

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

\* \* \* \* \*

IN RE: D.O.T LITIGATION.

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MM DEVELOPMENT COMPANY,  
INC.; and LIVFREE WELLNESS,  
LLC,

Appellants,

vs.

INTEGRAL ASSOCIATES, LLC  
D/B/A ESSENCE CANNABIS  
DISPENSARIES, ESSENCE  
TROPICANA, LLC, ESSENCE  
HENDERSON, LLC; and CLEAR  
RIVER, LLC,

Respondents.

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Case No.: 86739

Electronically Filed  
Jul 17 2023 01:33 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Dist. Ct. Case No.: A-19-787004-B

Dept.: XXXI

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

### **DOCKETING STATEMENT CIVIL APPEALS**

**1. Judicial District:** Eighth Judicial Court      **Department:** 31

**County:** Clark

**Judge:** Judge Joanna Kishner

**District Ct. Case No.:** A-19-787004-B (consolidated with A-18-785818-W; A-18-786357-W; A-19-786962-B; A-19-787035-C; A-19-787540-W; A-19-787726-C; and A-19-801416-B)

**2. Attorney filing this docketing statement:**

Nathanael R. Rulis, Esq.  
Kemp Jones, LLP  
3800 Howard Hughes Parkway  
Las Vegas, Nevada 89169  
(702) 385-6000

**Client(s):** MM Development Company, Inc. (“MM”) & LivFree Wellness, LLC (“LivFree”)

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

James J. Pisanelli, Esq.  
Todd L. Bice, Esq.  
Jordan T. Smith, Esq.  
Pisanelli Bice PLLC  
400 S. 7<sup>th</sup> St., Suite 300  
Las Vegas, Nevada 89101  
(702) 214-2100

**Client(s):** Integral Associates LLC d/b/a Essence Cannabis Dispensaries;  
Essence Tropicana, LLC; Essence Henderson, LLC (collectively “Essence  
Entities”)

Rusty J. Graf, Esq.  
Brigid M. Higgins, Esq.  
Black & Wadhams  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
(702) 869-8801

**Client(s):** Clear River, LLC (“Clear River”)

**4. Nature of disposition below (check all that apply)**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:               |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction     |
| <input checked="" type="checkbox"/> Summary judgment           | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute     |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify):         |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree:          |

- ☐ Grant/Denial of declaratory relief      ☐ Original      ☐ Modification
- ☐ Review of agency determination      ☒ Other disposition (specify):

In the instant Appeal, MM & LivFree are challenging the Orders finding the Essence Entities and Clear River to be prevailing parties vis a vis MM & LivFree (and other settling Plaintiffs) and the costs awarded to the Essence Entities and Clear River. *See* Notice of Entry of District Court's Order Granting in Part and Denying in Part Settling Plaintiffs' Motion to Retax and Settle Essence's Costs, entered on May 4, 2023 ("Essence Order"), attached hereto as **Exhibit A**; and Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Motion to Retax and Settle Costs Regarding Clear River, LLC'S Memorandum of Costs (the "Clear River Order"), entered on the May 3, 2023, attached hereto as **Exhibit B**.

**5. Does this appeal raise issue concerning any of the following? No.**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:



1. Greenmart of Nev. NLV LLC et al. v. Nevada Wellness Center, LLC;  
Case No.: 79673;
2. Greenmart of Nev. NLV LLC et al. v. High Sierra Holistics LLC, Case  
No.: 79672;
3. Greenmart of Nev. NLV LLC et al. v. Compassionate Team of Las  
Vegas LLC; Case No.: 79671;
4. Greenmart of Nev. NLV LLC et al. v. ETW Management Group, LLC  
et al., Case No.: 79669;
5. Greenmart of Nev. NLV LLC et al. v. Serenity Wellness Ctr., LLC et  
al.; Case No.: 79668;
6. Greenmart of Nev. NLV LLC et al. v. MM Development Company,  
Inc. et al.; Case No.: 79670;
7. Nevada Wellness Center, LLC v. Greenmart of Nev. NLV LLC et al.;  
Case No.: 80230;
8. State Dep't of Taxation v. Eight Jud. Dist. Crt. et al; Case No.: 80637;
9. State Dep't of Taxation v. Eight Jud. Dist. Crt. et al; Case No.: 81448;
10. Wellness Connection of Nev., LLC v. Qualcan, LLC et al.; Case No.:  
85314;
11. State Dep't of Taxation v. Eight Jud. Dist. Crt. et al; Case No.: 79825;
12. TGIG, LLC et al. v. State Dep't of Taxation; Case No.: 82014;

