

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

RURAL REMEDIES, LLC,
Appellant,
and,
CLARK NATURAL MEDICINAL
SOLUTIONS LLC; NYE NATURAL
MEDICINAL SOLUTIONS LLC; CLARK
NMSD, LLC; AND INYO FINE
CANNABIS DISPENSARY LLC;
Appellants/Cross-Respondents.
vs.
NEVADA ORGANIC REMEDIES LLC;
WELLNESS CONNECTION OF
NEVADA, LLC; THE STATE OF
NEVADA DEPARTMENT OF
TAXATION; AND CANNABIS
COMPLIANCE BOARD,
Respondents,
and
DEEP ROOTS HARVEST, INC.,
Respondent/Cross-Appellant.

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Case No. 86151-2024 02:38 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 4 OF 6

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

RICHARD D. WILLIAMSON, State Bar No. 9932
BRIANA N. COLLINGS, State Bar No. 14694
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
(775) 329-5600

Attorneys for Respondent/Cross-Appellant Deep Roots Harvest, Inc.

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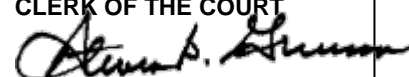
CERTIFICATE OF SERVICE

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 23rd day of February 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



PETER S. CHRISTIANSEN, ESQ.

Nevada Bar No. 5254

pete@christiansenlaw.com

WHITNEY J. BARRETT, ESQ.

Nevada Bar No. 13662

wbarrett@christiansenlaw.com

CHRISTIENSEN LAW OFFICES

810 S. Casino Center Blvd., Suite 104

Las Vegas, Nevada 89101

Telephone: (702) 240-7979

Facsimile: (866) 412-6992

Attorneys for Qualcan, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE: D.O.T.

Case No.: A-19-787004-B

Dept. No.: 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

QUALCAN, LLC'S MOTION FOR SUMMARY JUDGMENT
AS TO THE DOT'S IMPROPER ISSUANCE OF MULTIPLE LICENSES
TO A SINGLE APPLICANT IN THE SAME JURISDICTION

[ORAL ARGUMENT REQUESTED]

Plaintiff QUALCAN, LLC, by and through its attorneys of record, PETER S. CHRISTIANSEN, ESQ. and WHITNEY J. BARRETT, ESQ. of CHRISTIANSEN LAW OFFICES, hereby moves this Honorable Court for summary judgment in its favor. Specifically, entities with identical ownership structure applied for and received multiple licenses in Unincorporated Clark County. The allocation of multiple conditional licenses to these entities, which consist of the same "group of persons," was in direct violation of NAC 453D.272.

1 This Motion is made and based on the following Memorandum of Points and Authorities,
2 the papers and pleadings already on file herein, and any oral argument the Court may permit at
3 the hearing of this matter.

4 Dated this 13th day of March, 2020.

5 **CHRISTIANSEN LAW OFFICES**

6 

7 PETER S. CHRISTIANSEN, ESQ.

8 Nevada Bar No. 5254

9 WHITNEY J. BARRETT, ESQ.

10 Nevada Bar No. 13662

11 *Attorneys for Qualcan, LLC*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

BACKGROUND

Pursuant to the Recreational Marijuana Establishment License Application published by the DOT on July 6, 2018, “a person” holding a medical marijuana certificate may apply for one or more licenses, but “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.” See Exhibit 1, attached.

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 language of the application is consistent with the express anti-monopoly language contained in NAC 453D.272, which precludes “any person, group of persons or entity” from receiving more than one license to operate a retail marijuana store in any county whose population is 100,000 or more. Yet, the DOT allocated a total of four conditional licenses to Essence Henderson, LLC and Essence Tropicana, LLC (collectively “Essence”) and Commerce Park Medical, LLC and Cheyenne Medical, LLC (collectively “Thrive”). See Exhibit 2, attached.

CLARK COUNTY- UNINCORPORATED CLARK COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
3	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.66	Yes
4	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
5	HELPING HANDS WELLNESS CENTER, INC	HELPING HANDS WELLNESS CENTER	218.50	Yes
6	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
7	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	214.66	Yes
8	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
9	COMMERCE PARK MEDICAL, LLC	THRIVE	212.16	Yes
10	CLEAR RIVER, LLC	KABUNKY	210.16	Yes
11	WELLNESS CONNECTION OF NEVADA, LLC	CULTIVATE	208.50	No
12	CIRCLE S FARMS, LLC	CIRCLE S	208.00	No
13	QUALCAN, LLC	QUALCAN	207.66	No
14	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	205.67	No
15	3AP, INC	NATURE'S CHEMISTRY	202.83	No

Both Cheyenne Medical and Commerce Park (Thrive) are actually CPCM Holdings, LLC. Thus, their applications contained identical ownership structure:

- Mitchel Britten (owner)
- David Brown (owner)
- Edward Findlay (owner)
- Thomas Halbach (owner)
- Nickolas Mamula, Jr. (owner)
- Julie Murray (owner)
- Philip Peckman (owner)

Similarly, Essence Henderson, LLC and Essence Tropicana, LLC (Essence), which is Integral Associates, LLC, submitted applications with identical ownership:

- Brian Greenspun (owner)
- Alejandro Yemenidjian (owner)
- Armen Yemenidjian (owner)
- Alicia Abernathy (officer)
- Bert Adams (board member)
- Lesley Brousseau (officer)
- Anna Cohen (officer)
- J Dapper (board member)
- Courtney Lynch (officer)
- Sequoah Turner (officer)
- Jennifer Wilcox (officer)

As Defendants in this litigation, these entities have appeared as follows: Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC and CPCM Holdings, LLC d/b/a Thrive cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC. This is a tacit recognition that the Essence entities and the Thrive entities are one in the same.

1 The DOT has taken the position that Essence and Thrive were permitted to receive
2 multiple licenses in a single jurisdiction because their applications were submitted by separate
3 entities. Former Deputy Director Jorge Pupo unilaterally made the decision to allow them to
4 receive multiple licenses in Unincorporated Clark County because he believed them to be distinct
5 applicants simply because they were separate entities. *See* Exhibit 3, Evidentiary Hearing
6 Transcript, Day 9, 108:16 – 109:2; 114:3 – 118:14.¹

7 The DOT’s position flies in the face of the anti-monopoly provision precluding the same
8 applicant from having multiple licenses in a jurisdiction. Witnesses on behalf of numerous
9 plaintiffs, including the NRCP 30(b)(6) designees for TGIG and THC NV, have testified they
10 understood each “ownership group” could apply for and potentially receive only one license in a
11 jurisdiction, regardless of the existence of multiple entities. Thus, what was purportedly
12 “obvious” to Jorge Pupo was anything but – perhaps this is because Mr. Pupo’s position is
13 nonsensical when looking at the clear intent of preventing monopolies.

14 According to Deonne Contine, former executive director of the DOT, an applicant with
15 identical ownership applying for two licenses was expressly prohibited from obtaining more than
16 one license in a jurisdiction:

17 Q So if you had -- if an applicant with identical ownership structure who had
18 applied for two licenses in unincorporated Clark County, they would only be
19 given one license; right?

20 A I think so, yes.

21 Exhibit 4, Evidentiary Hearing Transcript, Day 14, 84:21-25.

22 Even more shocking, the Manpower graders looked at the financial contributions and
23 taxes paid by Integral Associates, LLC in grading the applications for both Essence entities, as
24 Essence Henderson and Essence Tropicana were only formed in late-2017. Thus, not only were
25 these entities comprised of the same “group of purposes,” but they are the “same applicant.”
26

27
28 ¹ Qualcan finds it curious that only these two groups of 462 applicants learned of the Pupo
loophole.

II.

LEGAL ARGUMENT

NRCP 56(a) provides, in pertinent part, that a party seeking to recover upon a claim may move for a summary judgment in the party's favor upon all or any part thereof. *Burnett v. C.B.A. Sec. Servs.*, 107 Nev. 787, 788, 820 P.2d 750, 751 (1991). Summary judgment is appropriate where the pleadings and affidavits on file show that there exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP 56(c); *Montgomery v. Ponderosa Const. Inc.*, 101 Nev. 415 (1985). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posadas v. City of Reno*, 109 Nev. 448 (1993).

Here, Qualcan is entitled to judgment as a matter of law concerning the DOT's improper issuance of conditional licenses to Essence and Thrive in Unincorporated Clark County. NAC 453D.272 expressly precludes the allocation of multiple licenses to Thrive and Essence, providing as follows:

5. To prevent monopolistic practices, the Department will ensure, in a county whose population is 100,000 or more, that the Department does not issue, to any person, **group of persons** or entity, the greater of:
 - (a) One license to operate a retail marijuana store; or
 - (b) More than 10 percent of the licenses for retail marijuana stores allocable in the county.

NAC453D.272(5). (emphasis added). This language mirrors the language of NRS 453A.326(2) concerning medical marijuana establishments. The clear intent was to prevent monopolistic practices within the marijuana industry.

There remains no genuine issue of fact surrounding the corporate structure of Essence and Thrive. They are comprised of the same "group of persons" as set forth under NAC 453D.272(5). The DOT's treatment of them as "separate" applicants in order to award a total of four conditional licenses in Unincorporated Clark County was in direct violation of the language contained in the regulations and the intent to restrict monopolies. Accordingly, Qualcan is entitled to judgment as a matter of law in its favor.

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III.

CONCLUSION

Therefore, Qualcan seeks an order from this court finding judgment in its favor concerning the conditional licenses improperly issued to Essence and Thrive in Unincorporated Clark County.

Dated this 13th day of March, 2020.

CHRISTIANSEN LAW OFFICES



PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
WHITNEY J. BARRETT, ESQ.
Nevada Bar No. 13662
Attorneys for Qualcan, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 13th day of March, 2020 I caused the foregoing document entitled *QUALCAN LLC's MOTION FOR SUMMARY JUDGMENT AS TO THE DOT'S IMPROPER ISSUANCE OF MULTIPLE LICENSES TO A SINGLE APPLICANT IN THE SAME JURISDICTION* to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.



An employee of Christiansen Law Offices

EXHIBIT 1



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

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

RENO OFFICE

4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

HENDERSON OFFICE

2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

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



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

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

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

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

EXHIBIT 2

2018 Retail Marijuana Store Application Scores and Rankings

Revised 4 pm 5/14/2019

CARSON CITY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.66	Yes
3	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	No
4	TRNVP098, LLC	GRASSROOTS	196.49	No
5	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
6	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
7	BIONEVA INNOVATIONS OF CARSON CITY, LLC	BIONEVA INNOVATIONS	188.00	No
8	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
9	D LUX, LLC	D LUX	150.49	No
10	CN LICENSECO I, INC	CANA NEVADA	139.01	No
11	CARSON CITY AGENCY SOLUTIONS, LLC	CARSON CITY AGENCY SOLUTIONS	128.67	No

CHURCHILL COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
NO APPLICATIONS RECEIVED				

CLARK COUNTY- HENDERSON				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
5	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.33	Yes
6	CLEAR RIVER, LLC	KABUNKY	210.16	Yes
7	QUALCAN, LLC	QUALCAN	209.66	No
8	CIRCLE S FARMS, LLC	CIRCLE S	208.00	No
9	WSCC, INC	SIERRA WELL	201.50	No
10	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	197.83	No
11	TRNVP098, LLC	GRASSROOTS	196.49	No
12	HARVEST of NEVADA, LLC	HARVEST	195.01	No
13	RED EARTH, LLC	RED EARTH	194.67	No
14	GRAVITAS NEVADA, LTD	THE APOTHECARIUM	194.66	No
15	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
16	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
17	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190.66	No
18	GREEN THERAPEUTICS, LLC	PROVISIONS	188.34	No
19	NV 3480 PARTNERS, LLC	EVERGEEN ORGANIX	188.00	No
20	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
21	GBS NEVADA PARTNERS, LLC	SHOW GROW	180.17	No
22	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
23	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178.83	No
24	NEVADA GROUP WELLNESS, LLC	PRIME	178.18	No
25	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172.16	No
26	GOOD CHEMISTRY NEVADA, LLC	GOOD CHEMISTRY	167.17	No
27	TWELVE TWELVE, LLC	12/12 DISPENSARY	166.67	No
28	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
29	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163.83	No
30	ETW MANAGEMENT GROUP, LLC	GASSERS	158.17	No
31	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	148.51	No
32	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134.17	No
33	NYE FARM TECH, LTD	URBN LEAF	133.34	No
34	GREENLEAF WELLNESS, INC	GREENLEAF WELLNESS	114.83	No
35	GREENWAY HEALTH COMMUNITY, LLC	GREENWAY HEALTH COMMUNITY	87.33	No

CLARK COUNTY- LAS VEGAS				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.66	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	HELPING HANDS WELLNESS CENTER, INC	HELPING HANDS WELLNESS CENTER	218.50	Yes
5	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
6	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
7	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	212.33	Yes
8	CLEAR RIVER, LLC	KABUNKY	210.16	Yes
9	WELLNESS CONNECTION OF NEVADA, LLC	CULTIVATE	208.67	Yes
10	CIRCLE S FARMS, LLC	CIRCLE S	208.00	Yes
11	QUALCAN, LLC	QUALCAN	207.33	No
12	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204.01	No
13	3AP, INC	NATURE'S CHEMISTRY	202.83	No
14	WSCC, INC	SIERRA WELL	200.83	No
15	ACRES MEDICAL, LLC	ACRES DISPENSARY	199.84	No
16	LAS VEGAS WELLNESS & COMPASSION CENTER	PEGASUS NV	199.83	No
17	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	197.83	No
18	NATURAL MEDICINE, LLC	NATURAL MEDICINE	197.17	No
19	TGIG, LLC	THE GROVE	196.67	No
20	TRNVP098, LLC	GRASSROOTS	196.49	No
21	TRNVP098, LLC	GRASSROOTS	196.49	No
22	GRAVITAS HENDERSON, LLC	BETTER BUDS	196.01	No
23	D.H. FLAMINGO, INC	THE APOTHECARY SHOPPE	196.00	No
24	HARVEST of NEVADA, LLC	HARVEST	195.01	No
25	RED EARTH, LLC	RED EARTH	194.67	No
26	STRIVE WELLNESS OF NEVADA, LLC	STRIVE	194.00	No
27	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
28	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
29	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190.66	No
30	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.17	No
31	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189.68	No
32	TRYKE COMPANIES SO NV, LLC	REEF	189.33	No
33	NV 3480 PARTNERS, LLC	EVERGEEN ORGANIX	188.00	No
34	AGUA STREET, LLC	CURALEAF	188.00	No
35	GREEN THERAPEUTICS, LLC	PROVISIONS	187.67	No
36	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	184.84	No
37	HIGH SIERRA HOLISTICS, LLC	HSH	184.83	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
38	GTI NEVADA, LLC	RISE	184.33	No
39	GTI NEVADA, LLC	RISE	184.33	No
40	GTI NEVADA, LLC	RISE	184.33	No
41	TRYKE COMPANIES RENO, LLC	REEF	182.00	No
42	SILVER SAGE WELLNESS, LLC	+ VIBES	181.99	No
43	CW NEVADA, LLC	CANOPI	181.67	No
44	TRYKE COMPANIES RENO, LLC	REEF	181.33	No
45	MATRIX NV, LLC	MATRIX NV	180.67	No
46	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
47	GBS NEVADA PARTNERS, LLC	SHOW GROW	180.17	No
48	GBS NEVADA PARTNERS, LLC	SHOW GROW	180.17	No
49	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	179.83	No
50	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
51	NEVADA GROUP WELLNESS, LLC	PRIME	178.18	No
52	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	176.34	No
53	NLVG, LLC	DESERT BLOOM WELLNESS CENTER	173.83	No
54	MEDI FARM IV, LLC	BLUM	173.50	No
55	NEVADA HOLISTIC MEDICINE, LLC	NHM	172.50	No
56	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172.16	No
57	LUFF ENTERPRISES NV, INC	SWEET CANNABIS	171.33	No
58	THC NEVADA, LLC	CANNA VIBE	170.99	No
59	THE HARVEST FOUNDATION, LLC	THE HARVEST FOUNDATION	170.50	No
60	MALANA LV, LLC	MALANA LV	168.66	No
61	WEST COST DEVELOPMENT NEVADA, LLC	SWEET GOLDY	168.17	No
62	GOOD CHEMISTRY NEVADA, LLC	GOOD CHEMISTRY	167.17	No
63	TWELVE TWELVE, LLC	12/12 DISPENSARY	166.67	No
64	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
65	NEVADA PURE, LLC	SHANGO LAS VEGAS	164.83	No
66	FSWFL, LLC	GREEN HARVEST (Have A Heart)	164.83	No
67	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164.32	No
68	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163.83	No
69	SOUTHERN NEVADA GROWERS, LLC	BOWTIE CANNABIS	163.17	No
70	GREENPOINT NEVADA, INC	CHALICE FARMS	160.84	No
71	ETW MANAGEMENT GROUP, LLC	GASSERS	158.17	No
72	NEVADA WELLNESS CENTER, LLC	NWC	156.51	No
73	ALTERNATIVE MEDICINE ASSOCIATION, LLC	ALTERNATIVE WELLNESS	154.67	No
74	YMY VENTURES, LLC	STEM	154.16	No
75	SOLACE ENTERPRISES	THALLO	153.67	No
76	MMOF VEGAS RETAIL, INC	MEDMEN	152.67	No
77	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152.50	No
78	YMY VENTURES, LLC	STEM	152.16	No
79	NEVCANN, LLC	NEVCANN	150.67	No
80	NEVCANN, LLC	NEVCANN	150.67	No
81	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	150.51	No
82	WENDOVERA, LLC	WENDOVERA	145.66	No
83	FOREVER GREEN, LLC	FOREVER GREEN	144.01	No
84	RELEAF CULTIVATION, LLC	RELEAF CULTIVATION	143.83	No
85	HERBAL CHOICE, INC	HERBAL CHOICE	143.51	No
86	PARADISE WELLNESS CENTER, LLC	LAS VEGAS RELEAF	142.99	No
87	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	141.83	No
88	CN LICENSECO I, INC	CANA NEVADA	139.01	No
89	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138.66	No
90	ECONEVADA LLC	MARAPHARM LAS VEGAS	137.33	No
91	ECONEVADA LLC	MARAPHARM LAS VEGAS	137.33	No
92	PHENOFARM NV LLC	MARAPHARM LAS VEGAS	137.33	No
93	DP HOLDINGS, INC	COMPASSIONATE TEAM OF LAS VEGAS	134.82	No
94	DP HOLDINGS, INC	COMPASSIONATE TEAM OF LAS VEGAS	134.82	No
95	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134.17	No
96	NYE FARM TECH, LTD	URBN LEAF	133.34	No
97	NYE FARM TECH, LTD	URBN LEAF	133.34	No
98	BLOSSUM GROUP, LLC	HEALING HERB	125.50	No
99	GB SCIENCES NEVADA, LL	GB SCIENCES	125.00	No
100	RURAL REMEDIES, LLC	DOC'S APOTHECARY	119.16	No
101	GREENLEAF WELLNESS, INC	GREENLEAF WELLNESS	115.16	No
102	RG HIGHLAND	TWEEDLEAF	113.00	No
103	NLV WELLNESS, LLC	ETHCX	109.67	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
CLARK COUNTY- MESQUITE				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
NO ALLOCATION				

CLARK COUNTY- NORTH LAS VEGAS				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	HELPING HANDS WELLNESS CENTER, INC	HELPING HANDS WELLNESS CENTER	218.50	Yes
5	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
6	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.33	No
7	COMMERCE PARK MEDICAL, LLC	THRIVE	212.33	No
8	CLEAR RIVER, LLC	KABUNKY	209.83	No
9	QUALCAN, LLC	QUALCAN	209.00	No
10	CIRCLE S FARMS, LLC	CIRCLE S	208.00	No
11	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204.01	No
12	3AP, INC	NATURE'S CHEMISTRY	202.83	No
13	WSCC, INC	SIERRA WELL	201.50	No
14	ACRES MEDICAL, LLC	ACRES DISPENSARY	199.84	No
15	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	198.50	No
16	NATURAL MEDICINE, LLC	NATURAL MEDICINE	197.17	No
17	TGIG, LLC	THE GROVE	196.67	No
18	TRNVP098, LLC	GRASSROOTS	196.49	No
19	GRAVITAS HENDERSON, LLC	BETTER BUDS	196.01	No
20	HARVEST of NEVADA, LLC	HARVEST	195.68	No
21	D.H. FLAMINGO, INC	THE APOTHECARY SHOPPE	195.67	No
22	RED EARTH, LLC	RED EARTH	194.67	No
23	ZION GARDENS, LLC	ZION GARDENS	194.17	No
24	GREENSCAPE PRODUCTIONS, LLC	HERBAL WELLNESS CENTER	192.83	No
25	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
26	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
27	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.54	No
28	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190.33	No
29	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189.68	No
30	TRYKE COMPANIES SO NV, LLC	REEF	189.33	No
31	FIDELIS HOLDINGS, LLC	PISOS	189.00	No
32	FIDELIS HOLDINGS, LLC	PISOS	189.00	No
33	GREEN THERAPEUTICS, LLC	PROVISIONS	188.67	No
34	NV 3480 PARTNERS, LLC	EVERGEEN ORGANIX	188.00	No
35	AGUA STREET, LLC	CURALEAF	185.50	No
36	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	185.17	No
37	GTI NEVADA, LLC	RISE	184.33	No
38	MATRIX NV, LLC	MATRIX NV	181.00	No
39	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
40	GBS NEVADA PARTNERS, LLC	SHOW GROW	180.17	No
41	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178.83	No
42	NEVADA GROUP WELLNESS, LLC	PRIME	178.18	No
43	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	176.34	No
44	NLVG, LLC	DESERT BLOOM WELLNESS CENTER	173.83	No
45	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172.16	No
46	THC NEVADA, LLC	CANNA VIBE	170.99	No
47	MALANA LV, LLC	MALANA LV	169.00	No
48	TWELVE TWELVE, LLC	12/12 DISPENSARY	166.67	No
49	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
50	EUPHORIA WELLNESS, LLC	EUPHORIA WELLNESS	165.16	No
51	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164.32	No
52	SOUTHERN NEVADA GROWERS, LLC	BOWTIE CANNABIS	163.17	No
53	GREENPOINT NEVADA, INC	CHALICE FARMS	161.84	No
54	NEVADA WELLNESS CENTER, LLC	NWC	156.51	No
55	SOLACE ENTERPRISES	THALLO	153.67	No
56	PHYSIS ONE, LLC	LV FORTRESS	153.00	No
57	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152.50	No
58	NEVCANN, LLC	NEVCANN	150.67	No
59	HEALTHCARE OPTIONS for PATIENTS ENTERPRISES, LLC	SHANG0	150.33	No
60	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146.99	No
61	WENDOVERA, LLC	WENDOVERA	145.66	No
62	RELEAF CULTIVATION, LLC	RELEAF CULTIVATION	143.83	No
63	HERBAL CHOICE, INC	HERBAL CHOICE	143.51	No
64	FOREVER GREEN, LLC	FOREVER GREEN	141.34	No
65	CN LICENSECO I, INC	CANA NEVADA	139.01	No
66	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138.66	No
67	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	137.51	No
68	EONEVADA LLC	MARAPHARM LAS VEGAS	137.33	No
69	PHENOFARM NV LLC	MARAPHARM LAS VEGAS	137.33	No
70	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134.17	No
71	BLOSSUM GROUP, LLC	HEALING HERB	125.50	No
72	LYNCH NATURAL PRODUCTS, LLC	LNP	124.00	No
73	RURAL REMEDIES, LLC	DOC'S APOTHECARY	120.16	No
74	NLV WELLNESS, LLC	ETHCX	109.67	No
75	MM R&D, LLC	SUNSHINE CANNABIS	64.66	No
76	THOMPSON FARM ONE, LLC	GREEN ZONE	49.66	No

CLARK COUNTY- UNINCORPORATED CLARK COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
3	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.66	Yes
4	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
5	HELPING HANDS WELLNESS CENTER, INC	HELPING HANDS WELLNESS CENTER	218.50	Yes
6	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
7	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	214.66	Yes
8	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
9	COMMERCE PARK MEDICAL, LLC	THRIVE	212.16	Yes
10	CLEAR RIVER, LLC	KABUNKY	210.16	Yes
11	WELLNESS CONNECTION OF NEVADA, LLC	CULTIVATE	208.50	No
12	CIRCLE S FARMS, LLC	CIRCLE S	208.00	No
13	QUALCAN, LLC	QUALCAN	207.66	No
14	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	205.67	No
15	3AP, INC	NATURE'S CHEMISTRY	202.83	No
16	WSCC, INC	SIERRA WELL	200.83	No
17	LAS VEGAS WELLNESS & COMPASSION CENTER	PEGASUS NV	200.16	RApp. 0595

