130 Nev. Adv. Op. 81, 335 P.3d 203, 206 (2014) (holding that third party defendants were adverse to plaintiff and entitled to costs as prevailing parties).

A defendant who avoids a judgment against it qualifies as a prevailing party. *145 E. Harmon II Tr. v. Residences at MGM Grand - Tower A Owners' Ass'n*, 136

Nev. 115, 120, 460 P.3d 455, 459 (2020). Stated otherwise, when the district court rejects the relief sought, that party is decidedly not a prevailing party. *See Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. 416, 422, 373 P.3d 103, 107 (2016) (holding that a prevailing party "must win on at least one of its claims" against its adversary). Further, Nevada law recognizes that a plaintiff may prevail against some defendants but not others, allowing the successful defendants to recover costs against the plaintiff. *See Schouweiler v. Yancey Co*., 101 Nev. 827, 832, 712 P.2d 786, 789 (1985).

Moreover, a guiding principle in determining whether a party is the prevailing party for costs award purposes is that "[a] party prevails if it succeeds on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc*., 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (internal quotation marks omitted) (emphasis in original) (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)); *see also Las Vegas Rev.-J. v. City of Henderson*, 137 Nev. 766, 769, 500 P.3d 1271, 1276 (2021).

The Supreme Court of Nevada's analysis in *Golightly & Vannah, PLLC v. TJ Allen, LLC* is instructive. In that case, the plaintiff law firm ("G & V") filed an interpleader action seeking a ruling that its lien had priority to recover funds in a personal injury settlement and named other potential creditors as defendants, including Renown Regional Medical Center ("Renown"). Renown argued that G & V's lien was not perfected and therefore had no priority. *Id.* at 418, 373 P.3d at 104. The district court ultimately rejected G & V's claim of priority and ordered

a pro-rata distribution of the recovery to the parties. The district court also found that G & V was not entitled to an award of costs as a prevailing party. *Id.* at 419, 373 P.3d at 105. On appeal, the Supreme Court of Nevada affirmed, explaining that "G & V did not prevail on its sole claim of priority" adverse to Renown and therefore G & V was not the prevailing party. *Id.* at 422, 373 P.3d at 107.

Applying the foregoing Nevada legal principles for determining which party is a prevailing party to the facts here, there is no room for doubt that Lone Mountain is the prevailing party. Judgment was not rendered in favor of Appellants on any claim asserted against Lone Mountain nor was Lone Mountain subject to any adverse judgment in this case. On the contrary, not only did Lone Mountain succeed in defending against Appellants' claim for declaratory relief, but Lone Mountain also prevailed on the most significant issue in the litigation and its purpose for intervening in the action, i.e., Lone Mountain successfully defended and retained all its RME licenses that Appellants sought to void in their effort to overturn the results of the 2018 RME licensing process.

The singular form of declaratory relief Appellants requested adverse to Lone Mountain was a declaration that "several of the Successful Applicants had incomplete or deficient applications, making the grant of a conditional license to them void." (6 AA 1315, 1317.) Appellants failed to obtain this relief. (6 AA 1444.) Lone Mountain clearly prevailed on this claim because the district court did not void or otherwise disturb Lone Mountain's awarded RME licenses as Appellants requested.

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Because Lone Mountain successfully retained all its RME licenses Appellants sought to void in this case, Lone Mountain prevailed on "[a] *significant issue* in litigation which achieves some of the benefit it sought in [defending] suit." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc*., 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (internal quotation marks omitted) (emphasis in original) (quoting *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)); *see also Las Vegas Rev.-J. v. City of Henderson*, 137 Nev. 766, 769, 500 P.3d 1271, 1276 (2021).

The record confirms that the district court correctly applied this legal analysis in determining that Lone Mountain was a prevailing party:

> *The Non-settling Plaintiffs filed complaints and thereafter prosecuted claims against Lone Mountain claiming a competing interest in and/or seeking to rescind conditional recreational cannabis licenses awarded to Lone Mountain*. The Findings of Fact and Conclusions of Law entered by the Court on September 3, 2022 following the Phase II trial in this matter does not grant the Non-settling Plaintiffs the relief they sought with respect to Lone Mountain. *Lone Mountain thus succeeded in its defense of the Non-Settling Plaintiffs' claims, which was its purpose for intervening and defending itself in this action. Lone Mountain is therefore a prevailing party with respect to the Non-settling Plaintiffs*.

(11 AA 2595 (emphasis added); *see also* 10 AA 2319-2320 (determining that the Successful Applicants were prevailing parties because they retained their licenses).