13. TGIG, LLC et al. v. State Dep't of Taxation et al.; Case No.: 86070;
14. Clark Natural Medicinal Solutions LLC et al. v. Deep Roots Medical, LLC; Case No.: 86151;
15. TGIG, LLC et al. v. State Dep't of Taxation et al.; Case No.: 86275;
16. Clark Natural Medicinal Solutions LLC et al. v. State Dep't of Taxation et al.; Case No.: 86276;
17. Nevada Wellness Center, et al. v. Integral Associates, LLC d/b/a Essence Cannabis Dispensaries; Case No.: 86741;
18. Clark Natural Medicinal Solutions, LLC et al. v. Clear River, LLC; Case No.: 86771; and
19. Green Leaf Farms Holdings LLC et al. v. Lone Mountain Partners, LLC et al.; Case No.: 86071.

MM & LivFree provide the above listed Appeals for completeness. However, MM & LivFree's Appeal is of the Orders attached as **Exs. A & B**.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

As noted in response to Question 1, Case No.: A-19-787004-B, was consolidated with various other cases (A-18-785818-W; A-18-786357-W; A-19-786962-B; A-19-787035-C; A-19-787540-W; A-19-787726-C; and A-19-801416-

B). In the consolidated matter, the Eighth Judicial District Court issued the following rulings/orders that are related to this Appeal:

1. Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM Development Company, Inc. and LivFree Wellness, LLC's Motion for Summary Judgment or for Writ of Mandamus, entered July 11, 2020.

2. Notice of Entry of Order regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment on First Claim for Relief; entered August 20, 2020;

3. Findings of Fact, Conclusion of Law and Permanent Injunction of September 3, 2020; entered on September 22, 2020;

4. Findings of Fact, Conclusion of Law and Permanent Injunction of September 16, 2020; entered on September 22, 2020;

5. Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b); entered on August 4, 2022;

6. Order Granting in Part and Denying in Part Remaining Motions to Retax and Settle Costs regarding Deep Roots Harvest, Inc.'s Verified Memorandum; entered June 14, 2023;

7. Order Denying in Part and Granting in Part the TGIG Plaintiffs' Motion to Retax and Settle Costs, and Awarding Costs to Clear River, LLC; entered May 19, 2023;

8. Order Granting in Part and Denying in Part Settling Plaintiffs' Motion to Retax and Settle Essence's Costs; entered May 4, 2023. *See Ex. A*;

9. Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Motion to Retax and Settle Costs Regarding Clear River, LLC's Memorandum of Costs; entered May 3, 2023. *See Ex. B*;

10. Findings of Fact, Conclusions of Law, and Order Denying Clear River, LLC's Motion for Attorney's Fees and Costs; entered April 4, 2023;

11. Order Denying in Part Motions to Retax and Settle the Essence Entities' Costs and the Joinder and Supplements Thereto; entered February 27, 2023;

12. Order Denying in Part and Granting in Part the TGIG Plaintiffs' Motion to Retax and Settle Costs, and Awarding Costs to Deep Roots Harvest, Inc.; entered February 16, 2023;

13. Order Re: TGIG Plaintiffs' Motion to Retax and Settle Costs and Joinders; entered February 7, 2023;

14. Order Granting Motion to Retax and Settle Costs Regarding Clear River, LLC; entered February 7, 2023;

15. Order Granting Motion to Retax and Settle Costs Regarding Deep Roots Harvest, Inc.; entered January 25, 2023;

16. Order Denying in Part and Granting in Part the TGIG Plaintiffs' Motion to Retax and Settle Costs, and Awarding Costs to Deep Roots Harvest, Inc.; entered January 25, 2023;

17. Order Denying in Part and Granting in Part TGIG Plaintiffs' Motion to Retax and Settle Costs Regarding Nevada Organic Remedies, LLC; entered January 24, 2023;

18. Order Granting Motions to Retax TGIG Plaintiffs' Memorandum of Costs; entered January 20, 2023;

19. Order Denying Motion to Retax and Settle Costs Regarding Wellness connection of Nevada, LLC as Moot; entered January 18, 2023;