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
18	ACRES MEDICAL, LLC	ACRES DISPENSARY	198.67	No
19	NATURAL MEDICINE, LLC	NATURAL MEDICINE	197.17	No
20	VEGAS VALLEY GROWERS	KIFF PREMIUM CANNABIS	197.17	No
21	TGIG, LLC	THE GROVE	196.67	No
22	TRNVP098, LLC	GRASSROOTS	196.49	No
23	GRAVITAS HENDERSON, LLC	BETTER BUDS	196.01	No
24	D.H. FLAMINGO, INC	THE APOTHECARY SHOPPE	195.67	No
25	HARVEST of NEVADA, LLC	HARVEST	195.01	No
26	RED EARTH, LLC	RED EARTH	195.00	No
27	GRAVITAS NV	THE APOTHECARIUM	194.66	No
28	ZION GARDENS, LLC	ZION GARDENS	194.17	No
29	GREENSCAPE PRODUCTIONS, LLC	HERBAL WELLNESS CENTER	192.83	No
30	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
31	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
32	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
33	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
34	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190.66	No
35	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.17	No
36	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189.68	No
37	TRYKE COMPANIES SO NV, LLC	REEF	189.33	No
38	FIDELIS HOLDINGS, LLC	PISOS	189.33	No
39	FIDELIS HOLDINGS, LLC	PISOS	189.00	No
40	LVMC C&P, LLC	CANNA COPIA	188.50	No
41	GREEN THERAPEUTICS, LLC	PROVISIONS	187.67	No
42	AGUA STREET, LLC	CURALEAF	187.17	No
43	AGUA STREET, LLC	CURALEAF	186.50	No
44	CWNEVADA, LLC	CANOPI	184.34	No
45	TRYKE COMPANIES RENO, LLC	REEF	181.33	No
46	MATRIX NV, LLC	MATRIX NV	180.33	No
47	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
48	GBS NEVADA PARTNERS, LLC	SHOW GROW	180.17	No
49	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	179.50	No
50	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
51	NEVADA GROUP WELLNESS, LLC	PRIME	178.18	No
52	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	176.34	No
53	NLVG, LLC	DESERT BLOOM WELLNESS CENTER	173.83	No
54	MEDI FARM IV, LLC	BLUM	173.50	No
55	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172.16	No
56	LUFF ENTERPRISES NV, INC	SWEET CANNABIS	171.33	No
57	WEST COST DEVELOPMENT NEVADA, LLC	SWEET GOLDY	168.17	No
58	GOOD CHEMISTRY NEVADA, LLC	GOOD CHEMISTRY	167.17	No
59	TWELVE TWELVE, LLC	12/12 DISPENSARY	166.67	No
60	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
61	NEVADA PURE, LLC	SHANGO LAS VEGAS	165.83	No
62	EUPHORIA WELLNESS, LLC	EUPHORIA WELLNESS	165.16	No
63	FSWFL, LLC	GREEN HARVEST (Have A Heart)	164.83	No
64	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164.32	No
65	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163.83	No
66	SOUTHERN NEVADA GROWERS, LLC	BOWTIE CANNABIS	163.17	No
67	GREENPOINT NEVADA, INC	CHALICE FARMS	160.84	No
68	ETW MANAGEMENT GROUP, LLC	GASSERS	158.17	No
69	NEVADA WELLNESS CENTER, LLC	NWC	155.18	No
70	YMY VENTURES, LLC	STEM	153.83	No
71	MMOF VEGAS RETAIL, INC	MEDMEN	152.67	No
72	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152.50	No
73	NEVCANN, LLC	NEVCANN	150.67	No
74	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146.99	No
75	WENDOVERA, LLC	WENDOVERA	145.66	No
76	NCMM, LLC	NCMM	144.16	No
77	NCMM, LLC	NCMM	144.16	No
78	RELEAF CULTIVATION, LLC	RELEAF CULTIVATION	143.83	No
79	HERBAL CHOICE, INC	HERBAL CHOICE	143.51	No
80	CN LICENSECO I, INC	CANA NEVADA	139.01	No
81	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138.66	No
82	PHENOFARM NV LLC	MARAPHARM LAS VEGAS	137.33	No
83	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	135.84	No
84	DP HOLDINGS, INC	COMPASSIONATE TEAM OF LAS VEGAS	134.82	No
85	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134.17	No
86	NYE FARM TECH, LTD	URBN LEAF	133.34	No
87	GFIVE DISPENSARY, LLC	G5	128.83	No
88	BLOSSUM GROUP, LLC	HEALING HERB	125.50	No
89	GB SCIENCES NEVADA, LL	GB SCIENCES	125.00	No
90	KINDIBLES, LLC	AREA 51	117.50	No
91	KINDIBLES, LLC	AREA 51	117.50	No
92	KINDIBLES, LLC	AREA 51	117.50	No
93	KINDIBLES, LLC	AREA 51	117.50	No
94	NLV WELLNESS, LLC	ETHCX	109.67	No
95	GREENWAY MEDICAL, LLC	GREENWAY MEDICAL	101.00	No
96	MILLER FARMS, LLC	LUCID	88.66	No
97	MM R&D, LLC	SUNSHINE CANNABIS	64.66	No

DOUGLAS COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	GREEN THERAPEUTICS, LLC	PROVISIONS	188.34	Yes
3	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	184.84	No
4	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	148.51	No
5	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146.99	No
6	WENDOVERA, LLC	WENDOVERA	145.66	No
7	NCMM, LLC	NCMM	144.16	No

ELKO COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
2	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.53	No
3	QUALCAN, LLC	QUALCAN	209.66	No
4	HARVEST of NEVADA, LLC	HARVEST	195.01	No
5	JUST QUALITY, LLC	PANACA CANNABIS (HUSH)	163.83	No
6	WENDOVERA, LLC	WENDOVERA	145.66	No
7	H&K GROWERS, CORP	H&K GROWERS	125.83	No
8	LYNCH NATURAL PRODUCTS, LLC	LNP	124.00	No

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
ESMERALDA COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	POLARIS WELLNESS CENTER, LLC	POLARIS MMJ	185.17	Yes
3	BLUE COYOTE RANCH, LLC	BLUE COYOTE RANCH	100.83	No
EUREKA COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	EUREKA NEWGEN FARMS, LLC	EUREKA NEWGEN FARMS	97.67	Yes
HUMBOLDT COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes
2	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146.99	Yes
3	LYNCH NATURAL PRODUCTS, LLC	LNP	124.00	No
4	RURAL REMEDIES, LLC	DOC'S APOTHECARY	119.16	No
5	MILLER FARMS, LLC	LUCID	88.66	No
LANDER COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	TRNVP098, LLC	GRASSROOTS	196.49	Yes
3	HARVEST of NEVADA, LLC	HARVEST	195.01	No
4	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138.66	No
5	RURAL REMEDIES, LLC	DOC'S APOTHECARY	119.16	No
LINCOLN COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes

Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
LYON COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes
2	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.17	No
3	HIGH SIERRA HOLISTICS, LLC	HSH	184.83	No
4	5SEAT INVESTMENTS, LLC	KANNA	162.00	No
5	GREEN LEAF FARMS, LLC	PLAYERS NETWORK	143.17	No
6	FOREVER GREEN, LLC	FOREVER GREEN	141.01	No
7	LYNCH NATURAL PRODUCTS, LLC	LNP	124.00	No
8	MILLER FARMS, LLC	LUCID	88.66	No
9	INTERNATIONAL SERVICES AND REBUILDING, INC	VOODOO WELLNESS	56.00	No

MINERAL COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	TRNVP098, LLC	GRASSROOTS	196.49	Yes

NYE COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
2	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.33	No
3	COMMERCE PARK MEDICAL, LLC	THRIVE	212.16	No
4	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204.01	No
5	TGIG, LLC	THE GROVE	196.67	No
6	TRNVP098, LLC	GRASSROOTS	196.49	No
7	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
8	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
9	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.50	No
10	GREEN LIFE PRODUCTIONS, LLC	GREEN LIFE PRODUCTIONS	180.68	No
11	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
12	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
13	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
14	5SEAT INVESTMENTS, LLC	KANNA	161.67	No
15	NYE FARM TECH, LTD	URBN LEAF	133.34	No
16	NLV WELLNESS, LLC	ETHCX	109.67	No
17	MILLER FARMS, LLC	LUCID	88.66	No
18	MM R&D, LLC	SUNSHINE CANNABIS	64.66	No

PERSHING COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes

STOREY COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	TRNVP098, LLC	GRASSROOTS	196.49	Yes
2	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	146.99	Yes

WHITE PINE COUNTY				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
2	TRNVP098, LLC	GRASSROOTS	196.49	Yes
3	DIVERSIFIED MODALITIES MARKETING, LTD	DIVERSIFIED MODALITIES MARKETING	138.66	No

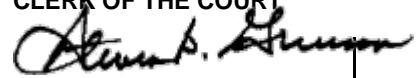
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
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WASHOE COUNTY- RENO				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE TROPICANA, LLC	ESSENCE	227.84	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	Yes
3	DEEP ROOTS MEDICAL, LLC	DEEP ROOTS HARVEST	222.49	Yes
4	CHEYENNE MEDICAL, LLC	THRIVE	216.50	Yes
5	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	Yes
6	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.66	Yes
7	COMMERCE PARK MEDICAL, LLC	THRIVE	212.16	No
8	QUALCAN, LLC	QUALCAN	209.66	No
9	WELLNESS CONNECTION OF NEVADA, LLC	CULTIVATE	208.33	No
10	CIRCLE S FARMS, LLC	CIRCLE S	208.00	No
11	MM DEVELOPMENT COMPANY, INC	PLANET 13 / MEDIZIN	204.01	No
12	WSCC, INC	SIERRA WELL	201.50	No
13	ACRES MEDICAL, LLC	ACRES DISPENSARY	199.84	No
14	TGIG, LLC	THE GROVE	196.67	No
15	TRNVP098, LLC	GRASSROOTS	196.49	No
16	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
17	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
18	FRANKLIN BIO SCIENCE NV, LLC	BEYOND/HELLO	190.66	No
19	LIVFREE WELLNESS, LLC	THE DISPENSARY	190.50	No
20	INYO FINE CANNABIS DISPENSARY, LLC	INYO	189.68	No
21	GREEN THERAPEUTICS, LLC	PROVISIONS	188.34	No
22	BIONEVA INNOVATIONS OF CARSON CITY, LLC	BIONEVA INNOVATIONS	187.67	No
23	HIGH SIERRA HOLISTICS, LLC	HSH	184.83	No
24	GTI NEVADA, LLC	RISE	184.33	No
25	HIGH SIERRA CULTIVATION, LLC	HIGH SIERRA	183.33	No
26	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
27	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
28	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178.50	No
29	NEVADA GROUP WELLNESS, LLC	PRIME	178.18	No
30	WAVESEER OF NEVADA, LLC	JENNY'S DISPENSARY	175.67	No
31	WELLNESS & CAREGIVERS OF NEVADA NLV, LLC	MMD	172.16	No
32	THC NEVADA, LLC	CANNA VIBE	170.99	No
33	HELIOS NV, LLC	HYDROVIZE	167.17	No
34	MMNV2 HOLDINGS I, LLC	MEDMEN	166.83	No
35	GLOBAL HARMONY, LLC	TOP NOTCH	166.34	No
36	FSWFL, LLC	GREEN HARVEST (Have A Heart)	164.83	No
37	NEVADA MEDICAL GROUP, LLC	THE CLUBHOUSE DISPENSARY	164.32	No
38	GREENPOINT NEVADA, INC	CHALICE FARMS	159.84	No
39	NEVADA WELLNESS CENTER, LLC	NWC	155.18	No
40	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152.50	No
41	NEVCANN, LLC	NEVCANN	150.67	No
42	D LUX, LLC	D LUX	149.83	No
43	PURE TONIC CONCENTRATES, LLC	THE GREEN HEART	141.83	No
44	CN LICENSECO I, INC	CANA NEVADA	139.01	No
45	LIBRA WELLNESS CENTER, LLC	LIBRA WELLNESS	134.17	No
46	H&K GROWERS, CORP	H&K GROWERS	126.50	No
47	BLOSSUM GROUP, LLC	HEALING HERB	125.50	No
48	LYNCH NATURAL PRODUCTS, LLC	LNP	124.00	No
49	RURAL REMEDIES, LLC	DOC'S APOTHECARY	120.16	No
50	NEVADA BOTANICAL SCIENCE, INC	VIGOR DISPENSARIES	115.34	No
51	NV GREEN, INC	NV GREEN	105.84	No
52	MILLER FARMS, LLC	LUCID	88.66	No
53	MM R&D, LLC	SUNSHINE CANNABIS	64.66	No

WASHOE COUNTY- SPARKS				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
1	ESSENCE HENDERSON, LLC	ESSENCE	227.17	Yes
2	NEVADA ORGANIC REMEDIES, LLC	THE SOURCE	222.99	No
3	LONE MOUNTAIN PARTNERS, LLC	ZENLEAF	214.50	No
4	GREENMART OF NEVADA NLV, LLC	HEALTH FOR LIFE	213.33	No
5	TGIG, LLC	THE GROVE	196.67	No
6	TRNVP098, LLC	GRASSROOTS	196.49	No
7	CLARK NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	192.01	No
8	NYE NATURAL MEDICINAL SOLUTIONS, LLC	NUVEDA (THE GREEN SOLUTION)	191.67	No
9	SERENITY WELLNESS CENTER, LLC	OASIS CANNABIS	180.17	No
10	CLARK NMSD, LLC	NUVEDA (THE GREEN SOLUTION)	178.84	No
11	ROMBOUGH REAL ESTATE, INC	MOTHER HERB	178.83	No
12	GREENPOINT NEVADA, INC	CHALICE FARMS	161.17	No
13	NULEAF INCLINE DISPENSARY, LLC	NULEAF	152.33	No
14	D LUX, LLC	D LUX	149.83	No
15	CN LICENSECO I, INC	CANA NEVADA	139.01	No
16	RURAL REMEDIES, LLC	DOC'S APOTHECARY	120.16	No

WASHOE COUNTY- UNINCORPORATED WASHOE				
Rank	Business Name	DBA/LOGO	Score	Conditional License Yes / No
NO ALLOCATION				

EXHIBIT 3



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 9
VOLUME II**

WEDNESDAY, JUNE 19, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 Q In Clark County?

2 A Oh, Clark County. It says 41. Unincorporated, 47
3 in Clark County.

4 Q Your records indicate that there were 47 licenses
5 already issued at the time that you opened up the application
6 process, and yet you only issued 31?

7 A Yeah. I don't know what this document -- when it
8 was made or who made it or whatever. It's my understanding
9 that 80 licenses were issued or have been issued, either
10 conditional or final in Clark County.

11 Q But there's no doubt about that requirement, so if
12 there weren't 80 licenses issued, then that would have been an
13 error; correct?

14 A Yes.

15 Q Okay.

16 MR. MILLER: All right. Turn to Exhibit Number 5
17 and let's go to page 8. Go to the red letter.

18 BY MR. MILLER:

19 Q Can you read that red letter to us?

20 A "No applicant may be awarded more than one retail
21 store license in a jurisdiction/locality unless there are less
22 applicants than licenses allowed in the jurisdiction."

23 Q And where is the Department's authority, either in
24 statute or regulation, that they gave you the authority to
25 impose that rule?

1 MR. KOCH: Objection. Legal conclusion.

2 THE COURT: Overruled.

3 THE WITNESS: There is no specific authority but
4 there's no prohibition, either, that I can find.

5 BY MR. MILLER:

6 Q So because you couldn't find a prohibition on it,
7 you thought you could just issue a rule on the application
8 that the applicants would have to abide by?

9 A I did consult with the AG's Office. I had several
10 discussions regarding this.

11 MR. SHEVORSKI: Sir, I want to caution you not to
12 reveal attorney-client privileged communications.

13 THE WITNESS: Yes, sir.

14 THE COURT: But you can say yes or no as to when you
15 consulted with them. So thank you for that.

16 BY MR. MILLER:

17 Q Following that consultation, you put on this
18 application in two places in red lettering this rule. Did you
19 expect the applicants to adhere to it?

20 A Yes.

21 Q You understood that they would read that rule and
22 understand that it should be given meaning and that they
23 shouldn't apply for more than one retail license in a
24 jurisdiction/locality in that jurisdiction because they
25 couldn't be awarded those licenses; correct?

1 whether or not they identified common ownership.

2 A Okay.

3 Q Do you see Duplicate Ownership Identified? For
4 Essence Tropicana and Henderson it says Yes; correct?

5 A Yes.

6 Q Do you recognize that they referenced the
7 application numbers that correspond?

8 A Yes.

9 Q So it's the same owners for Essence Tropicana and
10 Essence Henderson, is that right?

11 A Yes.

12 Q All right. And Cheyenne Medical and Commerce Park
13 Medical?

14 A Yes.

15 Q The same owners; right?

16 A Yes.

17 Q And yet the rule you just read me, you admitted that
18 there was nothing in the law authorizing, told applicants in
19 red letters twice that they couldn't obtain more than one
20 license in a locality, is that correct?

21 A Yes, and we didn't.

22 Q How are they not?

23 A Two different applicants.

24 Q "No applicant may be awarded more than one retail
25 store license in a jurisdiction/locality unless there are less

1 applicants than licenses allowed in the jurisdiction." Will
2 you tell me your interpretation of that is?

3 A So I think applicant is defined in the application
4 as an entity or individual because you can -- I don't know why
5 anyone would, but you can apply as a sole proprietor. So when
6 I look at this, I see Essence Tropicana versus Essence
7 Henderson is -- are two different entities, two different
8 applicants --

9 Q I see.

10 A -- with common ownership.

11 Q So you identified those having duplicate ownership;
12 correct? Is that what that criteria says?

13 A For common ownership, yeah, duplicate ownership.

14 Q It says duplicate ownership; right?

15 A Yes, that's what it says.

16 Q That what it says, duplicate ownership identified,
17 and it says yes, okay. And you're telling me that the
18 distinction that allows them to get around the rule is that
19 that same -- those same duplicate owners have created
20 different LLCs?

21 A Yeah, they're separate entities.

22 Q Oh. So in order to eat all the licenses up, up to
23 the 10 percent for a monopoly, all anybody had to know was
24 they had to just create different LLCs with the same
25 application, is that right?

1 MR. GRAF: Objection, Your Honor. Incomplete
2 hypothetical.

3 THE COURT: Overruled.

4 MR. GRAF: Thank you, Your Honor.

5 THE WITNESS: I don't know if they've gone and
6 created them. I know several -- I believe several applicants
7 applied under different entities with the same ownership. Not
8 all got awarded licenses.

9 BY MR. MILLER:

10 Q Okay. But other licensees, right, may have applied
11 more than once in a jurisdiction with different proposed
12 physical addresses; correct?

13 A Wait, say that again.

14 Q Other proposed licensees that applied multiple times
15 in the same jurisdiction may have provided different proposed
16 physical addresses; correct?

17 A May have, yes.

18 Q Okay. We heard testimony from Mr. Jolley that he
19 submitted identical applications in this regard. If any of
20 those -- if either Essence or Thrive submitted identical
21 applications that were then evaluated, do you think that rule
22 would have been violated? If the only thing that was creating
23 any distinction in the criteria here was the fact that it was
24 labeled under a separate LLC, do you think that they could
25 have still obtained more than once license in a jurisdiction

1 or locality?

2 A I'm not sure I'm getting your question. The
3 applicant is a separate entity. That's what the definition
4 says in the application. Entity slash individual, I believe
5 it says. So ownership interest or ownership is one thing and
6 the entity is another.

7 Q So an applicant with the same owners -- you have
8 identical applications and lists the same proposed physical
9 address but a different entity name was an LLC, they could get
10 more than one license in that jurisdiction?

11 THE COURT: You're asking if each of those separate
12 LLCs could receive a separate license?

13 MR. MILLER: Thank you, Judge. Yes.

14 THE COURT: All right.

15 THE WITNESS: Yes.

16 BY MR. MILLER:

17 Q Do you recall any questions about this rule and how
18 it would be applied?

19 A No.

20 Q You don't know how the industry may have been
21 interpreting that rule; right?

22 A No, I don't.

23 Q And unlike the regulations that were subject to
24 public workshops and arguably approved before the legislative
25 commission, there would have been no public testimony that we

1 can look to in order to figure out what his provision means;
2 right?

3 A No.

4 Q You didn't provide any additional guidance anywhere
5 in the application as to how that rule was going to be
6 interpreted or applied; correct?

7 A No. I think to me it was clear. It says no -- you
8 know, no one applicant. If you looked at -- if you reviewed
9 your application and looked at the definition of applicant, it
10 would be clear that an applicant is an entity or an
11 individual.

12 Q It's clear to you because you wrote it; right?

13 A It could be. I mean, you know, some people don't
14 read the entire application packet.

15 Q Okay. I'm going to ask you a series of hypotheticals
16 based off of some slides I've prepared. Some of these are
17 familiar. We've used at least one of these in your prior
18 testimony. All right. So if had, for the sake of argument,
19 Dr. Evil's Wellness Center application; right?

20 THE COURT: Where's Mr. Kemp? Okay, because he says
21 this is a classic, so we have to all give him credit.

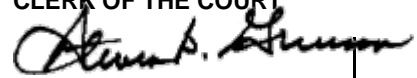
22 MR. KEMP: I'm paying attention, Your Honor.

23 MR. MILLER: Did you lose it, Shane?

24 I.T. TECHNICIAN: Yeah, sorry. One moment.

25 THE COURT: Mr. Rulis, are you okay?

EXHIBIT 4



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 14

FRIDAY, JULY 12, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 that.

2 Q I understand you weren't involved, but you drafted
3 the regulations and that's where the authority to impose rules
4 come from, do they not?

5 A Right. But I wasn't involved in kind of how it was
6 put together and what was in that, so I don't know the
7 thinking behind putting it together this way or any of that.
8 I think it means that you're just notifying people that you're
9 not necessarily entitled to more than one license.

10 Q Not necessarily entitled to more than one license?
11 That's the way you interpret that provision?

12 A Uh-huh.

13 Q It says, "No applicant may be awarded." That's a
14 strict requirement, isn't it?

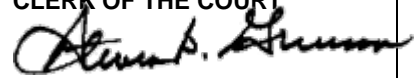
15 A Yeah. And so jurisdiction/locality, I guess that
16 would apply to the different jurisdictions within the county.

17 Q So would you interpret that to mean that an
18 applicant could not obtain more than --

19 A Yeah, so like one in Henderson, one in Vegas, one in
20 Clark County, one in North Las Vegas.

21 Q So if you had -- if an applicant with identical
22 ownership structure who had applied for two licenses in
23 unincorporated Clark County, they would only be given one
24 license; right?

25 A I think so, yes.



NTC
CRAIG D. SLATER, ESQ.
Nevada Bar No. 8667
LUH & ASSOCIATES
8987 W. Flamingo Road, Suite 100
Las Vegas, NV 89147
T: (702) 367-8899 F: (702) 384-8899
cslater@luhlaw.com
CLARK NATURAL MEDICINAL SOLUTIONS LLC,
NYE NATURAL MEDICINAL SOLUTIONS LLC, and
CLARK NMSD LLC.

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE: D.O.T. LITIGATION

CASE NO.: A-19-787004-B
Consolidated with A-785818
A-786357
A-786962
A-787035
A-787540
A-787726
A-801416

DEPT. NO.: 9

**CLARK NATURAL MEDICINAL SOLUTIONS LLC, NYE NATURAL MEDICINAL
SOLUTIONS LLC AND CLARK NMSD LLC'S JOINDER TO MOTIONS FOR PARTIAL
SUMMARY JUDGMENT**

COMES NOW, Plaintiff CLARK NATURAL MEDICINAL SOLUTIONS LLC, NYE
NATURAL MEDICINAL SOLUTIONS LLC, and CLARK NMSD LLC by and through their counsel
of record, CRAIG D. SLATER, ESQ. of the law firm LUH & ASSOCIATES, and hereby files this
Joinder to Motions for Partial Summary Judgment. Specifically, movants join in the following motions:

- 1.) Qualcan, LLC's Motion for Summary Judgment As To The DOT'S Improper Issuance of
Multiple Licenses To A Single Applicant In The Same Jurisdiction – filed on March 13,
2020.
- 2.) ETW Management Group, LLC's Motion for Partial Summary Judgment – filed on March
13, 2020.

1 3.) Nevada Wellness Center, LLC's Motion for Partial Summary Judgment on Second Claim for
2 Relief – Filed on March 13, 2020

3 4.) Nevada Wellness Center, LLC's Motion for Partial Summary Judgment on First Claim for
4 Relief – Filed on March 13, 2020

5 Pursuant to EDCR 2.20(d), the parties designated above incorporate and join the facts and law
6 cited in the motions identified herein as though fully set forth herein. This Joinder is based upon the
7 papers and pleadings on file herein and any oral argument of counsel the Court may entertain at the time
8 of the hearing of this matter.
9

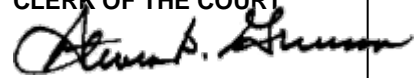
10 DATED this 20th day of **March, 2020**.

11 **LUH & ASSOCIATES**

12 */s/ Craig D. Slater*

13
14

CRAIG SLATER, ESQ.
15 Nevada Bar No. 8667
16 8987 W. Flamingo, Suite 100
17 Las Vegas, NV 89147
18
19
20
21
22
23
24
25
26
27
28



ANSB

Richard D. Williamson, Esq.

State Bar No. 9932

Jonathan J. Tew, Esq.

State Bar No. 11874

Anthony G. Arger, Esq.

State Bar No. 13660

ROBERTSON, JOHNSON, MILLER & WILLIAMSON

50 West Liberty Street, Suite 600

Reno, Nevada 89501

Telephone No.: (775) 329-5600

Facsimile No.: (775) 348-8300

Rich@nvlawyers.com

Jon@nvlawyers.com

Anthony@nvlawyers.com

Attorneys for Deep Roots Medical LLC

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

DEFENDANT DEEP ROOTS MEDICAL, LLC'S ANSWERING BRIEF IN

OPPOSITION TO PETITION FOR JUDICIAL REVIEW

Defendant DEEP ROOTS MEDICAL LLC ("Deep Roots"), by and through its undersigned counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby submits its Answering Brief in Opposition to Petition for Judicial Review. This answering brief is supported by the following memorandum of points and authorities, the papers and pleadings on file herein, and any oral argument that this Court may choose to hear. For the reasons set forth below, the Court should affirm the actions of Nevada Department of Taxation ("DOT") and deny all plaintiffs' petitions for judicial review.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTIONAL STATEMENT**

3 Plaintiffs TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis
4 Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, Medifarm IV, LLC, and
5 other remaining plaintiffs (collectively, “Plaintiffs”) seek judicial review of the DOT’s denial of
6 their recreational marijuana dispensary applications. Yet, this Court does not have jurisdiction
7 over any petition for judicial review because there was no contested case. “Courts have no
8 inherent appellate jurisdiction over official acts of administrative agencies except where the
9 legislature has made some statutory provision for judicial review.” Crane v. Cont’l Tel. Co. of
10 California, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989).

11 Judicial review is reserved for a party to an administrative proceeding that is “aggrieved
12 by a final decision *in a contested case*.” NRS 233B.130 (emphasis added). The Nevada
13 Supreme Court, in considering the availability of judicial review for licensing decisions, recently
14 “held that when the statutory scheme governing an administrative proceeding fails to require
15 notice and opportunity for a hearing, the agency’s final decision in that proceeding was not made
16 in a contested case and thus was not subject to judicial review.” State Dep’t of Health & Human
17 Services, Div. of Pub. & Behavioral Health Med. Marijuana Establishment Program v. Samantha
18 Inc. (“Samantha”), 133 Nev. 809, 813, 407 P.3d 327, 330 (2017). Indeed, as the Samantha Court
19 emphasized, the “Legislature codified this interpretation in the context of judicial review of
20 licensing procedures.” Id.

21 NRS 233B.121 to 233B.150 “do not apply to the grant, denial or renewal of a license
22 unless notice and opportunity for hearing are required by law to be provided to the applicant
23 before the grant, denial or renewal of the license.” NRS 233B.127. The legislative history of
24 NRS 233B.127 goes on to clarify that “[t]here are some instances where people think once they
25 have been denied a license, they can bring it up to the district court for review. That is simply
26 not the case” See Minutes of the Meeting of the Assembly Committee on Government
27 Affairs, Seventy-Eighth Session, February 13, 2015 at 17.