Appellants' contention that they are the prevailing parties on the declaratory relief claim is misguided and unsubstantiated. The district court denied nearly all forms of relief Appellants requested by way of their declaratory relief claim. (*Id.*; *see also* 6 AA 1315, 1317) (listing six requested forms of declaratory relief).) The

record plainly confirms that the Phase 2 Judgment only granted limited declaratory relief in favor of Appellants vis-à-vis the Department—not Lone Mountain—and only with respect to the Five Percent Rule:

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

(6 AA 1444) (emphasis added).

The narrow declaratory relief granted against the Department relating to the Five Percent Rule has no impact on Lone Mountain. To be clear, declaratory relief was not granted as against Lone Mountain and, what is more, Appellants failed to adduce any evidence at trial concerning Lone Mountain's ownership, let alone any evidence that could tend to establish that Lone Mountain failed to properly disclose the same. (3 RA 707-708.)

Lastly, Appellants' assertion that they are the prevailing parties vis-à-vis Lone Mountain is readily undone given that:

- Appellants' myriad efforts to overturn the 2018 RME licensing application process and void the licenses awarded to Lone Mountain in Phase 2 failed (*see generally* 6 AA 1413-1445);
- Appellants' petitions for judicial review tried in Phase 1 were denied in their entirety (6 AA 1460); and

- Appellants appealed the merits of the Phase 1 and Phase 2 Judgments, which Lone Mountain and other participating respondents successfully defended (*see* Case No. 82014: Order of Affirmance filed September 8, 2023, on file therein).

With an abuse of discretion standard of review, Appellants have manifestly failed to carry their high burden to demonstrate that "no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Stems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). This Court should affirm the Order Awarding Costs entered in favor of Lone Mountain as a prevailing party.

II. APPELLANTS' NEWLY ASSERTED ARGUMENT CONTESTING THE STATUTORY BASIS FOR AWARDING COSTS SHOULD BE DEEMED WAIVED AND NOT CONSIDERED BY THIS COURT

Lone Mountain submits that this Court need not consider Appellants' argument challenging whether costs are statutorily authorized in this case under NRS 18.020 because Appellants did not raise this argument in the district court.

It is well-established that an argument or issue not raised before the district court is deemed waived and cannot be advanced on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal"); *see also Powers v. Powers*, 105 Nev. 514, 516, 779 P.2d 91, 92 (1989) ("A party may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below"); *Montesano v. Donrey Media Group*, 99 Nev. 644, 650 n.5, 668 P.2d 1081, 1085 n.5 (1983) ("Arguments raised for the first time on appeal need not be considered").

Appellants' argument challenging whether costs are statutorily authorized in this case pursuant to NRS 18.020 for claims tried in Phase 2 of the proceedings is a new argument advanced for the first time on appeal. (Opening Brief at 22-23.) This argument was not raised in the TGIG Plaintiffs' Motion to Retax filed in the district court, which motion Appellants joined in, and is the subject of the Order Awarding Costs appealed in this case. (9 AA 2023-2029; 9 AA2047-2050; AA 2149-2153.)

To clarify, the sole argument the TGIG Plaintiffs asserted in the Motion to Retax with respect to the recoverability of costs under NRS 18.020 focused solely on the *Phase 1 Judgment* and, specifically, the contention that a petition for judicial review is not within the parameters of NRS 18.020. (9 AA 2025-2028.) No argument was presented in the district court challenging the recoverability of Lone Mountain's costs sought in connection with the *Phase 2 Judgment*. Indeed, Lone Mountain's Opposition asserted this very point: "[T]he TGIG Plaintiffs do not assert any arguments contesting the recoverability of costs incurred related to Phase 2 in the instant motion." (9 AA 2194.) The TGIG Plaintiffs' Reply was likewise silent on this issue. (*See generally* 9 AA 2226-2233.)

In accordance with Nevada jurisprudence holding that parties may not advance new arguments for the first time on appeal, Appellants' argument in the Opening Brief challenging whether costs relating to Phase 2 are statutorily authorized under NRS 18.020 is improper. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *see also Powers v. Powers*, 105 Nev. 514, 516,

/ / /

779 P.2d 91, 92 (1989); *Montesano v. Donrey Media Group*, 99 Nev. 644, 650 n.5, 668 P.2d 1081, 1085 n.5 (1983).

In conclusion, Lone Mountain respectfully requests that the Court deem Appellants' newly asserted argument contesting the statutory basis for awarding costs as waived and decline to consider the same.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT LONE MOUNTAIN'S COSTS WERE RECOVERABLE UNDER ONE OR MORE OF THE TYPES OF ACTIONS ENUMERATED IN NRS 18.020

In the event the Court is inclined to consider Appellants' new argument raised for the first time on appeal, the Court should affirm the Order Awarding Costs because the district court did not abuse its discretion in awarding costs to Lone Mountain in compliance with NRS 18.020.