20. Order Denying Motion to Retax and Settle Costs Regarding Nevada Organic Remedies, LLC; entered January 18, 2023;

21. Order Denying Motion to Retax and Settle Costs Regarding Lone Mountain Partners; entered January 18, 2023;

22. Order Denying Motion to Retax and Settle Costs Regarding CPCM Holdings, LLC d/b/a Thrive Cannabis Market Place, Cheyenne Medical, LLC and Commerce Park Medical, LLC; entered January 18, 2023;

23. Order Regarding TGIG Plaintiffs' Motion to Retax Thrive's Costs; entered on January 4, 2023; and

24. Order Denying Plaintiffs' Motion to Retax and Settle Costs and Awarding Costs to Lone Mountain Partners, LLC; entered January 3, 2023.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This Court is well versed in the general nature of the instant case. On or about July 20, 2022, the Essence Entities' Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) was granted. On August 4, 2023, the Essence Entities entered the Order certifying the two Phases as final. On August 5, 2022, the Essence Entities filed a Memorandum of Costs, seeking a total of \$181,033.95 from all Plaintiff parties. On August 8, 2022, Clear River filed a Memorandum of Costs, seeking a total of \$37,194.47 from all Plaintiff parties.

Prior to these filings, Plaintiffs MM, LiveFree, Nevada Wellness Center, Qualcan LLC, Natural Medicine, LLC, ETW Management Group, LLC, Global Harmony, LLC, Just Quality, LLC, Libra Clear River Center, LLC, Rombough Real Estate, Inc. d/b/a Mother Herb, and Zion Gardens (collectively "Settling Plaintiffs") had reached a settlement with the Nevada Department of Taxation, and some of the Defendants, not including the Essence Entities, in 2020. Generally, the Settling Plaintiffs worked as a group in responding to requests for costs, including the Essence Entities' and Clear River's requests.

On August 8, 2022, MM and LiveFree, along with Qualcan, LLC and Natural Medicine, LLC, filed a joint Motion to Retax and Settle Costs regarding the Essence

Entities. The remaining Settling Plaintiffs, NWC, ETW Management Group, LLC, Global Harmony, LLC, Just Quality, LLC, Libra Clear River Center, LLC, Rombough Real Estate, Inc. d/b/a Mother Herb, and Zion Gardens, joined the Motion. All Settling Plaintiffs submitted a joint Reply. The Court treated the Settling Plaintiffs different from others. Following completed briefing, the Court determined that the Essence Entities were prevailing parties vis a vis the Settling Plaintiffs. The Court retaxed costs that lacked sufficient justification/documentation. Additionally, the Court retaxed costs that were incurred after the Settling Plaintiffs settlement. However, unlike in later decisions addressing other Defendants' requests for costs, the Court did not retax costs incurred prior to the Essence Entities actually filing an Answer to each specific parties' Complaint. The Court did not allocate the awarded costs among either the Settling Plaintiffs, or the other plaintiffs in the case. Ultimately, the Motion to Retax was granted in part, and denied in part, with the Essence Entities be awarded costs, from the Settling Plaintiffs, totaling \$163,817.77.

On August 11, 2022, MM and LiveFree – as part of a joint motion with the other Settling Plaintiffs – filed a Motion to Retax and Settle Costs regarding Clear River. MM & LivFree were part of the group of Settling Plaintiffs that filed the joint Motion, and submitted a joint Reply. The Court treated the Settling Plaintiffs different from others. Following completed briefing, the Court determined that Clear River was a prevailing party vis a vis the Settling Plaintiffs – for purposes of costs

only. The Court retaxed costs that lacked sufficient justification/documentation. Additionally, the Court retaxed costs that were incurred after the Settling Plaintiffs settlement. And the Court retaxed costs incurred prior to Clear River actually filing an Answer to each specific parties' Complaint. The Court did not allocate the awarded costs among either the Settling Plaintiffs, or the other plaintiffs in the case. Ultimately, the Motion to Retax was granted in part, and denied in part, with Clear River being awarded costs, from the Settling Plaintiffs, totaling \$135.63.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Did the District Court err in failing to exclude costs incurred prior to the Essence Entities filing an Answer to each respective complaint?
2. Did the District Court err in finding that the Essence Entities were prevailing parties vis a vis the Settling Plaintiffs?
3. Did the District Court err in finding that Clear River was a prevailing party vis a vis the Settling Plaintiffs?
4. Did the District Court err in finding that certain costs were reasonable and necessarily incurred?
5. Did the District Court err in failing to allocate awarded costs among the Settling Plaintiffs, and all Plaintiffs in the action?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises



the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Upon information and belief, many of the ongoing Appeals, contained in response to Question 6 involve challenges to other Orders awarding costs in this matter, or denying an award of costs. It is believed these Appeals are as follows:

Case No. 86071;

Case No. 86771

Case No. 86741

Case No. 86276

Case No. 86275

Case No. 86151

Case No 86070

Additionally, Case No. 85314 is likely to touch on the issue of who is a prevailing party.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues. Does this appeal involve any of the following issues?**

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity

of this court's decisions

- ☐ A ballot question

If so, explain:

This appeal involves questions as to when a defendant becomes a party to the case. This appeal involves questions as to whether a non-settling defendant can seek costs from settled plaintiffs. This appeal involves questions as to who is a prevailing party in a multiparty case, especially when a defendant is only named to comply with the Administrative Procedure Act.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(9), as this matter proceeded in/originated in business court. The Settling Plaintiffs also believe this matter involves questions of statewide importance as to when a person/entity becomes a party. *See generally* NRAP 17(a)(12).

**14. Trial.** If this action proceeded to trial, how many days did the trial last?

The underlying trial lasted 20 days.

Was it a bench or jury trial?

Bench trial.

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

#### **TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from:**

May 3, 2023 (Clear River Order) and May 4, 2023 (Essence Entities Order).

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review

**17. Date written notice of entry of judgment or order was served**

May 3, 2023 (Clear River Order) and May 4, 2023 (Essence Entities Order).

Was service by:

☐ Delivery

- Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59).**

Not applicable.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing:

☐ NRCP 52(b)      Date of filing:

☐ NRCP 59          Date of filing:

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev., 245 P.3d 1190 (2010).**

(b)      Date of entry of written order resolving tolling motion.      N/A

(c)      Date written notice of entry of order resolving tolling motion was served. N/A

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed**

June 2, 2023;

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

In addition to MM & LivFree, the following parties filed Notices of Appeal regarding the Essence Entities Order (but not the Clear River Order) on the following dates:

- Nevada Wellness Center, LLC – May 30, 2023
- Natural Medicine, LLC – May 31, 2023 (Amended Notice of Appeal filed on June 2, 2023)
- ETW Management Group, LLC, Global Harmony, LLC, Just Quality, LLC, Libra Clear River Center, LLC, Rombough Real Estate, Inc. d/b/a Mother Herb, and Zion Gardens – June 1, 2023
- Qualcan, LLC – June 2, 2023

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a).

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

- (a) ☐ NRAP 3A(b)(1) ☐ NRS 38.205
- ☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3)      ☐ NRS 703.376

■ Other (specify)

NRAP 3A(b)(8)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Orders appealed from are post-trial special orders, granting in part and denying in part, the Motions to Retax (resulting in an award of costs to the Essence Entitles and Clear River).

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties: See

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

The only parties currently in the instant appeal are as follows:

- MM & LiveFree

Other Settling Plaintiffs – specifically, Nevada Wellness Center, Natural Medicine, LLC, ETW Management Group, LLC, Global Harmony, LLC, Just Quality, LLC, Libra Clear River Center, LLC, Rombough Real Estate, Inc. d/b/a Mother Herb, Zion Gardens, Rural Remedies LLC, and Qualcan, LLC are not

involved in the instant Appeal as they filed their own Appeal of the Essence Entities Order and have their own Case Number (86741). The remaining Plaintiffs are not involved in the instant Appeal as there were other entered Orders, specific to those Plaintiffs. Other than the Essence Entities and Clear River, the other remaining Defendants are not involved in the instant Appeal as none are directly impacted by the Appeal.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Settling Plaintiffs brought claims for violation of constitutional rights, writs of mandamus, declaratory relief, and judicial review against the State of Nevada, Department of Taxation seeking that errors with the grading be fixed and to obtain one or more dispensary licenses and/or damages. Other defending parties were added to comply with the Nevada Administrative Procedure Act. The bench trial resulted in two orders, both entered on September 22, 2020. The instant Appeal challenges the post-trial award of costs, via an Orders entered on May 3, 2023 and May 4, 2023.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

**25. If you answered “No” to question 24, complete the following:**

(a) Specify the claims remaining pending below:

It is believed there are no remaining, pending claims below. However, the Orders appealed from are the granting in part and denying in part of Motions to Retax following the Essence Entities and Clear River seeking awards of costs.