1 Plaintiffs' Opening Brief in Support of Petition for Judicial Review ("Brief") cites to the
2 Defendant/Intervenor, Clear River, LLC's, Order Denying Its Motion for Partial Summary
3 Judgment on the Petition for Judicial Review Cause of Action filed November 7, 2019 ("Order")
4 to justify the Court's jurisdiction over any petition for judicial review. (See Brief at 1:3-2:2.)¹
5 Notwithstanding Plaintiffs' position, however, the application process does not constitute a
6 contested case. The application process did not call for notice and opportunity for a hearing
7 prior to awarding the conditional licenses (or at any time). Therefore, the application process
8 cannot be a "contested case." NRS 233B.032; Samantha, 133 Nev. at 815, 407 P.3d at 331;
9 Private Investigator's Licensing Bd. v. Atherley, 98 Nev. 514, 654 P.2d 1019 (1982).

10 When an agency's decision is not the result of a contested case, judicial review is
11 unavailable as a remedy for those parties disappointed in the decision. See Atherly, 98 Nev. 514,
12 654 P.2d 1019 (citing Southwest Gas Corp. v. Public Serv. Comm'n, 92 Nev. 48, 546 P.2d 219
13 (1976)). Accordingly, the Court does not have subject matter jurisdiction over the Plaintiffs'
14 petition. See generally Washoe Cty. v. Otto, 128 Nev. 424, 434, 282 P.3d 719, 726-27 (2012)
15 (demonstrating that statutory requirements under the APA pertain to subject matter jurisdiction).²

16 Accordingly, since the Plaintiffs cannot meet the contested case requirement, their
17 petition must be denied and no further inquiry into the Plaintiffs' specious arguments on the
18 merits is necessary. Nevertheless, Deep Roots will also dispose of those arguments below.

19 **II. STATEMENT OF THE ISSUES**

20 (1) Whether the DOT's grading process for awarding conditional recreational
21 marijuana licenses to applicants constitutes a "contested case" for purposes of NRS 233B, *et seq.*

22 (2) If so, whether the DOT's grants and denials of conditional recreational marijuana
23 licenses to applicants, which was based on the rankings resulting from an impartial and
24 numerically-scored competitive bidding process, should now be set aside for some reason.

25
26 ¹ The body of Plaintiffs' Brief does not line up with the numbered lines. Deep Roots has used its best judgment to
cite to lines within the Brief as accurately as possible.

27 ² A challenge to the Court's subject matter jurisdiction can be raised by the parties at any time, or *sua sponte* by a
28 court of review, and cannot be conferred by the parties. See Landreth v. Malik, 251 P.3d 163, 166 (2011).
Subject matter jurisdiction may never be waived. See Mainor v. Nault, 120 Nev. 750, 101 P.3d 308 (2005).

1 **III. THE ADMINISTRATIVE RECORD AND THE PSUF**

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

- 5 (a) All pleadings, motions and intermediate rulings.
6 (b) Evidence received or considered.
7 (c) A statement of matters officially noticed.
8 (d) Questions and offers of proof and objections, and rulings
9 thereon.
10 (e) Proposed findings and exceptions.
11 (f) Any decision, opinion or report by the hearing officer presiding
12 at the hearing.

13 NRS 233B.121(7).

14 Initially, the party petitioning for judicial review is to “transmit to the reviewing court an
15 original or certified copy of the transcript of the evidence resulting in the final decision of the
16 agency.” Id. at 1(a). Subsequently, the agency rendering the decision is to “transmit to the
17 reviewing court the original or a certified copy of the remainder of the record of the proceeding.”
18 Id. at 1(b). Virtually none of those things listed above exist (due to the application process not
19 being a contested case in which such documents were necessary or required).

20 Separately, on May 7, 2020, Plaintiffs unilaterally filed a document entitled Plaintiffs’
21 Statement of Undisputed Facts (“PSUF”). In the PSUF, Plaintiffs alleged 137 purportedly
22 “undisputed” facts, and attach 16 lengthy, but incomplete exhibits to support those claims. (Id.)
23 Plaintiffs offered no indication of the purpose of filing this document. In fact, it appears to be a
24 rogue document. To the extent that Plaintiffs are now attempting to use the PSUF in an effort to
25 supplement the administrative record, satisfy any duties that a plaintiff in a judicial review action
26 may have, or otherwise use the PSUF in support of their claims for judicial review, Deep Roots
27 hereby objects. Nonetheless, in an abundance of caution and without waiving its objections,
28 Deep Roots will address the PSUF herein.

On June 12, 2020, the DOT submitted its Record on Review in Accordance with the
Nevada Administrative Procedure Act, including documents showing certain applicants’

1 applications³, the scoring sheets, and the tally sheets relating thereto, which are the evidence
2 submitted to facilitate the DOT's decision. On June 26, 2020, the DOT filed a Supplement to
3 Record on Review in Accordance with the Nevada Administrative Procedure Act. The
4 documents contained within these two filings (collectively, the "Record") provides all relevant
5 evidence that resulted in the DOT's final decision. NRS 233B.131(1)(a).

6 Plaintiffs argue in their Brief that the DOT's Record is insufficient because it fails to
7 include evidence of several alleged wrongdoings. (See Brief at 3-4.) These categories of
8 allegedly omitted documents, however, largely do not relate to the "contested case"⁴ which is to
9 be reviewed by the Court. Instead, these categories of additional documents the Plaintiffs want
10 to add include the confidential applications of successful applicants, how DOT determined
11 certain aspects of the applicants would be scored, various communications between the DOT and
12 some parties, and other documents. (See generally, id.) This information is irrelevant to the
13 supposed "contested case" at issue: the actual scoring of Plaintiffs' applications and subsequent
14 ranking thereof. Indeed, Plaintiffs state the issue in their Brief as "[w]hether the [DOT]'s
15 decisions on granting and denying applications for conditional licenses under NRS Chapter 453D
16 should be set aside." (Brief at 2.) Plaintiffs' own statement of the issue herein is limited to only
17 the actual scoring of the applications and ranking thereof – not the process by which the DOT
18 determined the application's contents, scoring criteria, or pre-deadline communications with
19 applicants. (Id.)

20 The DOT relied upon the submitted applications when it scored the applications and
21 ranked them according to NRS 453D.210(6). Accordingly – at most – only those applications
22 and the scoresheets created based thereon would be relevant to the claims for judicial review.
23 The Record produced by the DOT consists of various parties' applications for the conditional
24

25
26 ³ According to the DOT, a great number of applications were excluded from the Record because the various
parties did not agree to release these otherwise confidential documents.

27 ⁴ By mentioning the "contested case," those documents related thereto, and other aspects thereof, Deep Roots does
28 not concede there was a "contested case." For ease of reading, Deep Roots will not qualify each and every mention
of the "contested case."

1 licenses, the scoring sheets for all applications, and the tally sheets for all applications. (See
2 generally, Record.) Thus, the DOT's Record is the entire record on review.

3 If there was in fact a contested case – which there is not – Plaintiffs' Brief should only be
4 considered to the extent the factual assertions therein are supported by the Record.
5 NRS 233B.135(1)(b) ("Judicial review of a final decision of an agency must be . . . [c]onfined to
6 the record."); NRAP 28(e)(1) ("every assertion in briefs regarding matters in the record shall be
7 supported by a reference to the page and volume number, if any, of the appendix where the
8 matter relied on is to be found."). Plaintiffs' Brief does not cite to the Record even once.
9 Plaintiffs discuss briefly why the Record is insufficient, and argue the PSUF should be
10 considered a supplement thereto. (See Brief at 2:16-5:8.) Plaintiffs' argument is futile because
11 NRS 233B.135(1) explicitly limits when the record may be supplemented: only "in cases
12 concerning alleged irregularities in procedure." Plaintiffs claim their PSUF is submitted
13 "concerning alleged irregularities with the DOT's processes and procedures"; however, *there*
14 *can be no irregularities since there is no contested case and right to a hearing.* (Brief at 5:5-8.)

15 Further, the PSUF concerns significantly more than the alleged irregularities, and, indeed,
16 is the *only* record upon which Plaintiffs' Brief is based, despite numerous instances where the
17 Record could provide evidentiary support (or, as is more often true, show a lack thereof). The
18 PSUF is based upon evidence obtained after the petition was filed with this Court, and in some
19 cases is not based on any evidence at all. (See, e.g., PSUF at ¶¶ 46 ("Kleuver citation to be
20 supplied"), 60 ("Citations to be supplied"), 111 ("Gilbert citation to be supplied").) The PSUF
21 lists 137 facts which Plaintiffs characterize as undisputed, but which the parties have always
22 disputed. Deep Roots and the other defendants have always and do still dispute many of the
23 alleged "facts" put forth in the PSUF.

24 The PSUF is also inappropriate because, according to the Court's Trial Protocol issued
25 March 13, 2020, Plaintiffs' Brief was originally due on March 27, 2020. If Plaintiffs were
26 unable to file their Brief at that time due to the DOT not filing the Record until June 13, 2020,
27 Plaintiffs should have made the Court aware of this *at that time*. Alternatively, Plaintiffs could
28 have proffered their PSUF under NRS 233B.131(1) prior to March 27, 2020. Yet, the Plaintiffs

1 did none of those things and did not even disclose the purpose for which they were filing their
2 PSUF. Accordingly, the PSUF is improper and should not be considered.

3 Accordingly, Plaintiffs should not be allowed to rely upon their untimely and
4 inappropriate PSUF to support any factual allegations made in their Brief. NRS 233B.135(1)(b).

5 Finally, but most importantly, the Court has since denied the Plaintiffs' motion to
6 supplement the record. (See Minute Order dated August 14, 2020, filed and served on
7 August 17, 2020, at 2.) Therefore, the PSUF is entirely inappropriate and should be stricken.

8 **IV. STATEMENT OF THE CASE AND BRIEF OF THE FACTS**

9 In 2016, the legalization of recreational marijuana came before Nevada voters in the form
10 of a ballot question. Voters approved the ballot question and the text thereof was codified as
11 NRS 453D. Among other things, the newly codified statutes provided the process by which
12 recreational marijuana licenses, which were limited, were to be awarded. To facilitate the
13 distribution of these licenses, DOT created an application form and made the same available to
14 the public in July 2018. DOT accepted applications from September 7, 2018 until September 20,
15 2018. In total, 463 applications were submitted to DOT to obtain 61 conditional recreational
16 marijuana licenses. (Record at Part 22, p. 531.)

17 After each application was considered, assigned a score by six third-party graders, and
18 then ranked by score within jurisdictions for which the applicant applied, DOT awarded the
19 available licenses to the top-scoring applicants in each jurisdiction. Each of the Defendants are
20 among those applicants who received the highest scores on their applications within certain
21 jurisdictions, thereby earning a conditional license. (See generally, Record Part 72 (showing
22 ranking within jurisdiction on final score sheets).) The Plaintiffs are among those applicants
23 who did not receive sufficiently high scores to win a conditional license within a jurisdiction.
24 (Id.; Brief at 6:24-26.)

25 Upon notice that their applications had not scored high enough to receive an available
26 license, at least one Plaintiff submitted a request for reconsideration to the DOT. (Record at Part
27 22, 507-511.) DOT rejected this request as no appeal procedure of the scoring, ranking, and
28 ultimate awarding of the conditional licenses was included in NRS 453D. (Id. at 506.)

1 Thereafter, Plaintiffs filed their complaints, which included claims for judicial review,
2 declaratory judgment, writ of mandate, and injunctive relief. Based on these additional causes of
3 action, the parties have engaged in substantial discovery, resulting in thousands of documents
4 produced and numerous depositions taken. At the time the Brief was filed, all parties had been
5 in trial on Plaintiffs' other claims for approximately one week.

6 **V. STANDARD OF REVIEW**

7 "Courts have no inherent appellate jurisdiction over official acts of administrative
8 agencies." Fitzpatrick v. State ex rel., Dept. of Commerce, Ins. Div., 107 Nev. 486, 488, 813
9 P.2d 1004 (1991) (citing Crane, 105 Nev. 399, 775 P.2d 705). This appellate jurisdiction will
10 only arise where the legislature has created statutory authority for the judicial review. Id. The
11 statutory framework provides that judicial review is only available for a party who is
12 "(a) [i]dentified as a party of record by an agency in an administrative proceeding; and
13 (b) [a]ggrieved by a final decision in a contested case." NRS 233B.130(1). A contested case is
14 "a proceeding . . . in which the legal rights, duties or privileges of a party are required by law to
15 be determined by an agency after an opportunity for hearing, or in which an administrative
16 penalty may be imposed." NRS 233B.032. Judicial review of an agency's final decision must be
17 confined to the record. NRS 233B.135(1)(b).

18 "The court [may] not substitute its judgment for that of the agency as to the weight of
19 evidence on a question of fact," but the agency's action may be set aside if the decision violated
20 constitutional or statutory provisions, exceeded the agency's statutory authority, was made upon
21 unlawful procedure, was affected by error of law, was clearly erroneous in view of the reliable,
22 probative, and substantial evidence on the whole record, or was arbitrary or capricious or
23 characterized by abuse of discretion. NRS 233B.135(3). Agency action is only considered
24 arbitrary or capricious if the agency relied on facts a state legislature did not intend the agency
25 consider, entirely failed to consider an important aspect of the issue at hand, offered an
26 explanation for its decision that runs counter to the evidence before an agency, or issued a
27 decision so implausible it could not be ascribed to a difference in view of the product of agency
28

1 expertise. Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co., 463 U.S.
2 29, 43 (1983).

3 The Nevada Supreme Court has “previously accepted the definitions of arbitrary and
4 capricious, respectively, as ‘baseless’ or ‘despotic’ and ‘a sudden turn of mind without apparent
5 motive; a freak, whim, mere fancy.’” City of Reno v. Estate of Wells, 110 Nev. 1218, 1222, 885
6 P.2d 545, 548 (1994) (quoting City Council v. Irvine, 102 Nev. 277, 278-79, 721 P.2d 371, 372
7 (1986)). The court has also noted “‘the essence of the abuse of discretion of the arbitrariness or
8 capriciousness of government action . . . is most often found in an apparent absence of any
9 grounds or reason for the decision,’” or in other words, “[w]e did it just because we did it.”
10 Tighe v. Von Georken, 108 Nev. 440, 442-43, 883 P.2d 1135, 1136 (1992) (quoting Irvine, 102
11 Nev. at 280, 721 P.2d at 372.)

12 **VI. SUMMARY OF THE ARGUMENT**

13 Most critically, this Court cannot consider Plaintiffs’ claims for judicial review without
14 the requisite subject matter jurisdiction. See Otto, 128 Nev. at 431, 282 P.3d at 725 (“only those
15 decisions falling within the [Administrative Proceeding Act]’s terms and challenged according to
16 the APA’s procedures invoke the district court’s jurisdiction.”). Under the APA, a court only has
17 jurisdiction over a petition for judicial review if the petition derives from a “contested case.”
18 NRS 233B.130(1)(b). The Nevada Supreme Court *recently* considered whether the denial of a
19 license relating to marijuana is a “contested case” under almost identical facts and found in the
20 negative. See Samantha, 133 Nev. at 815-816, 407 P.3d at 332. There, the court held, “a
21 disappointed applicant for a medical marijuana establishment registration certificate does not
22 have a right to judicial review under the APA.” Id. Samantha is critically on point and cannot
23 be meaningfully distinguished in any way from the case at hand. Thus, because here, as in
24 Samantha, the application process to obtain a license relating to the sale of marijuana does not
25 constitute a “contested case” under NRS 233B.032’s “plain language,” the Court lacks authority
26 and jurisdiction to consider Plaintiffs’ claims for judicial review. Id. at 814, 407 P.3d at 331.
27 This mandates the denial of the petition and ends the propriety of any further inquiry into the
28 Plaintiffs’ petition. The Court should summarily deny it accordingly.

Furthermore, even if Plaintiffs’ petition was proper and derived from a contested case, Plaintiffs’ substantive arguments therein must also fail. Plaintiffs argue the DOT acted arbitrarily and capriciously or abused its discretion by interpreting the background check requirement to mean only those persons who were board members, directors, and owners of five percent or more of the applicant entities; by irregularly hiring and training the third parties who graded the applications; by engaging in favoritism and selectively sharing information with applicants; by disregarding the physical location of the applicants; by revising a section of the application without following certain procedures; and by disregarding the applicants’ compliance with laws. (Brief at 9:9-12:18.) The Record produced by DOT – *and even the PSUF produced by Plaintiffs* – do not provide evidentiary support of any of these allegedly arbitrary and capricious actions. Further, evidence at trial has shown that the Plaintiffs were just as, if not more so, engaged in the very conduct they claim rendered the DOT’s decisions arbitrary and capricious. Thus, even if the Court were to consider Plaintiffs’ hypocritical substantive arguments, their petition must be denied. Indeed, as reflected in previous briefing, the Plaintiffs should be judicially estopped from making such arguments.

VII. ARGUMENT

A. Samantha Dictates that the Denial of Plaintiffs’ Applications for Conditional Licenses Is Not a “Contested Case” Subject to Judicial Review

As the Nevada Supreme Court’s holding in Samantha has made clear, judicial review is not available to Plaintiffs because the DOT’s process for awarding conditional licenses to sell recreational marijuana was not a “contested case.” Plaintiffs may attempt to argue that the *scoring* of their applications can be a subject of judicial review even if other aspects of the application process cannot. Yet, the Samantha court does not allow for any such parsing of its holding. See Samantha, 133 Nev. at 815, 407 P.3d at 331 (“The statutory and regulatory provisions governing medical marijuana establishments do not envision any form of hearing regarding the Department’s *decisions reviewing and ranking registration certificate applications*” (emphasis added)). On a practical note, the scoring of Plaintiffs’ applications is certainly a part of the “application process.” Plaintiffs cannot designate the entire process of

1 applying for the licenses as ineligible for judicial review, but piecemeal out a single step of the
2 process, *i.e.*, the scoring, and argue it is indeed eligible for judicial review. This argument is
3 similarly fallible and legally untenable because Plaintiffs' arguments within their complaint and
4 the Brief relate primarily to portions of the process besides the scoring. (See generally, Brief.)

5 NRS 233B.121 to 233B.150 "do not apply to the grant, denial or renewal of a license
6 ***unless notice and opportunity for hearing are required by law to be provided*** to the applicant
7 before the grant, denial or renewal of the license." NRS 233B.127 (emphasis supplied); see also
8 Atherley, 98 Nev. at 515, 654 P.2d at 1020. Accordingly, "the APA only provides for judicial
9 review under NRS 233B.130 of final agency decisions in contested cases," and necessarily limits
10 the "availability of judicial review for exercises of agency authority" which "is well-established
11 as legislative prerogative." Samantha, 133 Nev. at 814, 407 P.3d at 330.

12 A thorough review of the legislative history of this statute also indisputably supports the
13 conclusion that this Court does not have jurisdiction over any of the Plaintiffs' claims for judicial
14 review. Namely, during the presentation of Assembly Bill 53, which later became NRS
15 233B.127, the Attorney General's office provided an example of when judicial review was not
16 available. See Minutes of the Meeting of the Assembly Committee on Government Affairs,
17 Seventy-Eighth Session, February 13, 2015 at pp. 14-31. This example depicts almost exactly
18 the situation which has arisen here:

19 [NRS] 233B.010 through NRS 233B.150 is the Nevada
20 Administrative Procedure Act. What that means is all of those
21 provisions regarding the procedures at a district court level for the
22 petitions for judicial review are not applicable to a situation where
23 a board has granted, denied, or renewed a license. If I applied for a
24 license from a board and it was denied due to a lack of experience
to satisfy what the statute required, I have lost my application fee,
and I do not have a license. ***I now cannot file a petition for
judicial review and have a district court review that decision
because it is not a contested case.***

25 Id. at 18-19 (emphasis added). Indeed, in this case, the Plaintiffs and other unsuccessful
26 applicants applied for conditional licenses from the DOT and those applications were denied due
27 to various shortcomings in their applications. (See Record at Vol. 72.) Accordingly, because "it
28 is only staff denying [the] license, [Plaintiffs are] not allowed to file a petition." See Minutes of

1 the Meeting of the Assembly Committee on Government Affairs, Seventy-Eighth Session,
2 February 13, 2015 at 19.

3 In fact, the regulations only allow judicial review in the very limited context of
4 disciplinary hearings. See generally NAC 453D.900-453D.996. But, neither NRS 453D nor
5 NAC 453D allow for judicial review in any other context. Certainly, both the legislature and the
6 DOT know how to grant a right to judicial review. Therefore, the lack of judicial review in this
7 context is no accident. Consistent with this intentional omission and the holding in Samantha,
8 Plaintiffs have no right to seek judicial review of the DOT’s denial of their applications for
9 conditional licenses. “A disappointed applicant for a medical marijuana establishment
10 registration certificate does not have a right to judicial review.” Samantha, 133 Nev. at 815-16,
11 407 P.3d at 332.

12 If there is no statutory right to judicial review, a truly harmed party might be able to seek
13 redress through mandamus, declaratory relief, or injunctive relief, *if warranted*. Samantha, 133
14 Nev. at 812, 816, 407 P.3d at 329, 332. But there is no dispute that a claim for judicial review is
15 inappropriate and must be denied. Id. at 133 Nev. at 813, 407 P.3d at 330.

16 In Samantha, the court addressed the statutory scheme providing for medical marijuana
17 registration certificates which allow holders to sell medical marijuana, among other things.
18 Here, the Court is reviewing a decision relating to recreational marijuana conditional licenses,
19 which allow holders to sell recreational marijuana, among other things. This single difference of
20 medical marijuana versus recreational marijuana is insufficient to render Samantha non-
21 instructive or non-binding. The Samantha court found the process by which the registration
22 certificates were awarded was not a contested case because the statutes did not include any
23 provision calling for judicial review. Samantha, 133 Nev. at 815, 407 P.3d at 331 (discussing
24 NRS 453A and NAC 453A). This was primarily because the legislature, when enacting the
25 applicable statutes in Samantha, did not address “such matters as notice and the opportunity to be
26 heard, see NRS 233B.121(1) & (2), the creation of a reviewable record, see NRS 233.121(7), the
27 issuance of a final agency decision, see NRS 233B.125, and the parties required to be included as
28 respondents in district court, see NRS 233B.130(2).” Samantha, 133 Nev. at 815, 407 P.3d at

1 332. Similar to the legislature’s decision to not consider these factors with respect to medical
2 marijuana registration certificates, the legislature also did not consider or include these factors
3 with respect to recreational marijuana licenses. See generally NRS 453D, *et seq.* Without these
4 required elements of a “contested case,” the process by which DOT accepted applications for
5 recreational marijuana licenses, scored those applications, ranked the scored applications, and
6 ultimately awarded the licenses cannot be considered a “contested case.” NRS 233B.130(1),
7 233B.032.

8 The notice and opportunity to be heard requirement for a contested case may be fulfilled
9 quite simply – which makes the lack thereof in this process all the more glaring. The Ninth
10 Circuit, for example, has held that providing written notice of a proposed action (such as a
11 revocation of a license) and a subsequent informal conference is sufficient to satisfy this
12 requirement of notice and opportunity to be heard. Gilbert v. National Transp. Safety Bd., 80
13 F.3d 364, 367 (9th Cir. 1996) (citing Reid v. Engen, 765 F.2d 1457, 1463 (9th Cir. 1985);
14 Greenwood v. FAA, 28 F.3d 971, 975 (9th Cir. 1994). Nothing in NRS 453D, however, required
15 the DOT to issue any sort of notice to the applicants prior to awarding the licenses or to provide
16 the applicants an opportunity to be heard on the proposed actions.

17 Furthermore, an application process does not generate the type of record that is amenable
18 to judicial review. “When you do not have a hearing because staff denied the license, there are
19 no transcripts or records.” See Minutes of the Meeting of the Assembly Committee on
20 Government Affairs, Seventy-Eighth Session, February 13, 2015 at 19. A record upon which a
21 district court will consider a petition for judicial review “must include” pleadings, motions, and
22 interim rulings made by the agency; evidence received or otherwise considered; statements of
23 officially noticed matters; questions and offers of proof and objections, as well as rulings
24 thereon; proposed findings and exceptions; and any decisions, opinions, or reports by the hearing
25 officer who presides over the hearing. NRS 233B.121(7)(a)-(f). Upon a review of the Record
26 produced by DOT (and the PSUF produced by Plaintiffs), only one of these categories of
27 documents *may* be satisfied: evidence received and considered by DOT. Because no actual
28 hearing was mandated to occur, nor did one occur, a significant portion of a required record

1 simply does not exist. Thus, there was no reviewable record created during the DOT's
2 application process from which this Court could conduct a judicial review.

3 At the end of a required hearing, after a reviewable record has been created, a final
4 agency decision must be issued in order to create a proceeding which can be judicially reviewed.
5 A final agency decision is one possessing four qualities: "(1) it is supported by a reviewable
6 administrative record, (2) it is a definitive statement of the agency's position, (3) it has a direct
7 and immediate effect on the day-to-day business on the party asserting wrongdoing, and (4) it
8 envisions immediate compliance with the order's terms." MacLean v. Department of Homeland
9 Sec., 543 F.3d 1145, 1149, 28 IER Cases 491 (9th Cir. 2008). The letter each of the Plaintiffs
10 received from DOT informing them their applications had not scored highly enough to earn a
11 conditional license is an agency decision, but not a "final agency decision" for purposes of
12 judicial review. (See, e.g., Record at Part 22, p. 540 (form denial letter to Plaintiff Livfree
13 Wellness, LLC).)

14 This letter cannot be considered a "final agency decision" sufficient to warrant judicial
15 review by this Court. As discussed above, there is no reviewable administrative record, and the
16 decision cannot be supported by a non-existent record (although those documents reviewed and
17 produced certainly support the DOT's decision). The letter does not have a "direct and
18 immediate effect on the day-to-day business" of Plaintiffs as Plaintiffs were simply not awarded
19 licenses to expand their businesses. Their existing businesses, and day-to-day operations, were
20 not altered by the Plaintiffs' failure to win a conditional recreational license.⁵ Thus, this letter,
21 while a definitive statement of the agency's position (that Plaintiffs' applications did not score
22 high enough to earn a conditional license), is not a final agency decision due to the lack of
23 administrative record and effect on Plaintiffs' day-to-day business.

24 The final requirement the Samantha court believed the legislature would have included in
25 NRS 453A had it desired judicial review to be available for those unsuccessful applicants is the
26 inclusion of the parties required to be named as respondents in a petition for judicial review.

27
28 ⁵ Plaintiffs state they "were already operating licensed recreational retail marijuana stores" at the time the
application process was taking place. (See Brief at 6:19-24.)