As an initial matter, Appellants' cursory argument on this issue is inadequate and need not be considered. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.") Indeed, Appellants fail to cite any portion of the record to support their contention. Thus, this Court should properly decline to consider Appellants' undeveloped argument relating to NRS 18.020.

Turning to the merits, "costs are awarded as a matter of course to the prevailing party in all actions listed in NRS 18.020." *Campbell v. Campbell*, 101 Nev. 380, 383, 705 P.2d 154, 156 (1985). NRS 18.020 provides:

> Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

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

NRS 18.020 (emphasis added).

In denying motions to retax the memorandums of costs filed by the Successful Applicants, the district court explained its ruling, in relevant part, as follows:

> *It is one of the categories under NRS 18.020, the valued license that you all -- if it was not more than 2500, I wouldn't have this wonderful grouping of attorneys here both in the Court and remotely. So and declaratory relief action also would trigger it*. Okay.

(10 AA 2319-2320) (emphasis added). With the district court's findings of more than $2,500 at issue and a declaratory relief action justifying an award of costs, the record supports the Award of Costs entered in favor of Lone Mountain under NRS 18.020 subsections (2), (3), and/or (4).

/ / /

First, costs are authorized under NRS 18.020(2) because the value of the property at issue—Lone Mountain's RME licenses at stake—significantly exceeded $2,500. On this point, the district court's assessment is sound in that the multitude of parties that participated in the lengthy and costly consolidated district court action would not have done so if the value of the licenses at issue were not worth well over $2,500. (10 AA 2320.) Further, the value of the RME licenses at issue exceeding $2,500 each is corroborated in the record. The parties paid a non-refundable application fee of $5,000—double the statutory minimum—just to apply for a license in the 2018 RME competitive licensing application process. (1 RA 050; 3 RA 601-602.) Thus, there is no doubt that the value of the licenses at issue well exceeded the $2,500 statutory minimum to recover costs under NRS 18.020(2).

Second, Lone Mountain's Order Awarding Costs is authorized under NRS 18.020(3) because Appellants sought to recover more than $2,500 in money or damages. To confirm this point, one need only review Appellants' operative complaint, which pleaded that the amount in controversy exceeded $15,000. (6 AA 1219, ¶ 35.)

Additionally, costs are also appropriate under NRS 18.020(4) because this action was a special proceeding for which costs are recoverable. Here, the district court determined that costs were allowed because Appellants filed a declaratory relief action. (10 AA 2320.) Notably, the Opening Brief submits no legal authorities standing for the proposition that a declaratory relief action does not

qualify as a special proceeding[11] under NRS 18.020(4), nor does the Opening Brief offer any argument on this point to challenge the district court's discretion in reaching its decision.

In sum, Appellants have failed to carry their high burden of demonstrating that the district court abused its discretion in awarding costs to Lone Mountain. This Court should affirm the Order Awarding Costs accordingly.

CONCLUSION

In conclusion, the district court did not abuse its discretion in determining that Lone Mountain was a prevailing party entitled to a costs award pursuant to NRS 18.020. Lone Mountain respectfully requests that the Court deny Appellants' requests for relief sought in the instant appeal and affirm the Order Awarding Costs in favor of Lone Mountain.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a

[11] Although it does not address the specific issue of whether a declaratory relief action constitutes a special proceeding under NRS 18.020(4), Appellants' reference to *Foley v. Kennedy*, 110 Nev. 1295, 885 P.2d 583 (1994), favors Lone Mountain's position on appeal. The instant case was not a straightforward action in which "one party has sued the other." *Id.* at 1305, 885 P.2d at 589. Given that Appellants and numerous other plaintiffs attempted to overturn the results of the 2018 RME licensing process—including voiding the multitude of licenses awarded to the Successful Applicants—Lone Mountain and the other Successful Applicants had no choice but to intervene and defend their interests in their respectively awarded RME licenses. With the scores of parties involved in the consolidated district court action, this case was a complex special proceeding for which costs are authorized under NRS 18.020(4).

proportionally spaced typeface using Microsoft Word 2016, font size 14-point, Times New Roman. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,586 words. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions if the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 22nd day of January 2024.

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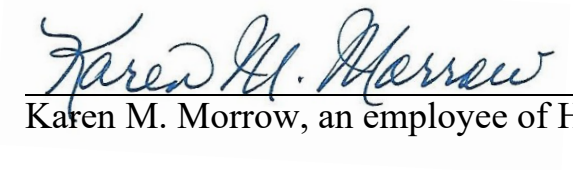
CERTIFICATE OF SERVICE

I certify that I am an employee of Hone Law and that on Monday, January 22, 2024, I submitted for filing the foregoing **LONE MOUNTAIN PARTNERS, LLC'S ANSWERING BRIEF** and caused a true and correct copy to be served on all registered parties via the Court's eFlex electronic filing system.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



Karen M. Morrow, an employee of HONE LAW