1 Samantha, 133 at 815, 407 P.3d at 331. This is entirely omitted from NRS 453D as is
2 abundantly clear following the motion practice with respect to whether Plaintiffs were required
3 to name each and every applicant in their petition. (See briefing on *Clear River, LLC's Motion*
4 *for Partial Summary Judgment on the Cause of Action for Petition for Judicial Review* and Order
5 (on file).) Courts should infer such omissions are purposeful under the construction canon
6 *expressio unius est exclusion alterius*. Samantha, 133 Nev. at 815, 407 P.3d at 331 (citing 2A
7 Normal J. Singer & Shambie Singer, Sutherland Statutory Construction § 47.23 (7th ed. 2014)).

8 Because the application process – including the scoring of all applications – did not call
9 for notice and opportunity for a hearing prior to awarding the conditional licenses, did not create
10 a reviewable record, did not result in an issuance of a final decision by the DOT, and did not
11 address which parties were to be included as respondents in a petition for judicial review, there is
12 no “contested case” for purposes of judicial review. NRS 233B.121(1); Samantha, 133 Nev. at
13 815, 407 P.3d at 331; Atherley, 98 Nev. at 515, 654 P.2d at 1019-20. When an agency’s
14 decision is not a contested case, judicial review is unavailable as a remedy for those parties to
15 whom the decision is unfavorable. Atherley, 98 Nev. at 515, 654 P.2d at 1020 (citing Southwest
16 Gas Corp., 92 Nev. 48, 546 P.2d 219 (1976)). Thus, Plaintiffs’ petition must be denied as a
17 matter of law.

18 B. No Facts Support Plaintiffs’ Substantive Allegations in the Petition and Brief

19 Despite their best efforts, Plaintiffs have failed to show that the application process was
20 fatally flawed. To the contrary, the highly-qualified graders carried out a lengthy, in-depth, and
21 more than sufficient scoring process.⁶ As a result, the application process satisfied the statutory
22 requirement for a competitive and impartial scoring process and certainly was not carried out in
23 an arbitrary and capricious manner.

24
25
26 ⁶ Judicial review under NRS 233B is to be restricted to the Record. NRS 233B.135(1)(b). Moreover, the Court
27 has denied the Plaintiffs’ motion to expand the record or add extraneous evidence. (See Minute Order dated
28 August 14, 2020, filed and served on August 17, 2020, at 2.) Plaintiffs, however, cite to a huge amount of evidence
outside the Record. (See PSUF.) To the extent that the Court considers any extraneous evidence or in the event that
the Plaintiffs are later allowed to rely on any extraneous evidence, Deep Roots requests leave to provide counter-
designations of additional evidence. Regardless, the Court need not consider the Record or any extraneous evidence
since under Samantha and other controlling law, the Court should deny all claims for judicial review in this case.

1 *i. Owner Background Checks*

2 Plaintiffs first contend DOT acted arbitrarily and capriciously when it decided
3 background checks would only be conducted on those owners owning more than five percent of
4 the entity applying for a conditional license. (Brief at 12:21-24.) NRS 453D.200(6) provides the
5 DOT will conduct background checks of “each prospective owner, officer, and board member”
6 of an applicant. NAC 453D.255(1), on the other hand, calls for background checks on all
7 officers and board members, and only those owners “with an aggregate ownership interest of 5
8 percent or more” in the applicant entity. Plaintiffs argue this subsequent administrative rule was
9 “arbitrary and capricious, an abuse of the DOT’s discretion, and is fatal to the application
10 process.”⁷ (Brief at 14:24-27.)

11 First, there is no doubt that all parties knew of and accepted the regulations and
12 application process now under attack. The regulations were subjected to a rigorous drafting and
13 review process, which included meetings that were open to the public, during which there was no
14 public dissent to the proposed five percent rule.

15 In addition, every plaintiff was aware of the regulations they now profess to attack. Upon
16 receiving the applications in July 2018, neither Plaintiffs nor any of the other plaintiffs in this
17 consolidated case challenged or lodged an objection as to the form or requirements of either the
18 original, July 6, 2018 version of the application or the slightly-updated copy of the application
19 issued on July 31, 2018 (collectively, the “Application”). To be sure, many Plaintiffs and some
20 defendants apparently sought guidance from the DOT, but none of the Plaintiffs challenged the
21 propriety of the application requirements – until they lost.

22 Plaintiffs first argue this decision by the DOT to implement NAC 453D.255(1) was
23 arbitrary and capricious. (Brief at 14:22-27.) The arbitrary and capricious standard is
24 “principally concerned with ensuring that the agency has examined the relevant data and
25 articulated a satisfactory explanation for its action” Sierra Club v. U.S. E.P.A., 774 F.3d
26

27 ⁷ It is important to note that Deep Roots complied with NRS 453D.200(6) and supplied information for a
28 background check for “each prospective owner, officer, and board member of a marijuana establishment license
applicant.”

1 383, 393 (7th Cir. 2014). The explanation should show “a rational connection between the facts
2 found and the choice made, that the agency’s condition was based on a consideration of the
3 relevant factors, and that the agency has made no clear error of judgment.” Id. This standard of
4 review is narrow. National Parks Conservation Association v. Jewell, 62 F. Supp. 3d 7 (D.D.C.
5 2014).

6 “[S]olely being dissatisfied does not demonstrate the [DOT]’s decision was arbitrary and
7 capricious.” Mt. St. Helens Mining and Recovery Ltd. Partnership v. U.S., 384 F.3d 721, 730
8 (9th Cir. 2004) (finding an agency’s reliance upon an appraisal which challenging party argued
9 was based on the wrong date did not render agency’s decision arbitrary and capricious). Thus,
10 without more, Plaintiffs’ argument that DOT’s action in interpreting and implementing the five
11 percent rule was arbitrary and capricious must fail.

12 To the extent Plaintiffs argue the DOT’s five percent rule does not clear the rational basis
13 test (Brief at 13:11), NAC 453D.255 is absolutely “rationally related to a legitimate
14 governmental purpose.” Hamm v. Arrowcreek Homeowners’ Assn., 124 Nev. 290, 301, 183
15 P.3d 895, 903 (2008). The rule attempts to appropriately balance the needs and interests of
16 consumers, non-consumers, local governments, and the industry through efficient and effective
17 regulation that is not unduly burdensome.

18 This rule is also consistent with other industries. To that end, both the administrative
19 provision for medical marijuana (NAC 453A.302), the statutory provision for gaming (NRS
20 463.569), and now the statutory provision for recreational marijuana (NRS 678B.350) abide by a
21 similar “5 percent ownership” rule, making plain that NAC 453D.255 was rationally related to a
22 legitimate governmental purpose; that is, being responsive to consumer, non-consumer, and
23 governmental needs and issues, while simultaneously providing a rational rule that is reasonable
24 and not overly burdensome on either applicants or the state agency.

25 Most importantly, any infirmities with the application of the five percent ownership rule
26 with regard to any specific applications should not undermine the entire licensing process. The
27 five percent ownership rule did not alter the scores in any way, and so did not harm the Plaintiffs
28 or affect the rankings.

1 **ii. Training and Hiring of Graders**

2 Plaintiffs further argue the DOT acted arbitrarily and capriciously in its hiring and
3 training of the application graders. Plaintiffs summarize their argument by stating that the
4 “grading on wholesale subjectivity, rather than based upon an objective methodology, is the
5 definition of arbitrary and capricious conduct and does not otherwise comply with NRS
6 453D.210(6)’s impartiality requirement.” (Brief at 17:10-12.) This overgeneralized statement is
7 both legally baseless and unsupported by any evidentiary support. Plaintiffs cite to selective
8 excerpts of deposition transcripts in their PSUF, but nothing in the actual Record.⁸

9 Moreover, while Plaintiffs may disagree with the methodology, there is no doubt that the
10 DOT and the graders followed clear and consistent scoring rubrics. Thus, their ultimate
11 determinations cannot be classified as “baseless,” “despotic,” or “a sudden turn of mind without
12 apparent motive.” Irvine, 102 Nev. at 278-79, 721 P.2d at 372. Rather, their decisions were
13 rational, based upon sound and reasonable logic, and fair to the applicants.

14 **iii. Applicant Access (Favoritism or Corruption)**

15 Plaintiffs’ next argument claims the DOT acted arbitrarily and capriciously by acting in a
16 way that benefitted “those applicants who had a relationship with Mr. [Jorge] Pupo and his
17 staff.” (Brief at 19:2-3.) To support their argument, Plaintiffs list ten “facts” with citations to
18 their PSUF (which in many cases egregiously misrepresents the evidence cited), and then
19 concludes these actions were arbitrary and capricious. (Id.) Plaintiffs fail to draw any
20 connections between the alleged favoritism or corruption and their claim that the DOT acted
21 arbitrarily and capriciously in the process by which the conditional licenses were awarded.
22 Plaintiffs similarly fail to cite to any evidence which actually shows the actions claimed to be
23 favoritism or corruption. Plaintiffs’ half-baked argument must therefore be rejected.

24 Plaintiffs’ first “fact” relates to “repeated” correspondence between Mr. Pupo and Ms.
25 Amanda Connor. (Brief at 17:28-29.) Plaintiffs cite their PSUF to support this “favoritism and
26

27 ⁸ Again, judicial review under NRS 233B is to be restricted to the Record. NRS 233B.135(1)(b). If the Court is
28 inclined to consider any portion of the PSUF, then it should first grant Defendants leave to provide counter-
designations of additional evidence.

1 corruption.” (Id. (citing PSUF at ¶ 60).) However, Plaintiffs’ PSUF at ¶ 60 states those
2 “citations” supporting this statement “*are to be supplied.*” Deep Roots is unaware of any
3 supplemental citation provided by Plaintiffs. Instead, Plaintiffs have not only completely
4 disregarded the statutory requirement that their petition is to be restricted to the Record, but in
5 attempting to supplement the Record, they also fail to provide evidence supporting this
6 statement.⁹ Plaintiffs’ inflammatory accusation against the DOT (and Ms. Connor) must be
7 disregarded entirely by the Court as no citations have been provided to support the statement.
8 Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 860 P.2d 720 (1993) (holding the court need not
9 consider appellant’s contentions when appellant’s opening brief fails to cite to the record).
10 Further, trial has shown the Plaintiffs to be hypocrites – engaging in the same conduct they
11 repeatedly claim justifies their claims.

12 Plaintiffs’ second fact, that Mr. Pupo allegedly met with representatives of an applicant
13 outside of the DOT for four dinners and one coffee, is similarly not based in fact. (See Brief at
14 18:1-3.) Again, Plaintiffs cite to their PSUF, which in turn cites to evidence outside the Record.
15 (Id.; PSUF at ¶¶ 61, 109.) Although Plaintiffs put forth two separate statements in the PSUF as
16 supporting this fact, each statement is identical and provides identical citations. (See PSUF at ¶¶
17 61, 109.) The cited transcript provides Mr. Pupo was *invited* to two dinners and two lunches
18 with Ms. Connor, who represented some of the applicants. (PSUF Ex. 2, 6/20/19 Transcript at
19 61:10-64:25.) One such dinner included Ms. Connor’s husband; one dinner was skipped by Mr.
20 Pupo; one lunch Mr. Pupo could not recall; and the second lunch included the owner of Thrive.¹⁰
21 (Id.) This testimony does not show four dinners nor any coffee meetings with any person, let
22 alone support Plaintiffs’ claim that four dinners and one coffee meeting took place with the same
23
24

25 ⁹ Each and every assertion in Plaintiffs’ Brief “regarding matters in the record shall be supported by a reference.”
26 NRAP 28(e)(1). Plaintiffs have cited their PSUF to support these facts, which in turn cites to evidence. In this case,
27 however, Plaintiffs’ citation to their PSUF is wholly unsupported by citations to evidence. Instead, their PSUF
28 indicates such citations are forthcoming. To date, no such citations have been produced. Plaintiffs are thus in
violation of NRAP 28(e)(1).

¹⁰ At none of these events did Mr. Pupo discuss the application with Ms. Connor. (PSUF Ex. 2, 6/20/19 Transcript
at 61:10-64:25.)

1 person. (Id.) Plaintiffs’ second fact to support their allegations of favoritism and corruption also
2 fails to find any support in the PSUF and certainly has no support in the Record.

3 Plaintiffs’ eighth fact is similar: it alleges Mr. Steve Gilbert of DOT had four dinner
4 meetings and one coffee meeting with a representative of Essence. (Brief at 18:14-19.)
5 Plaintiffs again cite to their PSUF to support this allegation. (Id. (citing PSUF ¶ 111).) Like the
6 misrepresented support for their first factual allegation, Plaintiffs here cite to a PSUF which
7 states the “citation [is] to be supplied.” (PSUF at ¶ 111.) This abject failure to cite any factual
8 support for their allegations must be fatal to Plaintiffs’ argument to this extent.

9 Plaintiffs’ sixth fact relating to Mr. Pupo allegedly only sharing information regarding the
10 physical location requirement with “select applicants” is similarly rooted in fiction. (Brief at 18:
11 10-12.) This fact cites to the PSUF, which in turn cites to the same report of invitations to
12 dinners and lunches with Ms. Connor as the second fact discussed above. (PSUF ¶ 50 (citing
13 6/20/19 Transcript at 61:10-64:25).) Notably, Mr. Pupo was asked whether he discussed the
14 application with the meeting attendees after being asked to the meetings. (Id.) Mr. Pupo
15 affirmatively stated the application was not discussed. (See id. at 61:24-65:3; 64:7-10.) Thus
16 Plaintiffs’ citations to these transcripts are wholly misplaced as the cited evidence fundamentally
17 disagrees with the claims Plaintiffs make.

18 Even more important than the disproven “facts” Plaintiffs put forth is that there was **zero**
19 **contact** between any applicant (or their representatives) and the graders who scored the
20 applications, and who would thus have been most likely to alter the outcome based on improper
21 influence.

22 The DOT brought in outside graders specifically to ensure they would be impartial. And,
23 to the extent Plaintiffs argue some applicants’ contact with the DOT was unfair, all recreational
24 marijuana applicants appear to have had equal access to the DOT leading up to the September
25 2018 application period, meaning there was no favoritism. (See PSUF Ex. 1, Steve Gilbert
26 30(b)(6) Deposition Transcript (“Gilbert Depo.”) at 50:11-24, 51:17-53:23, 56:19-22, 170:8-20.)
27 The DOT’s apparent “open door” policy makes clear that all applicants were treated similarly,
28

1 thereby disproving Plaintiffs' claims of favoritism. There was thus no arbitrary or capricious
2 favoritism or corruption in the application process.

3 **iv. Incomplete Applications**

4 Plaintiffs make a confident proclamation that the “[e]vidence clearly demonstrates the
5 DOT failed to comply with NAC 453.272(1),” which calls for DOT to ensure each application is
6 complete and in compliance upon receipt. (Brief at 19:13-15.) Once again, the evidence does no
7 such thing. By virtue of Plaintiffs’ very word choice, this allegation should certainly have been
8 *based on the record which was produced by DOT*, which would show whether those applications
9 accepted by DOT were indeed complete and in compliance. (See, e.g., Record at Parts 61-64
10 (showing TGIG’s various applications in redacted form).) Notably, Plaintiffs do not even argue
11 or otherwise state their own applications were complete upon submission to the DOT. (See *id.*)
12 Plaintiffs base their flimsy factual support for this argument on their PSUF which, again,
13 misrepresents the cited evidence. (Brief at 19:9-20:7; PSUF at ¶ 21.)

14 Plaintiffs also seem to be not entirely convinced of their argument, as they state, after
15 citing two paragraphs in their PSUF, that “[t]he record demonstrates that *in evaluating whether*
16 *an application was ‘complete and in compliance’* the DOT made no effort to verify owners,
17 officers, or board members.” (Brief at 19:28-20:2.) This is confounding because, on the one
18 hand, Plaintiffs argue the DOT acted arbitrarily and capriciously in *failing* to “determine
19 applications were ‘complete and in compliance’ [sic],” but on the other hand, argue that the DOT,
20 *while actively evaluating whether an application was complete and in compliance*, failed to
21 consider certain things. (*Id.* at 19:28-20:2.) These two statements are directly opposed and both
22 cannot be true; however, Plaintiffs argue both in their Brief. (*Id.*) As Plaintiffs are apparently
23 not wholly convinced of their argument, neither should the Court be so convinced. Instead, this
24 argument must be denied because there is no credible evidence which supports any conclusion
25 the DOT acted arbitrarily and capriciously with respect to the completeness of the applications.

26 **v. Physical Address**

27 Plaintiffs’ next argument appears to be that the DOT acted arbitrarily and capriciously
28 when it interpreted the physical location requirement contained in NRS 453D.255(5)(b). (Brief

1 at 20:8-12.) Plaintiffs argue this is because the DOT accepted and ranked applications which did
2 not disclose the physical location of the proposed dispensary. (Id. at 20:20-22 (citing PSUF ¶
3 106).) Tellingly, Plaintiffs again omit any citation to the Record evidencing the DOT’s
4 acceptance and ranking of applications which did not disclose such a location. The Record
5 contains multiple applications from about 12 applicants. (See generally Record (where one
6 application is so completely redacted, it is unclear whether it is one application or more).)
7 Certainly, Plaintiffs could and should have found such an incomplete application therein to
8 support this argument.

9 Plaintiffs further argue that DOT’s revision of the language in the application with
10 respect to the physical location was an adoption of a “regulation” by the DOT, which required
11 adherence to NRS 233B. (Id. at 21:1-8.) Plaintiffs fail to explain just how this application, and
12 subsequent amendment thereto, was a “regulation” under NRS 233B.038. (See id.)
13 Furthermore, Plaintiffs also fail to explain how or why this amendment to the application was
14 arbitrary or capricious. Without this reasoning, Deep Roots cannot adequately respond because
15 the truth is clear and simple: the application and revision thereto were not “regulations” under
16 NRS 233B.038 and thus did not require adherence to any specific procedures prior to
17 distribution.

18 Moreover, each of the Plaintiffs knew about this “change” and had access to the
19 Application several weeks *prior* to the Application process, yet failed to attack it until *after* the
20 Application process was completed and they learned they were not awarded any conditional
21 licenses. (See PSUF Ex. 1, Gilbert Depo. at 47:22-49:7; 58:2-11 (explaining that the later,
22 revised version of the application as of July 31, 2018, along with the official announcement
23 thereof, was available to every applicant on the LISTSERV website).) This invokes the
24 doctrines of invited error, laches, estoppel, and waiver, all of which warrant the immediate denial
25 of the entire argument regarding physical locations. Norgart v. Upjohn Co., 981 P.2d 79, 92
26 (Cal. 1999); Catholic Hous. Servs., Inc. v. State Dep’t of Soc. & Rehab. Servs., 886 P.2d 835,
27 840 (Kan. 1994); accord Humbert/Birch Creek Const. v. Walla Walla Cty., 185 P.3d 660, 663
28 (Wash. Ct. App. 2008).

1 As explained in the July 31, 2018 Official Announcement about the *minor* changes to the
2 Application, the second “box” on Attachment A on page 21 went from “Marijuana
3 Establishment’s Proposed Physical Address (this must be a Nevada address and cannot be a P.O.
4 box)” in the original Application form, to “Marijuana Establishment’s proposed physical address
5 *if the applicant owns property or has secured a lease or other property agreement* (this must be
6 a Nevada address and cannot be a P.O. box).” (Compare Supp. Record at P00772 with Supp.
7 Record at DOT 021474 (emphasis added); see also Supp. Record at DOT021453.)

8 As explained by Mr. Gilbert, the DOT revised the Application in an effort to clarify the
9 process, as the DOT was “getting a lot of questions on physical address.” (PSUF Ex. 1, Gilbert
10 Depo. at 50:20-24.) “The confusion was coming whether they needed to own or lease the
11 building or just have a location or have an address. There was confusion out there on that.” (Id.
12 at 52:5-8.) Indeed, the updated Application form was the result of “information [the DOT] got
13 and questions that [the DOT] got *from the industry, the applicants, potential applicants.*” (Id.
14 at 56:19-22; 53:20-23 (emphasis added).)

15 Importantly, the DOT determined that *both* versions of the application form complied
16 with the regulations before publication, as each version satisfied the physical address component
17 of NRS 453D.210(5)(b) and NAC 453D.265(1)(b)(3). (Id. at 45:4-15, 66:25-67:2.) Efforts by
18 the DOT to add a sentence to the Application in an effort to assist and otherwise clarify the
19 Application for all applicants are not arbitrary and capricious.

20 *vi. Disregarding Compliance Records of Applicants*

21 Plaintiffs finally argue the DOT acted arbitrarily and capriciously in “disregard[ing] the
22 mandatory statutory and regulatory provisions by ignoring [the] compliance records of
23 applicants.” (Brief at 24:8-10.) In so arguing, Plaintiffs misconstrue the facts. Plaintiffs appear
24 to base their argument on one applicant, Essence, having been “investigated for sales to minors.”
25 (Id.) Plaintiffs’ cite to only favorable snippets of a deposition transcript and fail to consider the
26 entire line of questioning to which they cite. (Brief at 23:15-24:7.) Therein, the DOT states it
27 completed a compliance check by “look[ing] at the applications that were received versus the
28 standing that the applicant had on record, [including] whether they were, you know, suspended

1 or revoked in the extreme case.” (PSUF Ex. 1, Gilbert Depo. at 118:23-119:12.) In addition, the
2 application itself repeatedly confirmed that one of the requirements was to include “[a]n
3 operations manual *that demonstrates compliance with the regulations* of the Department.”
4 (Supp. Record at P00765, P00768, DOT021467, DOT021470 (emphasis added).) This certainly
5 does not support Plaintiffs’ argument that the DOT failed to consider the applicants’ compliance
6 with various laws. Accordingly, Plaintiffs have again failed to show that the DOT engaged in
7 any arbitrary or capricious actions that affected their applications.

8 **VIII. CONCLUSION**

9 The Court must deny Plaintiffs’ petition as a procedural matter because the denial of
10 these conditional licenses was not a “contested case” according to Samantha. Alternatively, if
11 the Court chooses to depart from the holding in Samantha, the Court must still deny Plaintiffs’
12 petition because Plaintiffs’ substantive arguments lack merit and have no evidentiary support.

13 The Plaintiffs have failed to demonstrate that the DOT’s actions were “baseless,”
14 “despotic” or “a sudden turn of mind without apparent motive; a freak, whim, mere fancy.”
15 Estate of Wells, 110 Nev. at 1222, 885 P.2d at 548 (quoting Irvine, 102 Nev. at 278-79, 721 P.2d
16 at 372). While the Plaintiffs may understandably disagree with the outcome of the 2018
17 application process, they have no right to judicial review and have also demonstrated no basis to
18 reverse the DOT’s decision. Therefore, Deep Roots respectfully requests this Court **deny**
19 Plaintiffs’ petitions for judicial review.

20 DATED this 21st day of August, 2020.

21 ROBERTSON, JOHNSON,
22 MILLER & WILLIAMSON
23 50 West Liberty Street, Suite 600
24 Reno, Nevada 89501

25 By: /s/ Richard D. Williamson
26 Richard D. Williamson, Esq.
27 Jonathan Joel Tew, Esq.
28 Anthony G. Arger, Esq.
Attorneys for Deep Roots Medical LLC

1 **AFFIRMATION**

2 I hereby certify that this brief complies with the formatting requirements of NRAP
3 32(a)(4), and the type style requirements of NRAP 32(a)(6).

4 I further certify that this brief complies with the page- or type-volume limitations
5 of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it
6 does not exceed 30 pages.

7 Finally, I hereby certify that I have read this brief, and to the best of my knowledge,
8 information, and belief, it is not frivolous or interposed for any improper purpose. I further
9 certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in
10 particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the
11 record to be supported by a reference to the page and volume number, if any, of the transcript or
12 appendix where the matter relied on is to be found. I understand that I may be subject to
13 sanctions in the event that the accompanying brief is not in conformity with the requirements of
14 the Nevada Rules of Appellate Procedure.

15 DATED this 21st day of August, 2020.

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

20 By: /s/ Richard D. Williamson
21 Richard D. Williamson, Esq.
22 Jonathan Joel Tew, Esq.
23 Anthony G. Arger, Esq.
24 *Attorneys for Deep Roots Medical LLC*
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of
4 eighteen, and not a party within this action. I further certify that I e-filed and served the
5 foregoing **DEFENDANT DEEP ROOTS MEDICAL, LLC'S ANSWERING BRIEF IN**
6 **OPPOSITION TO PETITION FOR JUDICIAL REVIEW** to all parties listed on the Court's
7 Master Service List via the Clerk of the Court by using the electronic filing system on the 21st
8 day of August, 2020.

9 DATED this 21st day of August, 2020.

10 /s/ Teresa Stovak

11 An Employee of Robertson, Johnson, Miller & Williamson
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APPEARANCES (ALL TELEPHONIC) :

FOR THE PLAINTIFFS:

WHITNEY J. BARRETT, ESQ.
ADAM K. BULT, ESQ.
SIGAL CHATTAH, ESQ.
PETER S. CHRISTIANSEN, ESQ.
JENNIFER A. DELCARMEN, ESQ.
NICOLAS R. DONATH, ESQ.
MARK S. DZARNOSKI, ESQ.
MAXIMILIEN D. FETAZ, ESQ.
THEODORE PARKER, III, ESQ.
JAMES W. PUZEY, ESQ.
NATHANAEL R. RULIS, ESQ.
CRAIG D. SLATER, ESQ.
STEPHANIE J. SMITH, ESQ.
AMY L. SUGDEN, ESQ.

FOR THE DEFENSE:

STEVEN G. SHEVORSKI, ESQ.
TODD L. BICE, ESQ.
CLARENCE E. GAMBLE, ESQ.
J. RUSTY GRAF, ESQ.
JOSEPH A. GUTIERREZ, ESQ.
ERIC D. HONE, ESQ.
RICK R. HSU, ESQ.
KIEL B. IRELAND, ESQ.
JARED B. KAHN, ESQ.
DAVID R. KOCH, ESQ.
KIRILL V. MIKHAYLOV, ESQ.
CHRISTOPHER L. ROSE, ESQ.
ANDREW J. SHARPLES, ESQ.
ALINA M. SHELL, ESQ.
JORDAN T. SMITH, ESQ.
JONATHAN J. TEW, ESQ.
RICHARD D. WILLIAMSON, ESQ.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 8, 2020, 9:01 A.M.**

2 * * * * *

3 THE COURT: Mr. Dzarnoski, your PowerPoint doesn't
4 have page numbers on it. How am I going to follow along with
5 you?

6 MR. DZARNOSKI: I'm sorry, Your Honor. I could not
7 hear you.

8 THE COURT: Mr. Dzarnoski, your PowerPoint does not
9 have page numbers on it. How am I going to follow along with
10 you.

11 MR. DZARNOSKI: Page numbers did you say?

12 UNIDENTIFIED SPEAKER: Page numbers.

13 MR. DZARNOSKI: Oh, page numbers.

14 THE COURT: Page numbers or slide numbers.

15 Yeah. Okay. So we'll just give it our best shot.
16 Okay.

17 MR. DZARNOSKI: I can (indiscernible).

18 THE COURT: Nevermind, Mr. Dzarnoski. I can't fix it
19 now.

20 Mr. Parker, you had a request you want to make of us?

21 MR. PARKER: I did, Your Honor. I would ask only
22 because I will be on the plane tomorrow morning, but I land at
23 9:10. If we could start court at 9:30.

24 THE COURT: Does anyone have an objection?

25 Then I guess we'll start at 9:30 tomorrow,

1 Mr. Parker. Thank you.

2 MR. PARKER: Thank you so much, Your Honor.

3 Thank you, everyone.

4 THE COURT: All right. So is there anything else
5 before I go to Mr. Dzarnowski?

6 (No audible response.)

7 THE COURT: Mr. Dzarnoski, it's your petition for
8 judicial review.

9 MR. DZARNOSKI: I'm trying to find a better location
10 here (indiscernible) my office. I heard my name, but I
11 (indiscernible).

12 THE COURT: Mr. Dzarnoski, it is now time for you to
13 start your argument.

14 MR. DZARNOSKI: Thank you. (Indiscernible) motion on
15 moving to a better (indiscernible).

16 Can you hear me okay?

17 THE COURT: Yes, we can hear you but not well because
18 you're on a speakerphone.

19 Does anybody know how to switch to --

20 (Pause in the proceedings.)

21 MR. DZARNOSKI: I'm trying to decide whether to call
22 in on a different phone then. If you're not hearing me well.

23 THE COURT: Mr. Dzarnoski, if you have me on a
24 speakerphone and you are not right up against it, it is going
25 to be difficult for me to hear you.

1 MR. DZARNOSKI: I have to call in on (indiscernible)
2 new connection. It's not working.

3 THE COURT: Okay.

4 MR. DZARNOSKI: Hang up and call in.

5 (Pause in the proceedings.)

6 MR. KAHN: Your Honor, this is Mr. Kahn. I'm not
7 sure (indiscernible). I don't believe we were circulated the
8 PowerPoint that Mr. Dzarnoski is going to be referencing.

9 THE COURT: Well, that would be a problem for
10 Mr. Dzarnoski. He needs to send it to you, or Mr. Hunt or
11 Mr. Gentile or Mr. Miller.

12 MR. SHEVORSKI: This is Steve Shevorski. The State
13 has not received it.

14 THE COURT: So we need to circulate the PowerPoint so
15 everybody has whatever it is I'm supposed to look at during
16 Mr. Dzarnoski's argument.

17 Mr. Hunt, can you have somebody take care of that?

18 THE COURT RECORDER: I don't know if he's on the
19 phone.

20 THE COURT: He's not on the phone?

21 THE COURT RECORDER: John Hunt. It's only Dzarnoski.

22 MR. DZARNOSKI: This is Mark Dzarnoski. I'm calling
23 back in.

24 THE COURT: Mr. Dzarnoski, did you circulate your
25 PowerPoint --

1 MR. DZARNOSKI: Yes.

2 THE COURT: -- to all counsel?

3 MR. DZARNOSKI: It should be in the process of going
4 out, Your Honor, to all counsel, yes.

5 THE COURT: So we're not going to start until they
6 have it.

7 Mr. Shevorski, let me know when you get it.

8 MR. SHEVORSKI: Yes, Your Honor.

9 (Pause in the proceedings.)

10 MR. DZARNOSKI: While that is going out, Your Honor,
11 is this a better connection for you to hear me?

12 THE COURT: Yes, Mr. Dzarnoski, it is a better
13 connection.

14 (Pause in the proceedings.)

15 MR. DZARNOSKI: Now, just to advise the Court and
16 counsel, Mr. West has sent the PowerPoint on that massive email
17 distribution list. So you'll see his name instead of mine. So
18 pay attention if it pops up.

19 THE COURT: Mr. Shevorski, let me know when you get
20 it.

21 MR. SHEVORSKI: Yes, Your Honor. Not as of yet.

22 (Pause in the proceedings.)

23 MR. DZARNOSKI: I just -- again, to advise the Court
24 and counsel, my name was on that list. I did receive, just
25 now, the PowerPoint. It is from an A. West at Land Systems.

1 It says, RE Conference Call. So it has the attached
2 PowerPoint.

3 MR. SHEVORSKI: Yeah, this is Steve Shevorski. I
4 still don't have it, but obviously I work for the State. So it
5 may be -- the problem may be on my end, but I don't have as of
6 yet.

7 THE COURT: Do any of private counsel who do not work
8 for the State of Nevada have the PowerPoint yet?

9 MR. WILLIAMSON: This is Rich Williamson. I do not.

10 THE COURT: Mr. Smith, what about you?

11 MR. J. SMITH: (No audible response.)

12 THE COURT: So only your internal emails got it,
13 Mr. Dzarnoski. We're still waiting.

14 THE CLERK: Your Honor, I just received a PowerPoint
15 from Mr. Slater. It was just sent to me. So I don't know --

16 THE COURT: Mr. Slater, you sent a PowerPoint to
17 Dulce just now. It needs to be sent to all counsel.

18 MR. SLATER: I will address that upon receipt of
19 Mr. Dzarnoski's. I will attach mine and send it all. I don't
20 know that I will use the PowerPoint, but just in case, I want
21 everyone to have it.

22 THE COURT: Thank you.

23 (Pause in the proceedings.)

24 THE COURT: So, Mr. Dzarnoski, we're going to mark as
25 Court Exhibit 1. That means Mr. Slater's will be Court

1 Exhibit 2. We'll just go sequentially as you get more.

2 So, Mr. Shevorski, I work for the county, and we
3 don't have it -- or for a county computer system, and we don't
4 have it yet over here either.

5 MR. SHEVORSKI: I still don't have it, Your Honor.

6 THE COURT: I know. But the County's web server
7 hasn't gotten it yet either, Mr. Shevorski. So it's not just
8 the State because Dulce doesn't have it yet.

9 MR. SHEVORSKI: That makes me feel a little better.

10 THE CLERK: Okay. I have one here that says,
11 "PowerPoint in new order. Use this one," from Mr. West. It's
12 now 82 pages. That one was 86 pages. It was just addressed to
13 me.

14 (Pause in the proceedings.)

15 MR. SLATER: Your Honor, Craig Slater. I just
16 received Mr. Dzarnoski's email.

17 THE COURT: Does it have an attachment to it?

18 MR. SLATER: It does.

19 THE COURT: Lovely.

20 Everybody else have it now?

21 MR. SHEVORSKI: I do not, Your Honor. This is Steve
22 Shevorski.

23 THE COURT: Dulce, have you gotten it yet?

24 THE CLERK: I have the new order one, the 82 --

25 THE COURT: But is it addressed to all counsel or

1 just you?

2 THE CLERK: Just me.

3 THE COURT: Okay. So we still don't have it yet.

4 MR. BICE: This is Todd Bice, Your Honor. We just
5 received it.

6 THE COURT: Good. It's nice to know --

7 MS. CHATTAH: Judge, this is Sigal Chattah. I just
8 received it as well.

9 THE COURT: All right. It's nice to know what the
10 delay is for various carriers. The County's Internet doesn't
11 have it yet.

12 (Pause in the proceedings.)

13 THE COURT: Mr. Shevorski, you got it yet?

14 MR. SHEVORSKI: I do not, Your Honor.

15 THE COURT: All right. Well, since you are the
16 central figure in this, I need you to get it. So we'll just
17 wait patiently while we wait for the State and County Internet
18 to catch up with the rest of private counsel.

19 (Pause in the proceedings.)

20 MR. SHEVORSKI: Your Honor, this is Steve Shevorski.
21 Did the County get it yet?

22 THE COURT: No. Did the State?

23 MR. SHEVORSKI: No.

24 THE COURT: Darn.

25 Now, Dulce did receive one from Mr. West, but it was

1 not addressed to anybody else, just to her. So she received a
2 PowerPoint, "In new order. Use this one," but that's not the
3 one that was sent to all counsel.

4 MR. SHEVORSKI: There might be something going on
5 with my server, Your Honor, because I think Jordan tried to
6 send it to me as well. I have not received his email.

7 THE COURT: Well, it's important you have it. So
8 give me your email address, Mr. Shevorski, and I will try and
9 forward it to you as well.

10 (Pause in the proceedings.)

11 MR. SHEVORSKI: Got it, Your Honor.

12 THE COURT: Great. Mr. Dzarnoski, you may begin.

13 MR. DZARNOSKI: Okay. I think -- I think I
14 (indiscernible). So everybody -- I'm sorry, Your Honor. The
15 State got it. So you're saying go ahead. Is that correct?

16 THE COURT: That is correct.

17 MR. DZARNOSKI: Thank you, Your Honor. I apologize.
18 It's a big list. Apparently it goes out slowly.

19 In any case, Your Honor, where I would like to begin
20 is where this litigation actually all did began which was with
21 the adoption of NRS 453D.02 -- or 453D through the ballot
22 initiative, and I would like to highlight several of the
23 statutes and regulations that I'll be discussing throughout my
24 presentation. And so in my PowerPoint, what I have done is I
25 have presented so people can see the relevant provisions of

1 various statutes and regulations. It is edited to only include
2 the areas that I wanted to highlight at this point of the
3 presentation.

4 So I'm starting with NRS 453D.020. The portion that
5 I wanted to highlight was the paragraph 3, which states that,

6 The people of the State of Nevada have
7 proclaimed that marijuana should be regulated
8 in a manner similar to alcohol.

9 And the important items were in subparagraph (b),
10 that,

11 Business owners are subject to a review
12 by the State of Nevada to confirm that the
13 business owners and the business location are
14 suitable to produce or sell marijuana.

15 Throughout this litigation, I think we spent a lot of
16 time discussing the fact that all business owners are to be
17 background checked -- checked, but I wanted to also highlight
18 the fact that the ballot initiative did discuss as part of the
19 rationale of the findings and declarations the importance of a
20 business location being suitable to produce and sell marijuana.

21 The next statute that I wanted to at least discuss
22 was 453D.200, and again, I've included a brief synopsis or a
23 brief edit of that next statute in my PowerPoint, and it
24 indicates that obviously the Department is to approve or deny
25 applications pursuant to 453D.210, and in so -- in paragraph 6,

1 the statutory statement that,

2 The Department shall conduct a
3 background check of each prospective owner,
4 officer, and board member of a marijuana
5 establishment applicant.

6 So moving to what the statute itself has indicated,
7 the applications are to be guided by, which is NRS 453D.210,
8 the Department was directed to send out applications, and I
9 wanted to highlight subparagraph 4 because the issue of was a
10 completed application, and it's going to weigh heavily in my
11 presentation today and how the administrative record
12 demonstrates that there were not completed applications that
13 were submitted and ranked and scored, and that license was
14 granted.

15 The subparagraph 4 -- or paragraph 4 453D.210 states
16 that upon receipt of a completed -- a complete marijuana
17 establishment license application that the Department then
18 needs to issue its licenses within 90 days. And paragraph
19 5 specifically states that the Department shall approve the
20 license application if the prospective marijuana establishment
21 submitted an application in compliance with the regulations
22 adopted by the Department and of course paid the application
23 fee. And so the application again must be in compliance with
24 the regulations in order for a license to be awarded.

25 Then in subparagraph 5B, it clearly states the

1 importance of the physical address stating the physical address
2 where the proposed marijuana establishment will operate is
3 owned by the applicant or the applicant has written permission
4 of the property owner to operate on that property.

5 MR. SHEVORSKI: Your Honor, may I be heard briefly on
6 this?

7 THE COURT: Yes.

8 MR. SHEVORSKI: I apologize for interrupting oral
9 argument, but I want to make sure that I am not trying an issue
10 by consent.

11 The proceeding on judicial review, the only two
12 parties are the Department of Taxation and the individual
13 plaintiffs. The record on review consists of their
14 applications only, and the contested case is the scoring of
15 those applications pursuant to Your Honor's order. And to the
16 extent that counsel seeks to expand that record and expand the
17 issues upon judicial review, the State objects.

18 THE COURT: Thank you, Mr. Shevorski. I understand
19 your objection, and I am going to limit my ruling in that
20 fashion; however, I'm not going to interrupt Mr. Shevorski's
21 (sic) argument. I have given the plaintiffs a day among
22 themselves, and they can use it however they want.

23 Keep going --

24 MR. SHEVORSKI: Thank you, Your Honor.

25 THE COURT: -- Mr. Dzarnoski.

1 But your objection is noted, Mr. Shevorski, and it
2 was contained in your briefing as well.

3 Mr. Dzarnoski, keep going.

4 MR. DZARNOSKI: Thank you, Your Honor. Hopefully I
5 will tie this all together by the end of the presentation so
6 that even Mr. Shevorski will see that it is tied to the limited
7 scope of the judicial review.

8 In any case, 453D.210 also in paragraph 6 sets up the
9 concept that if there are competing applications, then for a
10 limited number of spots that we get to or have to use an
11 impartial and numerically scored competitive bidding process to
12 determine which application or applications would be approved.

13 NRS 233D.135 is the statute -- is the
14 administrative -- 233B.135, not D, that's a misprint on the
15 PowerPoint. 233B.135 is the administrative procedure act, and
16 the portion of that statute clearly states that in cases
17 concerning alleged irregularities in the procedure before the
18 agency that are not shown in the record, the Court may receive
19 evidence concerning the irregularities.

20 Now, I know, and I do -- I know we filed a motion
21 before the opening brief, Your Honor, requesting the
22 opportunity to do just that. I respect your under --
23 understand and respect your decision in that regard; however,
24 throughout the presentation today, I will be making an offer of
25 proof at various locations to highlight the additional evidence

1 that was deduced or adduced through the trial record in the
2 case in some instances that I believe would appropriately be
3 considered in addition to the administrative record, and I
4 don't expect your decision to change, but I will put my offer
5 of proof on the record.

6 Subparagraph 3 is what we're basically asking you to
7 do. These are the things that you can do in paragraph 3 of
8 233B.135 if, based upon what you review on the administrative
9 record, and it says that you can remand or affirm the final
10 decision, set it aside in whole or in part if the substantial
11 rights of petitioner or my clients have been prejudiced for any
12 number of reasons.

13 Those reasons are outlined in the statute and include
14 violation of constitutional or statutory provisions, the fact
15 that the Department acted in excess of its statutory authority
16 in connection with the (indiscernible), that it acted in an
17 arbitrary or capricious fashion in establishing the overall
18 system in the way my clients' application were scored and
19 ranked, or were characterized by an abuse of discretion.

20 And I believe that both the administrative record as
21 well as the offer of proof that I'll make certainly will
22 establish that at least three grounds exist to challenge the
23 agency decision here with respect to my clients.

24 One of the -- one of the things in terms of the
25 agency acting beyond or in violation of constitutional or

1 statutory provisions, of course comes from a decision that you
2 already have made on summary judgment which was that the
3 adoption of NAC 453D.255, which is more commonly known in our
4 litigation as the 5 percent rule, that that constituted
5 arbitrary and capricious deviation from the balloting
6 initiative and that that was inappropriate.

7 And what we will see or what I will be able to
8 demonstrate today is that part of the applicants in this
9 warring pool that my clients were thrown into, in fact, did not
10 have applications that were compliant because of application of
11 NAC 453D.255, which you have already ruled as an arbitrary and
12 capricious act.

13 NAC 453D.260, which I also have basically sets
14 fourth, you know, what is step 1 in this process of review that
15 we're looking at, and that is that this section that the
16 Department is supposed to determine how many licenses to issue,
17 and then the process really starts when a notice of a request
18 for applications to operate the marijuana establishment -- to
19 operate a marijuana establishment is circulated in conformity
20 with 453D.260, which means that according to Section 1A the
21 Department was required to post on its Internet website the
22 notice requesting applications.

23 Pursuant to subparagraph B, it was to post a copy of
24 the request for applications at the principal office of the
25 Department and, (c), to make notification of posting locations

1 using the electronic mailing list maintained by the Department
2 for marijuana establishment information.

3 I'm going to talk a little bit more detail about this
4 in a moment, but the important thing is this doesn't say that
5 it would be sufficient notice under 453D.260 to post an
6 application or a notice solely on a Listserv. It's very
7 specific as to where the Department is to make certain postings
8 to advise people of the existence of the application and the
9 process.

10 And then, of course, we get to 453D.268, and although
11 I have this and may refer to it in the detail at a later time,
12 all I need to do at the present time is to suggest that this
13 really is the -- this is -- identifies and defines in
14 Subsection 2 -- in paragraph 2, I'm sorry, that the -- what
15 must be in the application, and this is -- this is going to be
16 important in terms of how this interacts with the scoring
17 process that we are challenging.

18 And the three things that I wanted to highlight at
19 this point are the Subsection 2(e), which clearly states that
20 the application must include the physical address of the
21 proposed marijuana establishment. Under 2(f), I just wanted to
22 point out that it also asks and requires a mailing address, and
23 it puts those into different paragraphs. So obviously in
24 adopting this, the physical address where the proposed
25 marijuana establishment is to be located is separate and

1 distinct from a mailing address, which we will see many
2 applicants used.

3 There also is requirements for organizational charts
4 showing all owners, officers and board members; a list of all
5 owners, officers and board members; the race and ethnicity of
6 each owner, officer, board member; and other items that I will
7 probably come back to during the course of my presentation.

8 NAC 453D.272 sets forth what happens if more than one
9 application for a license in a jurisdiction is made and that
10 there's more applications than there are licenses to be
11 granted. And in sub -- in paragraph 1, of utmost importance is
12 the regulation specifically said that the Department determines
13 that more than one of the applications is complete and in
14 compliance with this chapter in Chapter 453 NRS. And it states
15 if -- if one or more -- more than one application is completed
16 and in compliance, then and only then will the Department then
17 rank the applications. And then and only then will the
18 Department score applications and look at the content of the
19 application. So there's the two-step process there dealing
20 with a determination of completeness and compliance and then
21 and only then going to scoring.

22 There are other portions of 272 that we may get to in
23 a moment, but I did want to highlight as well NAC 453D.312,
24 which comes into play. And paragraph 1 of 453D.312
25 specifically commands, demands that the Department will deny an

1 application for issuance or renewal of a license if, A, the
2 application for the marijuana establishment is not in
3 compliance with any provision of this chapter or Chapter 453D.
4 In other words, stated differently, if the application is
5 incomplete because it does not include information that must be
6 put in the application, then 453D.312 demands that that
7 application be denied, and that can be denied without reference
8 to whether it's gone into the scoring bin or not.

9 Also in subparagraph B, (b)(3), this regulation
10 commands that a application be denied if an owner, officer or
11 board member provides false or misleading information to the
12 Department. And as we will see, as we go forward in this
13 presentation, and as you saw during the trial, the applications
14 of many of the individuals, applicants did, in fact, contain
15 false information and misleading information specifically
16 regarding the property location.

17 So I have created a slide, sort of a summary slide
18 (indiscernible) process, and it identifies from these statutes
19 and regs that I have just quickly gone through the five-step
20 process that I think is under review in the judicial review.

21 (Indiscernible) Step 1, there's a notice of
22 application period and the circulation of a legally compliant
23 application. And that is -- derives from NAC 453D.260.

24 Step 2 is, that upon the submission of an application
25 the D.O.T. needed to make a determination of whether it was

1 complete and in compliance with the regulations, and there's a
2 string of regulations and statutes that I've cited where that
3 step is discussed.

4 Step 3 is, assuming that you have complete
5 applications, to go through those that are complete, go through
6 and impartially -- the D.O.T. is to impartially score the
7 complete applications pursuant to the specified and required
8 criteria.

9 Step 4 would be after the scoring is done, there is
10 still the step of ranking. It has not really been addressed
11 very much in this litigation that scoring and ranking are not
12 treated the same by the regulatory scheme. The scoring is once
13 an application is complete, there's certain things that are
14 required to be scored. That score then comes out, but then the
15 Department is to rank everything, not just by the score, but
16 rank it considering the score and also considering the
17 compliance history of the applicant.

18 Step 5 would be to give a notice of award to the
19 localities.

20 And then I have at the bottom of that particular
21 slide just summarized by saying, if the number of applicants is
22 equal to or less than the number of licenses to be awarded in a
23 jurisdiction, you award the license without scoring. But you
24 do have to make sure that it is complete, and a completed
25 application and in compliance with the regulatory framework.

1 If more applications are complete and in compliance, then
2 licenses are awarded. The applications go to the impartial
3 numerically scored system, but then ranked considering the
4 score as well as considering other factors, including
5 compliance.

6 Now, we are (indiscernible) handicapped, but we are
7 limited to looking at an administrative record. We certainly
8 believe that the administrative record is incomplete. We don't
9 believe that the administrative record supplies a judicial
10 officer like yourself the ability to even -- to even remotely
11 evaluate whether or not the Department of Taxation acted in a
12 way that was compliant with the law.

13 However, that being said, there are things in the
14 administrative record that allow me to demonstrate to the Court
15 how things went horribly wrong in this case.

16 From the -- I have a slide that is in evidence
17 from -- and it's called From Administrative Record -- What
18 Reached Scoring. And I wanted to point out here that there
19 were two applications, two versions of an application that were
20 ultimately circulated to applicants. One of those versions was
21 Trial Exhibit 1005. That also has been made part of the
22 administrative record by the Department of Taxation. Version
23 2 of the application was Trial Exhibit 1006. That too has been
24 made part of the administrative record by the Department of
25 Taxation in its supplemental filing.

1 What I don't think or I don't remember us discussing
2 at trial was whether or not applicants actually used both forms
3 of the applications and had those both forms of the
4 applications going into the scoring bin, and so the
5 administrative record that has been provided by the Department
6 shows that Nevada Wellness -- and I have the score sheet for
7 Nevada Wellness; the score sheet is RD312, part of the
8 administrative record, and it shows that that is the summary of
9 the scoring of that particular application submitted by Nevada
10 Wellness for the Las Vegas jurisdiction.

11 Right behind -- right behind that page in the
12 PowerPoint is page 21 of the application that was submitted by
13 Nevada Wellness, and that is part of the administrative record.
14 And if you look at box -- the second box of that, it says
15 marijuana establishment's proposed physical address. It says
16 this must be a Nevada address and cannot be a PO Box, and then
17 there's an address in there.

18 We do know from trial that this is the first version
19 of the application, and we also from the administrative record
20 can determine that this is the first version because the
21 administrative record does contain the Listserv notification
22 about the second version coming out, and it highlights the
23 additional language to be in the second version, and that
24 additional language is not contained on page 21 of the
25 application. So we know that RD312 was -- was an application

1 submitted on Version 1, and it was submitted. It was deemed
2 complete, and it went to the scorers.

3 Similarly, we have applications that were submitted
4 by Tryke Reno as RD416 and -- oops -- 416. It is the score
5 sheet summarizing the application -- I mean, that one is NuLeaf
6 again. I'm sorry, Your Honor. It was the second NuLeaf. I
7 don't need to go in that NuLeaf was also submitted under the
8 initial application.

9 RD251, the scoring sheet and then the PowerPoint,
10 that is an application by Tryke Companies of Reno. It is for
11 the Las Vegas jurisdiction. And right behind that is the
12 Attachment A, page 21, of the application that identifies
13 5775 West Sahara as the street address. And again, you can
14 tell from Box 1 that -- or Box 2, because it's asking for the
15 proposed physical address, that that was, in fact, the original
16 application. So we know from the administrative record again
17 that that application was deemed complete, and it was deemed to
18 go into the scoring bin and was, in fact, scored.

19 And then we have -- I have another example being
20 RD254, which is the score sheet for Tryke Company of Southern
21 Nevada for a jurisdiction of Las Vegas that we've submitted
22 page 21, which again indicates that is an application, the
23 first version of the application.

24 Now, because the administrative record does not have
25 all applications in it, I cannot tell the Court how many

1 applications on the Version 1 were actually submitted by
2 applicants and were scored, but we do know from the record that
3 at least these three applicants submitted using the
4 applications and can presume that others must have as well.

5 Then Version 2 of the application, there's also
6 evidence in the record again that some applicants in fact
7 submitted applications on Version 2. And I have identified
8 from the record Rural Remedies as one, Rural Remedies under
9 RD473. The PowerPoint says 478. It is more appropriately 473.

10 RD473, the score sheet is attached to my PowerPoint.
11 It's part of the administrative record. And page 21 which
12 follows the score sheet shows in the second box on page 21
13 marijuana establishment's proposed physical address if the
14 applicant owns property or has secured a lease or other
15 property agreement. And then there's an address there, and we
16 know because of the administrative record, because of the
17 Listserv announcement that's part of the record that this is
18 the second version of the application, and we know that in
19 addition to scoring, accepting as complete the first version
20 from some applicants, the Department accepted the second
21 version from some applicants and scored them.

22 Interestingly, we have -- I have added NuLeaf, RD417,
23 which is the score sheet showing that NuLeaf filed an
24 application in unincorporated Clark County, that it was deemed
25 complete, and it was scored. The attached page 21 shows that

1 no address, no address was put in blank 2, and instead it said
2 TBD, to be determined, unincorporated Clark County. And
3 because we have the score sheet summary, we do know that this
4 application, using the second version of the application and
5 not listing a proposed physical address went to scoring.

6 In terms of Step 1, which was the development of an
7 application, it is to me, maybe not to everyone, but when
8 Step 1 calls for the Department to develop an application and
9 to submit it to the individuals that were -- or not the
10 individuals but to potential applicants, you would expect that
11 there would be one application. You would expect that a
12 scoring system that is designed to determine fairly and
13 impartially that which application is superior that that
14 scoring system is only effective if all the applications and
15 all of the requirements are the same.

16 And what we -- what we definitely find is that they
17 are not the same, and I would suggest to the Court that the
18 difference between the applications is not some meaningless
19 distinction, nor, as developed during the trial, the fact that
20 the State waived or didn't determine completeness, didn't
21 require the physical location of the premises, the proposed
22 business location, is absolutely significant, and it's
23 significant because those applications that did not list a
24 physical location, a proposed physical location of a facility,
25 a truthful proposed location were not complete, and they never

1 should have gone to scoring, and we're going to look at the
2 numbers and volume of people submitting incomplete applications
3 that went to scoring in a moment.

4 And I know that you have indicated -- we asked that
5 certain testimony be permitted, and that was denied. But I
6 would like to make a proffer of some testimony, an offer of
7 proof that is related to Step 1 in this process about creating
8 an application.

9 THE COURT: All right. You may make your offer of
10 proof, Mr. Dzarnoski.

11 MR. DZARNOSKI: Yes. Steve Gilbert's trial testimony
12 and his deposition transcript, but in his trial testimony from
13 Steve Gilbert, the designation that I think is relevant is
14 pages 153, 1, through 261, line 23. But right now I'm going to
15 highlight individual excerpts.

16 At page 161, lines 20 through 22 --

17 THE COURT: So, Mr. Dzarnoski, I need you to just
18 make the offer of proof. Please don't cite to the particular
19 pages. Just give me your offer of proof.

20 MR. DZARNOSKI: Okay. The testimony of Steve Gilbert
21 on this particular area would be that the Department of
22 Taxation knew that in creating its application that it was
23 required to abide by the regulations. Mr. Gilbert also would
24 have testified or did testify that no individual at the
25 Department of Taxation had the ability to amend or modify the

1 regulations on their own and that the regulations needed to go
2 through a rule-making process in order to be amended.

3 Mr. William Anderson also testified, and as an offer
4 of proof I will say that Mr. Anderson, who was the executive
5 director --

6 THE COURT: So, Mr. Dzarnoski, you're supposed to be
7 making an offer of proof now, not arguing what those witnesses'
8 importance would be. You're supposed to be giving me factual
9 information that if I permit it would supplement the record.
10 That's all you're supposed to do.

11 MR. DZARNOSKI: Yes. Mr. Anderson would state that
12 if changes were needed in any of the regulations that those
13 changes would have to go to the Nevada Tax Commission. He
14 would also testify that Mr. Pupo was given the authority to
15 create an application, but that authority was limited to the
16 authority to create an application that was consistent with the
17 regulations set forth in NAC 453D.

18 He would testify that if an application violated --
19 if Mr. Pupo had created an application or the Department had
20 created an application that violated 453D, then Mr. Pupo would
21 have gone beyond the authority that had been delegated to him.
22 He would testify that he did not give any authority to remove
23 compliance from terms of complying with the Nevada
24 Administrative Codes regulation from consideration during the
25 application process. He would testify he did not give Mr. Pupo

1 the authority to remove location from the application process.

2 And so with those offers of proof that we believe
3 should be allowed and entered into the record to supplement the
4 administrative record, it will show that the -- that at the
5 very first step of this process, the creation of an application
6 was done in violation of the regulations; it was done in
7 violation of the directives of the executive director of the
8 Department of Taxation and that any applications, any scoring
9 system that was used to score applications that were
10 inconsistent with the regulations, they should have been ash
11 canned before they ever got to the scoring system.

12 Now, Step 2 of this process, as I outlined earlier,
13 was that upon submission of the applications, the Department
14 was required to determine whether or not the applications were
15 complete.

16 If the Court will recall, and I am making another
17 offer, we believe that exhibit -- Trial Exhibit 3291 should be
18 part of the administrative record and/or should be permitted to
19 be used in these proceedings as extra record evidence.

20 If you recall, 3291 was this Excel spreadsheet that
21 identified all of the companies and all of their applications.
22 It listed their -- the addresses they used. It put the scorers
23 on them. In effect it is a compilation sheet that was a
24 compilation of information as the application worked its way
25 through the system.

1 Also, Trial Exhibit 84 we believe should be admitted
2 in these proceedings to supplement. Trial Exhibit 84 was the
3 2018 retail marijuana score application scores and rankings.
4 And from those two documents, those two documents -- and I am
5 making another offer of proof, Your Honor. From those two
6 documents, you can determine that a grand total of 109
7 applications that were denied listed TBD, to be determined as
8 the physical location of the proposed marijuana facility.

9 From those two documents, you can derive that eight
10 licenses, a minimum of eight licenses were granted -- granted
11 to applicants who put TBD in as their address. And those
12 four -- those eight granted licenses, one was to Circle S, two
13 were to Pure Tonic, four were to Lone Mountain, and one was to
14 GreenMart.

15 At trial it was suggested and argued that TBD was
16 perfectly legitimate because in the cow counties you couldn't
17 have licenses -- or you couldn't get properties. Well, an
18 examination of Exhibits 3291 and Exhibit 84 shows that that
19 simply is not the case.

20 RD272 was a license granted to Green Therapeutics in
21 Douglas County, one of the counties that it was argued you
22 couldn't get an address, and they gave an address, 607 Highway
23 50. A denied application in Douglas, Polaris -- from Polaris
24 Wellness gave an address.

25 The denied application for Douglas County, Green Leaf

1 Farms gave an address.

2 A granted application for TRNV098 in Lander, RD672
3 gave an address.

4 A granted license for NewGen, RD290 gave an address
5 in Eureka.

6 And there are more. So whatever in anticipation of
7 an argument that was similar to at trial that it is impossible
8 to give an address, that is, if the Court were to admit
9 Exhibits 3291 and 84, those clearly show that it is possible to
10 do that.

11 Excuse me, Your Honor. I need to get a drink.

12 THE COURT: Okay.

13 MR. DZARNOSKI: Next, Your Honor, is the issue of
14 location in determining completeness. And again remember that
15 this argument, the reason this argument is relevant to the
16 judicial review as you've outlined is that at the end of this
17 argument you're going to hear that 68.8 percent of the licenses
18 that were granted through the scoring process never should have
19 reached the scoring pool at all. And then my client -- and the
20 only reason that those applications that were granted made the
21 scoring pool was because the Department acted arbitrarily and
22 capriciously in not eliminating them in a completeness review.

23 And in modifying arbitrarily and capriciously the
24 regulatory standards, the regulations, as we -- as I've already
25 outlined for you, clearly states that the physical location

1 must be in the application. There's no wiggle room, no wiggle
2 room whatsoever, and it is clear from the trial, if not
3 necessarily from the administrative record that applications
4 were deemed complete when locations were not put in because it
5 was to be determined or false information regarding the
6 location was put in, which the Department knew or should have
7 known was false at the time the applications were received.

8 Now, I have included a slide called, Proffer -- False
9 Addresses, Trial Exhibits 3291 and 84. But it also is derived
10 out of part 72 of the administrative record, which is the
11 summary score sheet for all applications that do happen to say
12 what the rank of the applicant was.

13 And this particular PowerPoint slide demonstrates or
14 shows that for an address at 5130 South Fort Apache Road,
15 Suite 215 dash something -- one, two, three, four, five, six --
16 seven different applicants, all of them clients of Amanda
17 Connor used that one address as the proposed physical location
18 of their facility, all of them.

19 RD316 used Suite 215-147.

20 RD320, CW Nevada used Suite 215-149.

21 RD329, Commerce Park Medical, Suite 215-155.

22 RD346, Essence Henderson, Suite 215-148.

23 And then we've got RD350, RD263 and RD215 also using
24 the Suite 215 address.

25 Significantly, the applications using this address

1 were granted in one, two, three, four, five cases, five of the
2 seven people using this application all used this -- that had
3 licenses granted using this address, and the Department knew or
4 should have known when they looked at the applications that
5 were coming in that there is no way seven stores, dispensaries
6 would be opened at that address. They were on notice,
7 particularly because all of these applications using the
8 duplicate addresses were clients of one single lawyer who was
9 identified on each of the applications.

10 And as you go through this offer of proof, you can
11 see that on 9030 West Sahara, RD317, RD321, RD349, RD216, RD264
12 all were applications using that same address with just
13 different numbers.

14 The Keystone address was used for RD318, RD331,
15 RD353, RD265 and RD219.

16 The Eastern Avenue address was used by RD319, RD218,
17 RD266.

18 Losee Road, was used by four applicants: RD330,
19 RD345, RD354, RD217.

20 And then 150 South Highway 160, RD332, RD352 and
21 RD221.

22 There is no way that any person using a modicum of
23 common sense and are trying to discharge their
24 responsibilities, even marginally, would miss the fact that
25 there were multiple applicants that were using identical

1 addresses that could not possibly be the physical address of
2 the proposed marijuana location which means two things from a
3 completeness standpoint.

4 One is, it's just downright incomplete because it
5 doesn't conform to the regulation, which the Department of
6 Taxation had no authority to modify. And, Number two, because
7 those people who were Amanda Connor's clients, and perhaps
8 others -- we can't tell because we don't have all of the
9 applications; they're not part of the administrative record --
10 we don't know the total number that went into the scoring bin
11 who used false addresses because we don't have that
12 information.

13 But as an offer of proof, the testimony of Mitch
14 Britten at trial clearly established -- or my offer of proof is
15 that it would establish that Mr. Britten was the one who did
16 the applications for Commerce Park -- Commerce Park Medical and
17 Cheyenne Medical and that there were nine applications that
18 were submitted. Every one of those nine applications used the
19 UPS Store or some other mail drop as the address. Every one of
20 them, he acknowledged, was not -- never intended to be the
21 proposed physical location of a store which means they lied.
22 He lied on the application.

23 At trial people tried to spin this in a lot of
24 different ways. Well, I put that information down because I
25 was told that it wasn't going to be scored. Well, I was told

1 it was not going to be scored is not an acceptable reason for
2 lying under oath. It simply isn't.

3 This further offer of proof said that he did sign the
4 attestation under oath saying everything in his application was
5 truthful, but yet he did not indicate in any way, shape, or
6 form that the information placed on his application was
7 truthful.

8 Those nine applications should not have been deemed
9 complete. They should have been incomplete and pursuant to the
10 regulation requiring the location, it was incomplete, and
11 pursuant to the regulation that says an application must be
12 denied if an officer makes a false statement to the Department.
13 It should have been tossed. Those nine applications should not
14 have gone to scoring, and yet six of them -- all nine did, and
15 six of them were granted.

16 As a further offer of proof, Armen Yemenidjian's
17 testimony at trial would have established, did establish that
18 he believed that all of his applications for the Essence
19 entities listed PO boxes on all eight applications that were
20 submitted. He would have testified that he didn't list the
21 physical addresses because it was his understanding that he
22 didn't need to. He would testify that there are no locations
23 at which he anticipated opening a marijuana dispensary that
24 were listed on his application. He would testify -- he would
25 testify that all -- that he did -- he and Essence did have

1 locations that they wanted to use as physical locations. They
2 had identified them in their own minds, but they did not list
3 them on their applications, preferring instead to use UPS
4 stores.

5 Mr. Gilbert would testify that the Department in his
6 testimony, and I am offering it, that -- let's see -- that if
7 the application did not contain the property location, the
8 physical address where the proposed marijuana establishment
9 would be located, it still would have been considered a
10 completed application by the Department, and it would have gone
11 on to the scoring.

12 He also would acknowledge that the Department did not
13 know whether the applicant submitted truthful information
14 regarding the physical address and that the reason they didn't
15 know or look in any further is the Department made a decision
16 not to require a physical address.

17 Now, the decision not -- by the Department to not
18 require a physical address, no one has an explanation. The
19 administrative record doesn't contain anything in it that
20 provides a rational explanation for why the Department chose
21 not to require a physical location. We know that they changed
22 the application not to require it from the administrative
23 record, and we know that violates the regulation that requires
24 the application to have it, and so even if they tried to
25 prevent -- present any administrative reference, a rational

1 basis, it wouldn't matter because you have to follow the
2 regulation. The only thing that they should have done or could
3 have done would have been to change that regulation.

4 The next aspect of completeness that may or may not
5 be part of the record, but I'll make you an offer of proof as
6 well, is the fact that certain applications made it through a
7 completeness review, went into the scoring bin notwithstanding
8 that they were owned in part or in full by publicly traded
9 companies or public entities.

10 Court's Exhibit 3 to the preliminary injunction
11 findings of fact and conclusions of law was a certification
12 from Mr. Shevorski. I believe that in addition to the
13 administrative record that the Court has the inherent ability
14 to judicially recognize its own court docket and its own
15 orders, and given the fact that that is an order and was part
16 of the Court's docket that also includes a certification, I
17 believe that it is appropriate for the Court to look at that
18 certification as part of the record in determining whether or
19 not the Department acted in an arbitrary and capricious
20 fashion.

21 If I didn't say it, that Shevorski certification was
22 also admitted at trial as Trial Exhibit 1302. And if the Court
23 chooses not to take judicial notice of Court Exhibit 3 and its
24 preliminary injunction findings, then I make an offer of proof
25 that that Trial Exhibit 1302 should be considered as part of

1 the judicial review process.

2 THE COURT: That request is denied; however, I will
3 take judicial notice of my findings of fact and conclusions of
4 law and permanent injunction that were entered on September
5 3rd.

6 Keep going, Mr. Dzarnoski.

7 MR. DZARNOSKI: Okay. The offer of proof then is
8 that in that certification itself, the Department of Taxation
9 acknowledged or would acknowledge that Nevada Organic Remedies
10 was an applicant that was acquired by a publicly traded company
11 on or around September 4th, 2018, and that as a result of the
12 fact that it was acquired by a publicly traded company on
13 September 4th, 2018, it could not -- the Department of
14 Taxation did not and could not possibly have known or gotten
15 information as to all of the owners.

16 At trial, and you indicated at trial that we did not
17 need an expert to give an opinion with respect to how publicly
18 traded companies' stocks are held and that this is common
19 knowledge. And so I ask you to consider that common knowledge
20 again as part of your evaluation, at least to the extent that
21 you know that a publicly traded company, any stocks that are
22 held in street name or held through the depository trust
23 corporation, it is virtually impossible, virtually impossible
24 for not only the issuer to know the beneficial -- the identity
25 of the beneficial owners, but it's also impossible for the

1 State to know the identity of all of the beneficial owners.

2 Nevada Organic Remedies, pursuant to trial
3 Exhibit 84, which I proffered, but also it can be derived from
4 Part 72 of the administrative record, was actually granted
5 licenses in Clark County, RD215; in Las Vegas, RD216; in North
6 Las Vegas, RD217; in Henderson, RD218; in Washoe-Reno, RD219;
7 in Nye County, RD221; in Carson City, RD 222.

8 GreenMart of Nevada, as a proffer, Court
9 Exhibit 3 and/or Trial Exhibit 1307 would show that the
10 Department of Taxation acknowledged that GreenMart was a
11 subsidiary of a publicly traded company -- or I'm sorry. A
12 subsidiary of a publicly traded company owned a membership
13 interest in the applicant at the time the applicant submitted
14 its application. So again, the fact that a publicly traded
15 company held membership interest prevented any ability for this
16 application to be considered complete because of the absence of
17 the ability of a full disclosure of owners.

18 Licenses granted to GreenMart of Nevada, RD504,
19 Las Vegas; RD505, Clark County; RD 507, Reno; RD511, Henderson.

20 So not only did GreenMart's applications survive the
21 completeness review when it shouldn't have, it was put into
22 a -- they were put into the scoring bin where they shouldn't
23 have been, and somehow or other they walked away with these
24 licenses.

25 Lone Mountain Partners, as a proffer, Trial

1 Exhibit 1302 or Court Exhibit 3 would prove that the Department
2 could not determine whether Lone Mountain Partners was a
3 subsidiary of an entity called Verona or was owned by the
4 individual members that were listed on Attachment A with Verona
5 being a public company.

6 Lone Mountain Partners, based upon part 72 of the
7 record plus Trial Exhibit 84, was granted licenses in Clark
8 County, RD590; Las Vegas, RD591; North Las Vegas, 592; Reno,
9 RD593; Esmeralda, RD594; White Pine RD595; Lander, RD596;
10 Lincoln, RD597; Douglas, RD598; Mineral, RD601; Eureka, RD602.

11 All of those were granted, as we have already -- what
12 I've previously seen is Lone Mountain Partners actually has two
13 strikes against it. One is that none of its applications to
14 have been deemed complete and gone into the scoring bin by
15 virtue of the fact that its owners couldn't be determined and
16 not backgrounded; but second, because for many of these
17 licenses that were granted, they didn't put in a property
18 location.

19 Likewise, Nevada Organic Remedies, not only should
20 they not have gone into the scoring bin and been scored because
21 you couldn't determine who their owners were, but because they
22 submitted false allegations -- or false applications containing
23 false addresses and propounding under oath in their application
24 that those addresses were the proposed sites of their proposed
25 marijuana facilities.

1 Now, once you take this information into account, as
2 an application analysis, there is a PowerPoint slide entitled
3 Application Analysis, and it has A, it's an analysis for
4 incomplete applications as a percentage of applications filed.
5 Of the total applications that were filed per finding of fact,
6 48 of your most recent findings of fact, Your Honor, it was
7 stated that 462 applications were made.

8 Part 72 of the administrative record actually has 461
9 score sheets to indicate 461 applications were in scoring.
10 That Exhibit 84, there's a little more -- is inconsistent with
11 457 total applications. The different numbers is not
12 significant. I mean, one -- it's a difference of one
13 application between 462 and 461 is not why I bring that up, but
14 we have to have a number to start with.

15 Now, incomplete applications, there were 117
16 incomplete applications because the addresses were listed as to
17 be determined. 32, at least 32 applications had false
18 addresses. These are the ones that we've already gone through
19 that were Amanda Connor's clients. They have an -- where I
20 have this listed as the owner here, there is an additional 25
21 applications that were submitted by individuals that the
22 Department of Taxation has certified that it was unable to
23 determine who the owners were.

24 That gives us a total of 174 of the applications
25 should not even have been scored out of 462 submitted. That's

1 38 percent of the applications should not have been scored.
2 That's significant to my client because the argument is being
3 made that my clients can't prove that they have a superior
4 interest or would move up in the scoring if things were done
5 correctly. Well, we don't know that at all from anything in
6 the administrative record, nor do we know that from anything
7 that was presented in the trial record. We don't because
8 everything that has been presented to us that provides for a
9 ranking includes 174 applications that never should have been
10 scored.

11 We don't know if you take those 174 applications out
12 of the mix where that would have left any of my individual
13 clients on a scoring and a ranking. And the Department of
14 Taxation has not presented a sufficient administrative record
15 for you to try and decide whether or not the elimination of 174
16 of those applications from scoring would have changed anything,
17 and they can't give you any rational or reasonable explanation
18 for what they did.

19 There is a Section B, I believe, to this, which I am
20 not immediately finding. I am searching for another slide,
21 Your Honor.

22 THE COURT: Okay. I'm going to let Ramsey go handle
23 the people who are showing up for arraignment court even though
24 we don't have arraignment court today in this courtroom. So
25 hold on a second. And you can look for your slide while Ramsey

1 does some administrative work.

2 (Pause in the proceedings.)

3 Did you find it, Mr. Dzarnoski?

4 MR. DZARNOSKI: Not -- not quite yet, Your Honor. I
5 am -- I know what it's called. I just haven't found it yet.

6 (Pause in the proceedings.)

7 MR. DZARNOSKI: Okay, Your Honor. Apparently it was
8 inadvertently omitted from my PowerPoint, but I have found it.
9 So I'm going to talk about it.

10 THE COURT: Okay. Keep going.

11 MR. DZARNOSKI: The second part of the application
12 analysis is the incomplete applications that were actually
13 granted as a percentage of all licenses that were granted. Per
14 Exhibit 84, and I think it is uncontested, Trial Exhibit 84,
15 there were 61 licenses that were granted, and I didn't -- at
16 least going over your order, most recent order, I didn't see
17 the number of ordered licenses set forth, but I believe the
18 record is clear that it's 61.

19 So looking now at which applications were incomplete
20 and yet were granted licenses, eight incomplete licenses were
21 granted to applicants who used TBD, to be determined, as their
22 property location. Twenty-one licenses were granted. I'm
23 going to say a minimum of 21 licenses were granted by
24 applicants who put in UPS addresses and mail drops as their
25 address location.

1 25 applications were granted to the entities listed
2 on Court Exhibit 3, Trial Exhibit 1302, where they were public
3 companies or complete ownership was not (indiscernible). So
4 that is a grand total of 54 licenses were granted -- or 54
5 total. Now, there is some overlap between those categories.
6 For instance, in the category of incomplete applications
7 because of the lack of ownership, that's all of Lone Mountain.
8 Lone Mountain also had four that were in the to-be-determined
9 category and were incomplete for that reason. So there is some
10 overlap.

11 There is an overlap of one with GreenMart because
12 Green Mart obtained one license for an address that was to be
13 determined, and it obtained -- and it also failed to have its
14 owners because of -- public owners disclosed because it was
15 publicly traded. And likewise, there is an overlap with Nevada
16 Organic Remedies because they had seven applications who
17 included a false address and also seven where they failed to
18 disclose their ownership because of public entities.

19 So that -- when you do the math, that all comes out,
20 add to that 54 that I initially identified, if you take out the
21 overlap for seven Nevada Organic Remedies, four Lone Mountain,
22 one GreenMart, that's 12. The net total number of licenses
23 granted for applications that were incomplete based upon the
24 regulations is 42 out of 61, 68.8 percent of all granted
25 applications were incomplete, and the significance of that,

1 again to the matters that you are judicially reviewing is that
2 my clients, that the argument being made is my clients can't
3 show that they would have had a different rank, or they
4 would've had a different score, or they would've gotten a
5 license, but for -- but for the problems that were cited, but
6 for the arbitrary and capricious actions.

7 Well, I suggest to you, Your Honor, that if you take
8 42 of the people off the list who were granted licenses, that
9 would first of all create 42 spots for new licenses to be
10 awarded. And if you also take out the 178 or 174 incomplete
11 applications that shouldn't be scored at all, you are now
12 creating an entire new list where it is impossible for anybody
13 to know that my clients wouldn't have obtained a license or
14 could have obtained the license because the scoring in ranking
15 is so flawed it is impossible for you as a judicial officer to
16 look at this record and say, oh, yeah, we move up one person.
17 What are you going to do? Are you going to try to say move up
18 42 people? And then are you going to look at the next 42 in
19 line, and are you going to have to try and decipher how many of
20 those had complete applications? I don't think so.

21 I think that's what the Department of Taxation was
22 supposed to do to begin with, and they were supposed to present
23 to you an administrative record so that we could look at the
24 things that they actually did, and we can see exactly who --
25 why they allowed applications to go into scoring that were in

1 complete violation of the regulations which they had no
2 authority to change.

3 Step 3 of the process as I outlined it, is that the
4 D.O.T. had the responsibility to impartially score those
5 applications on the required criteria, and again, we are now
6 talking about -- we should be talking about a more limited
7 number of applications to go to scoring because 174 of them
8 sure shouldn't have gone there, and 42 licenses that were
9 granted certainly should never have gone to scoring, but they
10 did.

11 So now what's the impact of that on scoring? Well,
12 in your findings of fact for your most recent order, Your
13 Honor, just by way of argument here, Section or paragraph 100,
14 that addressed the aspect of the actual physical address. And
15 in Finding of Fact 100, you stated,

16 By selectively eliminating the
17 requirement to disclose an actual physical
18 address for each and every proposed retail
19 recreational marijuana establishment, the
20 D.O.T. limited the ability of the independent
21 contractors to adequately assess created
22 criteria, such as prohibited proximity to
23 schools and certain other public facilities
24 impact on the community, security, building
25 plans and other material considerations

1 proscribed by the regulation.

2 Well, had they not eliminated the requirement for an
3 actual physical address, then those categories could have been
4 scored and the physical location would have played a role in
5 the score. And the scoring sheets that are listed in the
6 administrative record themselves show that the physical
7 location, the actual address was not a component in any of
8 these categories that were required to be scored, at least not
9 as applied by the Department.

10 So my -- the scoring of those people that should have
11 been in there still would have required the Department to look
12 at the physical location in connection with these required
13 components which are the required scoring components.

14 You note in paragraph 93 of your -- I'm pulling it
15 up:

16 Although not required to use a single
17 point of contact process for questions
18 related to the application, once D.O.T.
19 adopted that process and published the
20 appropriate process to all potential
21 applicants, the D.O.T. was bound to follow
22 that process.

23 I do not disagree with that finding. That finding
24 could equally well be said about the Department's decision not
25 to require a physical location and not to score the physical

1 location and not to use the physical location as a component in
2 scoring other required categories. You might otherwise have
3 phrased it that the reg, although not required to adopt the
4 regulation requiring an application to disclose the physical
5 address, once the D.O.T. adopted the regulation and published
6 it to all applicants, it created an application in conformity
7 with that regulation. The D.O.T. was bound to follow that
8 requirement.

9 It is a, per se, arbitrary and capricious violation
10 for an agency of the State to take actions that are contrary to
11 and inconsistent with their own regulation, just as it is
12 arbitrary and capricious for the D.O.T. not to follow the
13 process of a single point of contact once it was enacted. And
14 the reason for that is that changing an internal rule that has
15 been used and applied and/or changing the regulation or
16 amending a regulation or not enforcing a regulation constitutes
17 rule making in and of itself, and it's got to go through the
18 rule-making procedure.

19 And in the case that we have, the administrative
20 record provides no evidence whatsoever by which you as the
21 judicial officer can assess whether or -- or how if at all the
22 Department could justify not following the regulation.

23 As a proffer of what should be in the record, because
24 I think this falls under the exclusion where we're challenging
25 the overall methodology used, the framework and the process, we

1 should be allowed to bring in evidence that deals with that
2 process. Again I'm going to make a proffer from William
3 Anderson's testimony, and in his testimony, he -- he would
4 testify that -- sorry -- he would testify that the regulations
5 and the applications, when it discussed compliance, referred to
6 the historical compliance record of the applicant, that it was
7 the previous compliance history of a licensee that would be
8 looked at.

9 Karalin Cronkhite, as an offer of proof, from her
10 deposition transcripts, the offer of proof is that she would
11 state that no applicant was required to submit anything with
12 respect to compliance history with the Department of Taxation
13 as part of their application and that in evaluating the
14 applications, the identified graders in their work were not
15 allowed to evaluate the actual compliance history and
16 compliance file maintained on the licensee.

17 She would testify that none of the unidentified
18 graders looked at any of the actual historical compliance for
19 any of the applications. She would testify that in the
20 unidentified criteria, the graders did not consider or give
21 points to any applicants based upon whether an applicant had
22 demonstrated a record of operating their existing facility in
23 compliance with the regulations.

24 And as the Court will recall, one of the regs that I
25 read a portion of, that language come specifically from the

1 regulation and says that the application should be evaluated
2 based upon, and looking at the owners whether the applicant had
3 demonstrated a record of operating. That can't be future
4 oriented. It is backward oriented. She would -- Ms. Cronkhite
5 would testify as an offer of proof, that she was part of the
6 group at the D.O.T. who determined how points were to be
7 awarded and that there never was any discussion as to whether
8 or not to have any scoring or ranking based upon actual
9 historical compliance history.

10 So, Your Honor, the fact that the administrative
11 record is devoid of any evidence to show that there was a look
12 at actual historical compliance, it is also devoid of any and
13 all evidence to show that the Department of Taxation even
14 considered including that as part of the scoring even though
15 the regulations required it.

16 So as to compliance and the requirement of scoring,
17 one more time, we simply cannot look at the administrative
18 record as being sufficient to determine who was or was not an
19 appropriate recipient of a license in that application process
20 because they didn't consider compliance, and they didn't score
21 it even though it's part of the regulatory requirement, and it
22 was acknowledged to be such by the executive director.

23 As to ownership, clearly, clearly, Your Honor, you
24 can't -- you cannot look at the actual way things were scored
25 and say that my client definitively would not have received a

1 license but for these people being in the mix and getting
2 licenses, as I said, 25 of them. 25 of them got licenses for
3 when they couldn't demonstrate their current ownership.

4 Well, in terms of how that impacts the actual
5 scoring, look at diversity. The way diversity was scored, just
6 look at each owner, and you would decide whether or not that
7 owner is white, black, male, female, Asian or whatever
8 persuasion, and you would put a checkmark next to it. And
9 based upon the percentage, based upon the percentage of owners
10 who fell into those diverse categories to the total number of
11 owners, you got a diversity score. And each of these license
12 grantees got a diversity score as well as everybody who
13 submitted, all 462 applications got diversity scores.

14 Well, as to public companies, Your Honor, I suggest
15 to you that is absolutely impossible. At trial you heard the
16 testimony of Mike Nahass of MediFarm, I believe, and that was
17 that he had thousands of shareholders. For any public company,
18 any public company at all, if you have to first try and find
19 out who the beneficial owners are, which I've already indicated
20 is impossible, but if you did that, you would find that they
21 have thousands of owners. There is nothing in the
22 administrative record, looking at part 72, which is all the
23 scores that would suggest that the Department of Taxation in
24 evaluating and scoring diversity considered a thousand
25 shareholders. They did not have the information. So they

1 could not do it.

2 Then there is the scoring dealing with owners; the
3 organizational chart is supposed to list all owners. It's
4 supposed to give a background and experience, and your -- but
5 the Department of Taxation is supposed to evaluate pursuant to
6 NRS -- or I'm sorry, NAC 453D.272 whether all of the owners
7 have operating experience such that it would help them operate
8 a marijuana experience -- establishment.

9 If you don't know the owners, you can't give an
10 adequate score. There's no basis for scoring. You're supposed
11 to score -- award points based on the educational achievement
12 of the owners. One more time, if the application is incomplete
13 because all owners were not disclosed, then the scoring is
14 impacted. And we know that at least 25 grantees received
15 scores for their owners for diversity, for experience, for
16 educational achievements, and yet the Department doesn't even
17 know who they are, nor did the applicants know who they were.

18 So those are additional ways that the -- the
19 administrative record in this case clearly shows that the
20 Department acted arbitrarily and capriciously in not scoring
21 all owners, in not scoring property location or requiring the
22 property location to even be disclosed and for not scoring a
23 required category of historical compliance.

24 Step 4 of this overall process comes after the
25 scoring. After the scorers have given a score, under this

1 statutory and regulatory scheme, that is not equivalent to the
2 ranking. 453D.272(1) clearly says that you're to be ranked
3 based upon compliance with both the statute, compliance with
4 the regulation, and then by points awarded in the scoring
5 system of the application. That wasn't done.

6 And again the only way I know of to demonstrate is to
7 make an offer of proof as to the -- an offer of proof as to
8 what was disclosed in the -- or learned in the trial regarding
9 the Department's policies. And this would be -- this would be
10 Mr. Gilbert again, as a proffer of Mr. Gilbert's testimonies --
11 a proffer of Mr. Gilbert's testimony. He would testify that
12 nobody at the Department of Taxation who did have access to the
13 disciplinary file of an applicant reviewed the applicant's --
14 the applications to determine whether or not a ranking
15 adjustment should be made by the Department.

16 So while they're required by statute and regulation
17 to rank and adjust the scoring or do a rank by a basis of
18 adjustment scoring, they didn't. Pure and simple, there was no
19 process put into place to adjust the ranking based upon
20 compliance.

21 Mr. Gilbert would, also as a proffer, indicate that
22 they didn't have the criteria or they couldn't come up with the
23 criteria to judge compliance, and his statements more or less
24 would be to the effect of it was too hard and too difficult to
25 create a formula or a process that we would be able to evaluate

1 one person's compliance history with another applicant's
2 compliance history.

3 Respectfully, Your Honor, that -- the difficulty
4 of -- the difficulty of the Department to comply with its
5 regulation is not an acceptable reason for them to ignore their
6 regulation.

7 And this has been a consistent theme, both in the
8 scoring and the judicial review aspect of this case as well as
9 in the trial. The theme being, hey, listen, it's impractical
10 or it's impossible, or it's very difficult for us to do these
11 things. They raised that same argument with respect to the
12 5 percent rule. Well, it would be impractical for us to have
13 to evaluate all of the owners of a publicly traded company. So
14 therefore we're not going to do it.

15 Likewise, the Department of Taxation's sole
16 explanation throughout these proceedings to date as to why they
17 did not look at the compliance, actual historical compliance
18 record and rank applicants based upon that in part is because
19 it was difficult. And I don't know how many times I heard
20 someone say from the Department, Well, we only had 90 days to
21 do something; making it really difficult.

22 You know, as a lawyer, the last thing I would ever
23 advise a client to do is to say, hey, compliance with the law
24 is difficult. It might be too difficult for you. So feel free
25 to go ahead and violate the law. I mean, that is not an

1 acceptable way for society as a whole to behave, much less for
2 the Department of Taxation to justify not doing something
3 because it's difficult.

4 As to the difficulty with respect to owners and the
5 supposed impracticability of vetting a public company become an
6 owner of a marijuana licensee under the old statutory scheme, I
7 refer you to the gaming laws of this State. They're from 1930
8 something when gaming was first legalized by statute in the
9 state of Nevada, all the way into 1960s. No public companies
10 were gaming licensees in this State, and it was not because a
11 statute or a regulation prohibited public companies from being
12 gaming license holders.

13 What it was, was the gaming statutes and regulations
14 required that every owner, all owners of a company or all
15 owners of a company that wanted to be a licensee, a gaming
16 licensee, all of those owners had to be licensed. So all of
17 those owners had to go through suitability checks, and so just
18 like the State in this case saying, hey, it's impractical or
19 too difficult for public companies to get marijuana licenses
20 here because of if you require all owners to be disclosed and
21 backgrounded, well, that same thing could have applied in
22 gaming. I mean, thank God the Department of Taxation wasn't
23 doing gaming licensing back then and saying, hey, it doesn't
24 matter if you're a public company. We're not going to force a
25 public shareholder who owns less than 5 percent to be licensed.

1 So that is one example of how the State of Nevada has
2 enacted its privilege licensing for things like gaming,
3 alcohol, marijuana, and there is no reason to believe that
4 enacting ballot initiatives, Ballot Question 2, in enacting
5 453D that the voters weren't cognizant that it might make it
6 difficult for a public company to become an owner because of
7 the background.

8 THE COURT: Mr. Dzarnoski, are you okay?

9 MR. DZARNOSKI: Yes, Your Honor. I am having an
10 allergy moment for a second.

11 THE COURT: All right.

12 MR. DZARNOSKI: Unfortunately, all I have is my
13 facemask and no tissues with me.

14 A couple more pieces of testimony, Your Honor, that I
15 would like to proffer.

16 THE COURT: Okay.

17 MR. DZARNOSKI: Mr. Gilbert in his trial testimony,
18 if permitted to present the testimony, would acknowledge that
19 five or six applicants could use the same address and, in fact,
20 did use the same address on their applications, but it did not
21 make a whit of difference to the Department because they didn't
22 look at the physical address of the proposed establishment.

23 And then as an additional proffer, he would
24 testify -- interestingly, it came out of a Court question that
25 was asked to him about he would testify that the only thing,

1 the only sense that compliance was used by the Department of
2 Taxation on a historical basis was that if an applicant was on
3 suspension, then they would not be eligible to submit an
4 application. And Mr. Gilbert would go on to say that -- that
5 he, even though he was part of the group, that he did not know
6 how the Department came to the conclusion that that would be
7 the only disqualifying events would be for a suspension.

8 And likewise, that is also from the administrative
9 record. There is nothing to indicate any basis, rational or
10 otherwise for the Department not to include in its scoring the
11 compliance.

12 Your Honor, I may be done. I think I've been at this
13 for about two hours. Could I have five minutes to look at my
14 notes and see if I'm done?

15 THE COURT: Yes. We will take a five-minute recess.
16 We will resume at 11:30 -- no, 11:20. 11:20.

17 All right. Take five, guys. Get up, walk around.
18 Take your masks off for a little bit.

19 (Proceedings recessed at 11:12 a.m. until 11:19 a.m.)

20 (Pause in the proceedings.)

21 THE COURT: So we're done with our five-minute
22 recess, Mr. Dzarnoski. Are you ready to proceed?

23 MR. DZARNOSKI: Yes, Your Honor. Thank you.

24 THE COURT: Uh-huh.

25 MR. DZARNOSKI: Your Honor, I've never felt that it

1 is a good use of the Court's time or my time to try and simply
2 reiterate arguments that have been made in the briefing. I've
3 tried to take an approach today that is not necessarily just
4 reiterating what we put in our opening brief, but I don't want
5 the Court to believe that by me not reiterating the matters
6 that we have argued and set forth in the brief that we're in
7 any way waiving any of those arguments or anything.

8 I know how much you read all this stuff, and you
9 don't -- once you've read it, you don't need to hear it from me
10 is my attitude. So I just want to make it clear that if I
11 haven't addressed anything in particular in our opening briefs
12 that it's not a waiver, and it's just I don't want to be
13 duplicative.

14 THE COURT: Thank you, Mr. Dzarnoski.

15 MR. DZARNOSKI: And second that -- I'm sorry?

16 THE COURT: Thank you. Keep going.

17 MR. DZARNOSKI: Second, in addition to responding or
18 opposing, filing opposing briefs, some of the defendants -- or
19 the State and some of the intervenors, that's what I wanted to
20 say, have filed opposing briefs and have raised certain issues
21 regarding standing. I don't believe that they've asked for a
22 reconsideration of your prior rulings on standing, and it has
23 been briefed -- I am thinking like three to five times that
24 you've made decisions regarding standing on motions to dismiss,
25 motions for summary judgment, and I don't suspect that your

1 decision will change on the issue of standing with respect to
2 judicial review from your prior orders. So, I mean, I just
3 want to highlight the fact that I do acknowledge that there has
4 been the argument raised on standing.

5 Again, I don't want this Court to feel because I am
6 not addressing it again with the same arguments that we've used
7 three or four times that we are waiving that. We are not.

8 And I would like to point out on that respect, if the
9 Court feels that it needs additional briefing on standing,
10 under the statute we were supposed to have 30 days to file a
11 reply brief. You scheduled this hearing before that 30 days
12 expired. If you have questions on standing that you would like
13 me to address today, I would ask that you tell me that or tell
14 me that you do think that there's additional briefing that
15 needs to be done, and then we would get our reply brief filed
16 within the statutory time frame. So I'm looking for some
17 guidance from you there.

18 THE COURT: Mr. Dzarnoski, I read the briefing, and I
19 don't need any additional information on standing. It's been
20 briefed ad nauseam for the last year.

21 MR. DZARNOSKI: I thought that would be your answer,
22 and I'm glad to hear that.

23 THE COURT: All right. Anything else?

24 MR. DZARNOSKI: No, Your Honor. I think I'm done.

25 THE COURT: All right. So, Mr. Dzarnoski, to the

1 extent that you have made proffers of evidence for me to
2 consider that is outside of the current record, that request is
3 denied, but it is of course preserved for purposes of your
4 appellate record.

5 Any other plaintiffs wish to argue at this time?

6 Ms. Sugden? Ms. Chattah? Mr. Slater?

7 MS. SUGDEN: Your Honor, this is Amy Sugden. I do
8 not have anything at this time.

9 THE COURT: Thank you.

10 MR. SLATER: Good morning, Your Honor. This is Craig
11 Slater. I have just a very brief argument that will be very
12 short.

13 THE COURT: Okay.

14 MR. SLATER: My clients are in a unique position. I
15 don't know that any of the other plaintiffs did what they did.
16 Specifically, if you look at page 1 of the PowerPoint
17 presentation, when my clients received news that they had not
18 been awarded the recreational licenses, they followed the
19 statute guidance of NRS 360.245 and they appealed the decision
20 to the Tax Commission. If you look at Slide Number 2,
21 specifically Subsection 1 of that statute is pointed out, and
22 that reads as follows:

23 All decisions of the Executive Director
24 or other officer of the Department made
25 pursuant to this title are final unless

1 appealed to the Nevada Tax Commission.

2 Upon appealing the decision to the Tax Commission, my
3 clients were informed that the Department of Taxation,
4 specifically Jorge Pupo, was rejecting their appeal. We
5 believe that that clearly violates the statute, which the
6 statute is clear on its face, and it creates a remedy. If the
7 Department or the director of the Department takes an action
8 that you disagree with, you appeal it to the Tax Commission.

9 Here, my clients have been deprived of their right
10 and opportunity to go before the Tax Commission. So that is
11 one of the errors that we believe has occurred in the process.

12 If you go to the fourth slide in my presentation, one
13 of my clients is the NuVeda entities. They submitted numerous
14 applications that were all identical. For whatever reason, one
15 of their applications received more points than all of their
16 others, despite the fact that they were identical. RD503
17 scored 192.01 points, whereas all of the other applications
18 submitted by Clark Natural Medicinal Solutions received 191.67.

19 If you go to Slide Number 5 and 6, you can see the
20 difference. On Slide 6, I highlighted the difference. The
21 Care, Quality, Safekeeping component and the Non-Identified
22 Criteria Score, those were slightly higher. Again, we have no
23 idea how the graders would have come to different testing
24 results when the applications were identical.

25 With respect to Slide Number 7, my other client,

JD Reporting, Inc.

1 Inyo, I just want to point out for the Court's attention and
2 not belabor the point their application identified physical
3 addresses for every location that they sought. My clients went
4 out, in accordance with the terms of the -- or instructions of
5 the application, they secured real property. They had letters
6 of intent in place. They had negotiated leases. They had
7 agreements in place for physical property, and they therefore
8 identified that physical property on their application.

9 Conversely, NuVeda did that for a couple of their
10 applications, but then in reliance upon the statement that a
11 physical address was not needed, they disbanded that effort
12 considering they had such a large number of applications. But
13 both of my clients did have physical addresses: Inyo for every
14 single location, and Nuveda for at least two or three of the
15 locations on their applications.

16 That is all I wanted to point out. I don't want to
17 repeat any of the points Mr. Dzarnoski has already made or
18 repeat the briefing. Thank you for your time.

19 THE COURT: Thank you, Mr. Slater.

20 Any other plaintiffs wish to make an argument at this
21 time?

22 (No audible response.)

23 THE COURT: Mr. Shevorski, how long do you --

24 I'm sorry, was there another plaintiff that wished to
25 make an argument?

1 MR. GAMBLE: Your Honor, this is Clarence Gamble from
2 Rural Remedies -- representing Rural Remedies. I'll just join
3 in the arguments that were made by Mr. Dzarnoski.

4 THE COURT: Thank you, Mr. Gamble.

5 Are there any other plaintiffs who wish to argue at
6 this point?

7 (No audible response.)

8 THE COURT: Mr. Shevorski, how long is your argument?

9 MR. SHEVORSKI: Mercifully, Your Honor, it will be
10 before lunch.

11 THE COURT: All right. You're up.

12 MR. SHEVORSKI: Thank you, Your Honor.

13 When I was listening to my friend's opening argument,
14 I honestly thought I was at a different kind of proceeding.
15 What I heard a great deal of was essentially a motion for
16 reconsideration -- actually, two motions for reconsideration.

17 I heard a motion for reconsideration regarding the
18 scope and the content of the record. Of course it had not been
19 filed -- a motion for reconsideration had not been filed. And
20 I think Your Honor quite correctly determined that the offer of
21 proof should be denied, certainly, as its basis would be under
22 2.24(a) of the Eighth Judicial District Court Rules.

23 I also heard a motion for reconsideration really on
24 the legality of the 2018 retail marijuana store competition
25 process, neither of which is appropriate for this particular

1 phase of the proceeding. And I think it's telling, Your Honor,
2 the last page of the TGIG plaintiffs' brief says, The D.O.T.'s
3 decision on granting/denying applications for conditional
4 licenses should be set aside. That is not what this Court is
5 charged with doing under 233B.

6 This Court quite rightly determined that the
7 proceeding under review is the Department's determination on
8 the TGIG plaintiffs' license applications; that the record --
9 the documents the Department considered in grading the
10 applications, that the only parties to judicial review are the
11 individual plaintiffs. The Court's role is to review a final
12 decision in the contested case, and the contested case of
13 course being the scoring of the Serenity application, the
14 scoring of NuVeda's applications, the scoring of Inyo.

15 Other than Mr. Slater's argument where Mr. Slater
16 addressed scoring discrepancies in what's believed to be
17 identical applications, and we'll get to why that's not a basis
18 for judicial review in a moment, you didn't hear anything about
19 the scoring of the TGIG plaintiffs' application at all. The
20 contested case, which is the first step in determining whether
21 or not the final decision based on that contested case should
22 be set aside, was never discussed at all. And for that reason
23 alone we believe that the Court quite rightly should deny the
24 petition for judicial review.

25 And oftentimes in this case I have mentioned

1 something that I thought was important that the plaintiffs have
2 left out, and, forgive me, but I'm going to do so again. The
3 plaintiffs seeking judicial review, at least Mr. Dzarnoski's
4 clients, are TGIG, LLC; Nevada Holistic Medicine, LLC; BGS
5 Nevada Partners; Fidelis Holdings, LLC; Gravitas Nevada; Nevada
6 Pure, LLC; MediFarm, LLC; MediFarm IV. You never heard those
7 entities described. There was no citations to the record
8 regarding their applications, let alone how they were scored,
9 with the noteworthy exception, Your Honor, that MediFarm and
10 TGIG's applications were attacked by Mr. Dzarnoski.

11 In the instance of TGIG, Mr. Dzarnoski of course
12 attacked the applications of TGIG with respect to the physical
13 address because TGIG of course had Amanda Connor as their
14 consultant. With respect to MediFarm, MediFarm of course
15 deemed being a publicly traded corporation, or owned by one,
16 rather, and so to the extent that the plaintiffs, the TGIG
17 plaintiffs, listened to Your Honor's charge in the trial
18 protocol, it was essentially to divide or attack their own
19 house. That is not a basis for seeking judicial review but
20 rather is a basis for denying judicial review.

21 It's important to keep in mind the standards that
22 we're here to consider. To the extent that any questions of
23 fact were raised, I submit that there were none because they
24 did not cite to the record but rather sought improperly to
25 expand the record in derogation of Your Honor's ruling. The

1 Court should not substitute its judgment on those questions of
2 fact.

3 Importantly, the final decision of the agency here,
4 the denial of the applications, shall be deemed reasonable and
5 lawful until reversed or set aside. Most importantly, the
6 Court cannot set aside an agency decision unless the
7 substantial rights of the petitioner have been prejudiced. In
8 other words, it has to -- there has to be a nexus between the
9 allegation regarding the agency's decision and the petitioner,
10 and the petitioner has the burden to demonstrate that that
11 decision essentially had a causal nexus to prejudice, and that
12 is entirely lacking here, entirely lacking.

13 Indeed, the only time it was mentioned before -- that
14 an individual applicant was mentioned of the TGIG plaintiffs
15 was to attack that applicant. And surely the other plaintiffs
16 aren't building their case based upon attacks to TGIG or
17 MediFarm. The element of prejudice was entirely ignored. And
18 to the extent it may have been mentioned in passing, it was to
19 say -- Mr. Dzarnoski said that it would be impossible to know
20 that the rankings were affected by this, that and the other, or
21 you couldn't expect this to show. Well, that is not a reason
22 for setting aside a final decision by an administrative agency,
23 but rather it is a reason to affirm the decision because the
24 plaintiff -- the petitioner, excuse me, who has the burden
25 under 233B.135, Subsection 2, who has the burden simply has not

1 met that burden.

2 THE COURT: Anything else, Mr. Shevorski?

3 MR. SHEVORSKI: Yeah, I'm fine, Your Honor. I'm
4 going through my paper. I don't want to repeat myself or
5 belabor points made in the brief.

6 And so to conclude on that point, Your Honor, the
7 TGIG plaintiffs' arguments contain a significant procedural
8 flaw in that they are essentially asking this Court to
9 disregard the information before the agency at the time the
10 final decision was made and also to assume prejudice. Neither
11 is appropriate.

12 The Court does not have inherent appellate authority
13 over the administrative agency according to the case law. The
14 Court's review is confined to the record before the agency at
15 the time. Based upon the total absence of any argument
16 regarding the record before the agency, this Court should
17 affirm that decision.

18 Touching upon briefly some of the arguments made with
19 respect to the particular statutes, the first argument is one
20 Your Honor has heard time and again, which is NAC 453D.255(1)
21 as an impermissible modification of 453D.200, sub 6. Honestly,
22 we believe the issue on that regulation is moot since it was
23 repealed and replaced. But also, Your Honor, the arguments
24 regarding that in the petition for judicial review are simply
25 irrelevant because the TGIG plaintiffs never tied those

1 arguments to any kind of prejudice to them.

2 The background check is to protect the public. It is
3 not something that a petitioner can use as a sword to attack
4 the agency and seek to set aside the decision of a denial of
5 their particular license. Indeed, the focus of that argument,
6 Your Honor, is entirely on something that's not part of the
7 administrative record in this case, which is other people's
8 applications. The arguments regarding 453D.255(1), the Nevada
9 Administrative Code, are simply irrelevant to this particular
10 proceeding.

11 Secondly, Your Honor, the well-worn argument
12 regarding physical address. Again, my friends are making that
13 argument entirely outside the record. Never do they cite to
14 the record itself to demonstrate their own compliance with
15 that -- what they view of that provision of the Nevada Revised
16 Statute. Obviously we point out in our brief that we believe
17 they're misreading that statute. And the *NuLeaf* case, of
18 course, we believe shows that, that the word "shall" doesn't
19 mean that the Department shall disregard the application that
20 may or may not have a physical address.

21 But more importantly, Your Honor, in terms of this
22 contested case, the address was not scored. And so there's no
23 tie or nexus between the physical address and these particular
24 contested cases, the scoring of the applications. It affected
25 everyone equally in terms of this particular proceeding before

1 Your Honor.

2 Regarding the Department's decision under
3 453D.272(1)(g), which is of course the compliance, again, they
4 are making that argument out -- based upon things that are
5 outside the record. We believe they're also misreading the
6 Nevada Administrative Code. But more importantly, Your Honor,
7 they never demonstrate or attempt to demonstrate that their
8 substantial rights were prejudiced based upon any
9 interpretation the Department made regarding that particular
10 version of the administrative code. And, Your Honor, in your
11 findings of fact and conclusions of law, paragraph 25
12 determined that the decision was in the discretion of the
13 Department of Taxation.

14 But to the extent that the petitioners are attempting
15 to relitigate that matter, we believe they are foreclosed from
16 doing so, and we would cite to the -- I can't pronounce the
17 first name, but I think it's *Alcalacta* (sic). It's the Walmart
18 decision dealing with issue preclusion. To the extent that my
19 friends attempt to set aside the denial of their licensure
20 based upon unequal communication, again, that argument is
21 entirely based on material that is outside the administrative
22 record. There is no argument that their substantial rights
23 were prejudiced because of that. And, indeed, Your Honor found
24 at paragraph 75 of the findings of fact and conclusions of law
25 that there is no substantial likelihood that they would have

1 been successful in the rating process if there had been a
2 different manner of communicating. And so we believe that to
3 the extent they even attempt to raise that argument they are
4 precluded from doing so.

5 Mr. Dzarnoski spent a great deal of time on the idea
6 that it was somehow inappropriate to have two applications.
7 Again, there's no inherent appellate authority for a court to
8 review the administrative processes of the agency. We're here
9 to review the contested case, which is the scoring of the
10 applications. And there's no argument and no evidence in the
11 administrative record to demonstrate that the two applications
12 had any impact globally on the scoring of the applications even
13 if that was appropriate, which we believe it is not. But more
14 importantly, since Mr. Dzarnoski doesn't even mention they were
15 applications of his clients, there's no evidence in the record
16 that the substantial rights of his clients were prejudiced by
17 virtue of the two applications.

18 And so in dealing -- turning now, Your Honor, to
19 NuVeda and Inyo, if NuVeda feels that it has an appeal, this is
20 not the -- or Inyo -- this is not the appropriate forum for
21 that particular challenge. Certainly they can file and seek
22 mandamus to the extent it believes that the Department of
23 Taxation has violated a mandatory duty. We believe that that's
24 not correct, but that is not what we are here to do. That is
25 not the contested case, and it is not the final decision under

1 review.

2 And to the extent that Mr. Slater seeks to expand the
3 record, seeks to expand the subjects under review here, we
4 would object to that and ask that those arguments be denied.

5 To the extent there are different scores on the
6 applications, for example for NuVeda, that's not entirely to be
7 unexpected. This is a human process; there could be error.
8 The Court is not here under 233B.135 to substitute its judgment
9 for the particular graders. But more importantly, there's no
10 argument that any error in scoring prejudiced the rights of
11 Mr. Slater's clients, no argument that they would have achieved
12 a higher ranking and put into a winning position, and therefore
13 no basis for seeking judicial review in the particular
14 contested case before Your Honor.

15 Your Honor, I think these arguments that you've heard
16 today consist almost entirely of attempts to relitigate issues
17 before the Court in Phase 2 but under a different name. The
18 legality of the 2018 process was decided by Your Honor. We
19 respect that decision. We think it is inappropriate to
20 relitigate it under a different name.

21 We ask that Your Honor deny the petitions for
22 judicial review.

23 THE COURT: Thank you. I have one question for you,
24 Mr. Shevorski.

25 MR. SHEVORSKI: Yes, Your Honor.

1 THE COURT: How is Mr. Slater's request related to
2 Mr. Pupo's rejection of the appeal different from the partial
3 summary judgment I granted on May 22nd to M and M with respect
4 to that same issue?

5 MR. SHEVORSKI: I think there may be a question of
6 fact, Your Honor, on timeliness and also whether or not it was
7 served appropriately. I'd have to review that. Candidly, I'm
8 not prepared at this time to determine that. But that decision
9 was made on summary judgment where there was no genuine issue
10 of material fact as to those particular appeals, and I don't
11 think we're in a position here today to review and say there's
12 no question of fact even if there's a properly perfected
13 appeal, Your Honor.

14 THE COURT: All right. Thank you, Mr. Shevorski.

15 MR. SHEVORSKI: Thank you, Your Honor.

16 THE COURT: Do any of the other defendants in
17 intervention have very short arguments in 13 minutes or less,
18 or should I break for lunch?

19 MR. BICE: Your Honor, this is Todd Bice on behalf of
20 the Essence parties. The only point I would add will take less
21 than one minute, which is on your last point. The questions
22 about judicial or review by the Department of Tax, I would also
23 add to what Mr. Shevorski said is that those arguments have now
24 been waived. Mr. Slater's clients proceeded to trial on their
25 legal claims. It did not seek that type of relief. And so you

1 cannot proceed to a trial on claims and then turn around and if
2 you lose then say, well, my case should have been remanded to
3 the Department of Tax.

4 THE COURT: All right. Thank you, Mr. Bice.

5 Any other defendants in intervention wish to make any
6 other points briefly? Are any of you guys going to actually
7 argue?

8 MR. WILLIAMSON: Your Honor, Richard Williamson on
9 behalf of Deep Roots. I would just join in Mr. Shevorski and
10 Mr. Bice's arguments, and we'll otherwise rest on the briefs.

11 THE COURT: All right. Thank you. And I did receive
12 your proposed findings. Thank you.

13 Anyone else who's a defendant intervenor actually
14 want to speak after lunch? I don't want to break for lunch and
15 then have none of you want to argue.

16 MR. KOCH: This is David Koch for Nevada Organic
17 Remedies. We don't intend to add anything.

18 MR. GRAF: Your Honor, Rusty Graf for Clear River.
19 We don't intend on adding anything either. Submit it on the
20 brief.

21 THE COURT: Okay.

22 MR. HONE: Your Honor, Eric Hone for Lone Mountain
23 Partners. We have nothing to add either.

24 THE COURT: I'm getting a consensus from the
25 defendant intervenors that none of you want to argue.

1 So, Mr. Dzarnoski, we are going to break for lunch,
2 and then at 1:15 we will begin with your rebuttal argument.
3 Okay?

4 MR. DZARNOSKI: Okay. 1:15?

5 THE COURT: All right. So I'll talk to you guys at
6 1:15.

7 (Proceedings recessed at 11:50 a.m. until 1:16 p.m.)

8 THE COURT: Good afternoon, Counsel.

9 Mr. Dzarnoski, your rebuttal.

10 MR. DZARNOSKI: Yes. Good afternoon. Thank you,
11 Your Honor.

12 My rebuttal is going to be limited primarily to
13 addressing Mr. Shevorski's comments regarding how my clients
14 are aggrieved, and also to discuss briefly the remedy that is
15 available here should we prevail.

16 First, it is the position, boiled down to its
17 simplest form, of the D.O.T. that my clients did not get a
18 license because their score was not high enough compared to
19 other applications that were scored. I think that might be one
20 thing that all counsel can agree upon as a premise for the --
21 the argument made by the D.O.T.

22 As I brought out in my initial argument this morning
23 that there is evidence that comes solely from the
24 administrative record that shows that incomplete applications
25 were scored, and those were those RD numbers that attached

1 pages 21 to them, and showed that even something that was to be
2 determined, as an address, was included in the scoring
3 (indiscernible).

4 Now, I -- I'd like to start this with an observation
5 that I hope, again, would be uncontested, and that is that --
6 let's assume for a moment every other application submitted,
7 out of the 462 or 461, if every one of those applications was
8 incomplete for any reason -- whether it be the "to be
9 determined" address, the false address, failure to disclose
10 ownership -- if every one of those was incomplete, then my
11 clients who submitted complete applications would have gotten a
12 license award if this was administered properly.

13 Okay. I don't know how anybody can argue against
14 that proposition. If my clients were the only ones to submit
15 complete, compliant applications, regardless of whether they
16 scored them or they didn't, if everything else was incomplete,
17 my client should have won. That obviously would make them
18 aggrieved.

19 THE COURT: But, Mr. Dzarnoski, don't you have to
20 demonstrate a part of the record in this proceeding that each
21 of your clients submitted a complete and compliant application?

22 MR. DZARNOSKI: Well, you know what, Your Honor, I
23 think that at this stage of the proceedings, since my clients'
24 applications were scored too, the Department made the
25 determination, apparently, that they were complete, just like

1 everybody else's applications out there.

2 I mean, I -- my -- my clients, their applications
3 aren't part of the administrative record. I haven't heard
4 that -- I maintain those are complete. The Department has not
5 stated a position that my clients' applications were
6 incomplete. They haven't presented -- there's nothing in the
7 administrative record that says my clients' applications are
8 incomplete.

9 Their record is my clients' application. I can't go
10 outside the record to bring any evidence in that my clients',
11 outside the record, was complete. I've been barred from doing
12 so. They've been barred from showing that they're incomplete.

13 So the question you ask is I -- it's a -- it's a darn
14 good question. But given the rules of the game on judicial
15 review, my clients aren't able to bring in any evidence apart
16 from the application that was submitted.

17 THE COURT: So let's stop there for a minute. So,
18 for instance, let's use your client, Fidelis, as an example.
19 Fidelis's documents are in the record at what I believe are
20 Volumes I through IV of the record on appeal. How do you
21 demonstrate for me that those applications --

22 Is Fidelis one of your clients?

23 MR. DZARNOSKI: Yes.

24 THE COURT: Okay.

25 -- that those applications are complete? Since I've

1 got 73 --

2 MR. DZARNOSKI: Your Honor, well --

3 THE COURT: -- volumes, it's a lot.

4 MR. DZARNOSKI: I'm sorry?

5 THE COURT: I have 73 volumes of the record. I have
6 the index that I went through at lunch again. But I need you
7 to point to me where in the record your clients have
8 demonstrated that their applications were complete.

9 MR. DZARNOSKI: By filing the applications
10 themselves. I'm at a loss. The record is the application.
11 There is nothing else other than the application; right?

12 THE COURT: We are limited to the record that has
13 been filed, all 73 volumes of it.

14 MR. DZARNOSKI: Okay. Then the only way that I
15 can -- then the only way is by implication because my -- the
16 only evidence that has been submitted as part of the
17 administrative record by the Department of Taxation, which I
18 think is -- I mean, I understand your ruling. I just totally
19 disagree with it because the volume of information that is
20 presented totally by application and solely by the scoring
21 sheets does not provide sufficient information for me to prove
22 that my clients -- outside of the fact that they submitted an
23 application and it went to scoring, there is nothing else that
24 they -- is in the administrative record. But that's because
25 the State has submitted an administrative record that is

1 limited solely to application and solely due to the ultimate
2 score sheet. So, I mean, that is the conundrum I have.

3 But on the one hand, the State is saying to you over
4 and over again, hey, the administrative record is here. There
5 is nothing wrong with the applications we granted. They all
6 went to scoring. They're complete.

7 Well, where -- where is there anything in the record
8 to say that those are complete or incomplete? I think I was
9 very fortunate to find amongst the few applications relatively
10 few applications that the D.O.T. submitted that I was actually
11 able to find in the administrative record that clearly an
12 incomplete application was submitted to scoring, and that being
13 the one that had "TBD" in it.

14 Apart from having an address listed as "TBD," you
15 can't tell whether a company is -- whether the -- it's a public
16 company. You can't -- there's an address that's given. The
17 only address that -- and I can't even -- I can't use that 3219
18 because you -- even though you and I and the whole world knows
19 that TGIG used an address that was a maildrop because Amanda
20 Connor told them to do that, just as she told her other
21 clients. You know that; I know that; the D.O.T. knows that.
22 But this administrative record does not contain anything that
23 would allow someone to conclude that because all I have is the
24 record.

25 And I am suggesting to you that this administrative

1 record totally -- if this is acceptable, it totally eviscerates
2 any meaningful judicial review that you can do, and it totally
3 eviscerates the rights of my clients to be able to demonstrate
4 to you that they would have gotten a license or should have
5 gotten a license if you remove the incomplete application.

6 My -- again, if every one of them was incomplete,
7 Your Honor, my clients would have gotten a license if theirs
8 was complete. And -- and because we are being limited here to
9 not being able to go outside the applications of my clients and
10 other clients who were denied licenses, we cannot present to
11 you the applications that were in the scoring pool. We've been
12 precluded from doing that.

13 And that's where my clients are aggrieved, is they
14 have no ability whatsoever to say to you or prove to you from
15 what was submitted as an administrative record that these
16 applications were incomplete which is why I had to make a
17 proffer and to show you how 68.8 percent of the licenses that
18 were granted should never have been scored at all. But right
19 now we can't consider that.

20 But we can't consider whether my clients'
21 applications were complete either without going outside the
22 administrative record, and the only thing you can infer is that
23 they are complete because they went into the scoring. And I'm
24 telling you that that inference is -- is what has caused this
25 entire process to be flawed.

1 The State has allowed and assumed that everything in
2 the application was -- that was submitted is true even when
3 confronted with overwhelming evidence that what was submitted
4 in the application could not be true. Yet they stand there and
5 say, well, it's -- they swore it was true, and we have to
6 accept it's true. Well, if that's the rules, my clients sworn
7 that their applications -- they were scored, so there's your
8 evidence. I mean, that's the best that I can do.

9 What the D.O.T. is saying is it does not have to give
10 the Court, it does not have to give my clients an
11 administrative record from which completeness can be
12 determined. That's really where we are at right now. That
13 record, you cannot make a determination of completeness one way
14 or the other as to all of the applicants that were in the pool,
15 all of the applicants that were scored.

16 But we do know from the record that there were
17 incomplete applications that were in there, and that is not an
18 appropriate -- it doesn't give you the tools, Your Honor, to
19 conduct judicial review on that issue at all.

20 And I think that brings me to the remedy because I
21 want to make it clear. I think Mr. Shevorski assumed that we
22 were looking for the same do-over on the judicial review, but I
23 don't think we necessarily specified that we were looking for a
24 do-over on (indiscernible). So I certainly (indiscernible) say
25 it in my argument.

1 NRS 233B.135 provides you a wealth of remedies. It
2 allows you to remand; it allows you to remand and ask them to
3 do a fuller administrative record. It would allow you to in
4 whole or in part overturn the D.O.T. But I'm not even
5 necessarily suggesting that that's the appropriate remedy given
6 the state of this administrative record.

7 Given the state of the administrative record, which
8 is that the -- that the D.O.T. has not given you or I a
9 sufficient record to determine how many of those applications
10 that were scored were complete, that what -- and what you ought
11 to do and what I'm asking you to do is to remand to the agency,
12 and ask the agency on remand to develop a further -- a fuller
13 administrative record vis-a-vis the Department of Taxation
14 determining completeness of the applications that were actually
15 scored as of the date of submission of the application. That
16 way the D.O.T. will end up having an administrative record that
17 will show that it looked at the completeness of the
18 applications as of the time that it submitted them, and let the
19 chips fall where they may.

20 If the D.O.T. ends up finding that, as I have set
21 forth in here, that 68.8 percent of the licenses that were
22 granted were pursuant to applications that were incomplete,
23 well, the D.O.T. -- or now the CCB is going to have to make a
24 decision about what to do about that. But absent a record
25 showing completeness, you can't -- you can't do anything to

1 help my client.

2 But my client is entitled to know that it was in a
3 fair process, that the process was administered according to
4 the statute and the regulation. And all it is trying -- my
5 clients are trying to do is to say, hey, listen, let's look
6 at -- let's see what the -- the completeness of these
7 applications are. Those that were not complete should not have
8 been scored. They should not have been given licenses.

9 This would not require -- what I'm asking you right
10 now wouldn't even require rescoring necessarily. I mean, if we
11 don't deal with the fact that they didn't score compliance,
12 let's leave that out of the mix. You don't need to rescore.
13 It would use the same scores that were already developed by the
14 Department of Taxation, but you would eliminate from the
15 rankings the 60 -- the however many -- 174 or -- 174
16 applications that were incomplete. So you would just strike
17 through the names and you could use the same scoring.

18 But the one issue that is totally outside the realm
19 of judicial review and our ability to prove that our clients
20 should have gotten the license is this issue of completeness.
21 And so I am urging you to do the remand, have the State develop
22 an administrative record.

23 They can put together a little checklist, and they
24 could say -- they can put on that checklist did -- searched the
25 address on Google. It's a UPS Store. First address here, it's

1 a UPS Store. Therefore, it's incomplete.

2 They can look at the application and see TBD as an
3 address. It's incomplete.

4 They make it on a checklist. This would not be an
5 extensive project and undertaking for them to do.

6 It becomes a more extensive undertaking if, in fact,
7 you -- we were asking for and on (indiscernible) ask for, I'm
8 not sure it's necessary, that the scoring itself we obviously
9 believe was inappropriate because it didn't account for things
10 that we think the statute required. Well, so far we lost that
11 determination on Thursday when you issued the order.

12 But nowhere have we lost an issue on completeness
13 regarding the ownership or on the physical location of the
14 scoring that is mandatorily required by regulation.

15 But I -- frankly, there -- there'd be no reason to
16 have judicial review if the -- if all the State has to do is
17 submit a record where important issues that -- that they needed
18 to decide were just eliminated from the record, and nobody
19 could go forward to the -- and you couldn't go forward and find
20 out a rational basis for why they did something that is, per
21 se, arbitrary and capricious.

22 If you have any more questions, I'd be happy to
23 answer them.

24 THE COURT: So, Mr. Dzarnoski, some of your clients'
25 applications that are part of the administrative record are

1 more highly redacted than others. In reviewing the
2 administrative record, can you give me any guidance on how I
3 should treat those applications for your clients that are very
4 heavily redacted and those that are redacted very little?

5 MR. DZARNOSKI: Well, yes. Let -- I'm going to try
6 and answer you first, and then I'd like to make a comment about
7 it. It's always good to answer the question.

8 THE COURT: Okay.

9 MR. DZARNOSKI: First, as to the redactions, the --
10 my answer is the same thing, I suppose, as it was to your
11 earlier question where it's very closely akin.

12 The applications, as they were submitted to the
13 Department of Taxation, obviously, were not redacted. So the
14 Department of Taxation reviewed those applications in their
15 unredacted form, and they determined that they were complete or
16 must have assumed they were complete, whatever they did,
17 because they went to scoring. And then they were scored based
18 upon the information that is redacted.

19 Most of their redactions, by the way, Your Honor,
20 are -- deal with the -- the unidentified portion of the
21 application. And so I've -- we're not necessarily -- we're not
22 challenging the particular score, and nor -- nor are we asking
23 you to look at whether or not they should have given my client
24 28 points for community -- not community development --
25 community --

1 THE COURT: Community impact.

2 MR. DZARNOSKI: -- impact. We're not saying my
3 clients should have got 28 versus 30 points. What we're saying
4 is that the guys who got granted licenses, 70 percent of them,
5 70 percent of them filed incomplete applications.

6 I don't need to compare my score, my clients' score
7 against their scores. So the redacted information doesn't help
8 you at all in the determination of whether something is
9 complete or incomplete. And it's not an issue that is before
10 you on judicial review that my scores should have been higher.
11 We are not making that argument. So that's the -- I mean,
12 that, I think, answers your question.

13 And the comment that I wanted to make is that the
14 redactions are -- are entirely a product of the confidentiality
15 rules that were imposed in the governing process, I guess,
16 (indiscernible). I mean, I got applications, for instance,
17 from -- from Essence that I remember looking at -- that
18 somebody in my office -- Hey, I'd like to look at the whole
19 application. I don't remember how many pages, I'm estimating.
20 Mark, I've got 6,000 pages. I said, Okay. Well, maybe I don't
21 want you to print 6,000 pages. Let me look. There's probably
22 about 25 pages that are not redacted.

23 I mean, that -- at trial there was -- I recall there
24 was a couple exhibits that we entered -- I introduced through,
25 I believe, it was Mr. Britton or Mr. Plaskon, and I had told

1 you that the exhibit that we submitted was well over 1,000
2 pages, and all I asked for was to have my IT person take out
3 those pages that were not redacted. After, you know, 1,100
4 pages, pulled 21 that were unredacted. So, I mean, that -- the
5 redaction is not somebody or is my client hiding anything
6 meaningful from you. It's the process of this litigation
7 that's been followed from day one [iindiescernible] just by
8 every intervenor.

9 THE COURT: Well, Mr. Dzarnoski, the problem is --

10 MR. DZARNOSKI: (Indiscernible) the State to produce
11 the redacted versions to you.

12 THE COURT: The problem is, Mr. Dzarnoski, you on --
13 your firm on behalf of your clients made a decision as to what
14 redactions were appropriate or not and informed the Department
15 of Taxation about that prior to the production of the documents
16 in the litigation. Those redactions remain in the record as it
17 was filed on June 12th, 2020, which causes me concern in
18 evaluating your claims that your clients would have been
19 successful if I order review by the D.O.T. of what happened
20 because it's in a redacted form that I can't even draw heads or
21 tails from on most of.

22 MR. DZARNOSKI: Let me clarify that. I -- I am not
23 telling you that each of my clients would be -- would get a
24 license under this -- under what I am asking for a remedy. I
25 think I'm specifically telling you I can't do that because the

1 administrative record, apart from any redactions -- no
2 redactions are going to change the fact that the administrative
3 record that has been submitted does not allow you and it does
4 not allow us to figure out whether or not the applications
5 submitted by people who won and the people who ranked higher
6 than my (telephonic interference) were complete. And that's
7 the problem, and there's nothing in any redaction that my
8 client has made that answers that question.

9 It is only if the Department is required on remand to
10 develop a further record to show that they even considered
11 completeness. And they do it, as I said, very, very simply.
12 Here's the address. They can Google it, check it. And they
13 will find, just as I found, that they are UPS Stores, Mail Box
14 Etc. that are -- are covering a vast number of the applications
15 that were granted.

16 So, you know, when -- when you say would my clients
17 prevail, well, we know that 68 percent of the -- the applicants
18 who were granted licenses are going to be cut off. So at least
19 we're going down, and we need to fill those 68 slots with the
20 next -- or the slots for that 68 percent with the next group of
21 people, but those people have to have submitted complete
22 applications.

23 And until you finish the completeness inquiry, there
24 is no way to figure out what a reasonable and rational ranking
25 would be for these people that was done in conformity with the

1 statute and the regulation.

2 I mean, I can't make it -- make the evidence up. But
3 I don't want to mislead you. I am not telling you that if you
4 take those redactions out that my client would end up -- each
5 of my clients would end up getting a license. In fact, I -- I
6 think I can tell you with some degree of certainty and some
7 degree of candor that if it got remanded, TGIG in that remand
8 and the further development of the record would probably be
9 determined to have an incomplete application and not be part of
10 the license pool or the scoring pool.

11 I can tell you that Medicare -- not Medicare -- I'm
12 getting ready to apply.

13 So MediFarm, MediFarm, in all likelihood, upon a
14 remand, because it is a public -- it is owned by a public
15 company would fail a completeness review and wouldn't end up in
16 the pot to be scored.

17 But I'm certainly not going to stand up here and try
18 and persuade you or tell you that those two would get licenses.
19 But I've got four or five other (telephonic interference) that
20 are not public companies, that did not use addresses that were
21 false and bogus. I can't prove they're not false and bogus
22 because I'm not allowed to go outside the administrative
23 record. But I can tell you that those clients that would not
24 get out of the -- the completeness -- that would get out of the
25 completeness pool, go into the scoring pool, once you remove

1 68 percent of the grantees and you eliminate --

2 What did I come up with earlier? Like 174 that was
3 just on addresses "to be determined."

4 -- once you start removing all those things, the list
5 of people whose names appear above my clients on that list
6 disappear, and my client goes up higher. And it's only after
7 that is done that one could say this was a fair legitimate
8 process that complied with the statute and the regulation.

9 And we're not asking you to make a decision to enjoin
10 anyone. We're not asking you to award my client a license.
11 We're asking you to look at this administrative record and
12 recognize the problem, the problem being that it does not give
13 adequate information to you or us to conduct any kind of
14 meaningful judicial review. And that the only way to conduct
15 that meaningful judicial review is to remand for further
16 fact-finding and see what the D.O.T. comes up with.

17 If they match my numbers and they say these were all
18 incomplete and they gave Essence and Thrive and some other
19 people licenses pursuant to that when they shouldn't have,
20 I'm -- I don't know that you would be the ultimate person to
21 decide what to do under those circumstances. I suspect the
22 first person -- or the first people that would look at it and
23 develop the administrative record would be the CCB, and they'd
24 say, okay, we granted these licenses, but we shouldn't have.
25 What do we do now? And then two years from now, all of a

1 sudden there's a phone call, and we'll be back in Court with
2 you to argue about that one problem.

3 But -- but that's the remand, and that's the -- the
4 way my client will not be aggrieved and the way that you can --
5 you can make sure that at a minimum this process was in
6 substantial compliance (telephonic interference) compliance
7 with the statutes and the regulation because we know that as
8 the situation stands now and (indiscernible) everybody on this
9 call and everybody who's read your Order knows that everything
10 wasn't done in a fashion that anybody should be proud of.

11 And now you can -- you can help my client in giving a
12 remedy simply by remanding for further factual findings on this
13 one particular issue dealing with completeness insofar as it
14 encompasses ownership disclosure, the "to be determined"
15 licensing, and the -- or "to be determined" property location,
16 and to do a search on Google to verify that these addresses
17 that were used are not UPS Stores, P.O. boxes and the like.
18 That's at the very, very minimal request.

19 It does not seem it would take much time for the
20 D.O.T. It would at least let everybody know what would have
21 happened if the -- if the process and the statutes had been
22 followed. And then we'll -- government agencies and applicants
23 and licensees will have to act accordingly after that remand
24 and the new record is developed, and none of us can say what
25 that way is.

1 THE COURT: Thank you, Mr. Dzarnoski.

2 Mr. Slater, I've got one question, before you --
3 before you start your rebuttal portion of the argument.

4 In looking at the record on appeal that's been filed,
5 all of your client's information is listed as attorney eyes
6 only and is not in the appendix at least as far as I could find
7 because I did not look in all 73 volumes. I looked on the
8 index.

9 Can you tell me where within the record your client's
10 request for an appeal to the Tax Commission and your rejection
11 of that request for an appeal are located?

12 MR. SLATER: I can, Your Honor. They are not
13 included in the appeal on record.

14 THE COURT: Okay. Okay. Is there anything else you
15 want to tell me on the rebuttal?

16 MR. SLATER: Nothing on my end, Your Honor.

17 THE COURT: Ms. Sugden, Ms. Chattah, anything?

18 MS. CHATTAH: Nothing on our end, Judge. We're going
19 to join, at least on my end. I'm going to join with
20 Mr. Dzarnoski.

21 THE COURT: Ms. Sugden?

22 MS. SUGDEN: I join as well in -- in TGIG's
23 arguments. But I do want to note that THC Nevada has submitted
24 I believe their complete unredacted application which would
25 show it's complete.

1 THE COURT: Thank you.

2 MS. SUGDEN: It's listed on the index.

3 THE COURT: Thank you.

4 MS. SUGDEN: Thank you.

5 THE COURT: Anything else?

6 I believe the hearing on Phase I --

7 MR. DONATH: Your Honor --

8 THE COURT: -- is now completed. Is there anything
9 else anybody believes we need to do on Phase I?

10 MR. DONATH: Your Honor --

11 THE COURT: Besides --

12 MR. DONATH: -- Nick Donath, for Green Leaf Farms,
13 Green Therapeutics, NevCann and Red Earth. To the extent where
14 relevant and applicable, we'd like to join in Mr. Dzarnoski's
15 arguments today. Thank you.

16 THE COURT: Thank you.

17 Anyone else?

18 (No audible response.)

19 THE COURT: All right. The matter will stand
20 submitted.

21 Dulce, if you could put a status check on my chambers
22 calendar a week from Friday.

23 THE CLERK: September 18, chambers.

24 THE COURT: So the next issue for your thought
25 process and consideration relates to Phase 3 of the trial,

1 which is a jury trial. That is limited to certain 1983 claims
2 that still exist.

3 I would like for the State and the remaining
4 plaintiffs who have those claims to give me a status report on
5 what you believe we should do to try and schedule that portion
6 of the trial. And I'm going to set that on the 18th as well
7 for a status check. If you could give me a written status
8 report, please.

9 And then this Friday, any objections to the release
10 of bond are due. I anticipate there will be at least one
11 objection based on the communications we had last week.

12 Does anyone think we need an evidentiary hearing as
13 opposed to a hearing with a conference call?

14 MR. KAHN: Your Honor, this is Jared Kahn for Helping
15 Hands Wellness Center. Thank you.

16 We are already preparing our objection, as you've
17 noted. We'd like to be forthcoming.

18 At this stage, Your Honor, an evidentiary hearing may
19 be necessary to determine the amount of damages unless we --
20 unless you would like to just limit it to the evidence and
21 exhibits that were admitted in the record already in this
22 phase.

23 THE COURT: Okay.

24 MR. KAHN: Otherwise, we -- we can be prepared to
25 proceed with an evidentiary hearing and schedule that for --

1 for Your Honor's review.

2 THE COURT: All right. Then I will look at the
3 objections when they come in. I only have my courtroom all day
4 on Tuesdays. So if I am able to find a Tuesday where we can do
5 an evidentiary hearing, I'll let you know.

6 MR. KAHN: Okay. Thank you, Your Honor.

7 THE COURT: I'm not going to the Convention Center to
8 do that, Ramsey.

9 THE CLERK: Tomorrow is vacated, Your Honor?

10 THE COURT: Tomorrow is vacated. We have finished.

11 MR. GAMBLE: This is Clarence Gamble for Rural
12 Remedies.

13 THE COURT: Yes, sir?

14 MR. GAMBLE: Regarding your comments regarding the
15 joint statement that is due regarding the Phase 3 for the jury
16 trial issues, you did not mention the claims for unjust
17 enrichment which -- against the D.O.T. which did include a
18 demand for a jury. Was that by omission, or was that a
19 contention?

20 THE COURT: That was by omission.

21 MR. GAMBLE: Okay. Thank you, Your Honor.

22 THE COURT: All of the phase -- all of the jury trial
23 matters are lumped together under Phase 3.

24 So -- and you may know, Mr. Gamble -- I know that
25 you're located someplace else most of the time -- that we

1 haven't had a jury trial in district court yet, and they're
2 going to try and do some criminal jury trials, and they may try
3 and do a civil jury trial, but they're not making much progress
4 in getting anybody to take us up on the jury courtroom they
5 built over at the Convention Center now that we're gone. So.

6 All right. Well, I will have a decision out for you,
7 and you all remain well. Thank you again for your
8 professionalism and for providing the information that I need
9 to make a decision on this portion.

10 Be well. Thank you.

11 MS. SUGDEN: You as well, Your Honor.

12 (Proceedings concluded at 1:54 p.m.)
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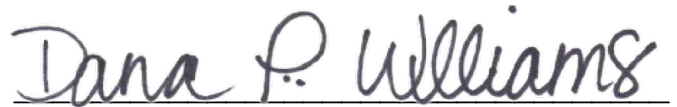
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

09/08/2020

DATE

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