(b) Specify the parties remaining below:

See above.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCp 54(b)?

☐ Yes

☒ No

See above; not applicable.

(d) Did the district court make an express determination, pursuant to NRCp 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

See above; not applicable.

**26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**



The instant appeal does not challenge the decisions entered following the Bench Trial. The instant appeal is challenging post-trial awards of costs under NRAP 3A(b)(8).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Please see attached **Exhibits A & B**. Additionally, please see various Complaints, attached hereto as **Exhibit C**.

## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

MM Development Company, Inc.  
& LivFree Wellness, LLC

\_\_\_\_\_  
Name of appellant

Nathanael R. Rulis, Esq.

\_\_\_\_\_  
Name of counsel of record

July 17, 2023

\_\_\_\_\_  
Date

*/s/ Nathanael R. Rulis*

\_\_\_\_\_  
Signature of counsel of record

Clark County, Nevada

\_\_\_\_\_  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 17<sup>th</sup> day of July, 2023, I served a copy of this completed docketing statement upon all counsel of record via the Court's E-filing system and via First Class Mail with sufficient postage prepaid to the following address:

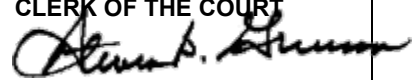
Eleissa C. Lavelle, Esq.  
JAMS  
7160 Rafael Rivera Way, Suite 400  
Las Vegas, NV 89113  
*Settlement Judge*

Dated this 17<sup>th</sup> day of July, 2023.

/s/ Ali Lott

An Employee of Kemp Jones, LLP

# **Exhibit A**



James J. Pisanelli, Esq., Bar No. 4027

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*Attorneys for Integral Associates LLC*

*d/b/a Essence Cannabis Dispensaries,*

*Essence Tropicana, LLC, Essence Henderson, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In Re: D.O.T. Litigation,

Case No.: A-19-787004-B

Dept. No.: XXXI

CONSOLIDATED WITH:

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an "Order Granting in Part and Denying in Part Settling Plaintiffs' Motion to Retax and Settle Essence's Costs" was entered in the above-captioned matter on May 4, 2023, a true and correct copy of which is attached hereto.

DATED this 4th day of May, 2023.

PISANELLI BICE PLLC

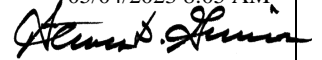
By: /s/ Jordan T. Smith  
James J. Pisanelli, Esq., Bar No. 4027  
Todd L. Bice, Esq., Bar No. 4534  
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400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101

*Attorneys for Defendants in Intervention,  
Integral Associates LLC d/b/a Essence Cannabis  
Dispensaries, Essence Tropicana, LLC, Essence  
Henderson, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 4th day of May, 2023, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **NOTICE OF ENTRY OF ORDER** to all parties listed on the Court's Master Service List.

/s/ Shannon Dinkel  
An employee of Pisanelli Bice PLLC

  
CLERK OF THE COURT

**OGM**

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Essence Tropicana, LLC, Essence Henderson, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**Case No.** A-19-787004-B

**Consolidated with:**

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787035-C

A-19-787540-W

A-19-787726-C

A-19-801416-B

**Dept. No.** XXXI

In Re: D.O.T. Litigation

**ORDER GRANTING IN PART AND DENYING IN PART SETTLING PLAINTIFFS'  
MOTION TO RETAX AND SETTLE ESSENCE'S COSTS**

Settling Plaintiffs MM DEVELOPMENT COMPANY, INC. D/B/A/ PLANET 13  
("MM"), LIVFREE WELLNESS, LLC D/B/A THE DISPENSARY ("LivFree"), QUALCAN  
LLC ("Qualcan"), NATURAL MEDICINE, L.L.C. ("Natural Medicine"), NEVADA  
WELLNESS CENTER, LLC ("NWC") and ETW MANAGEMENT GROUP, LLC ("ETW"),  
GLOBAL HARMONY, LLC ("Global Harmony"), JUST QUALITY, LLC ("Just Quality"),  
LIBRA CLEAR RIVER CENTER, LLC ("Libra"), ROMBOUGH REAL ESTATE, INC. dba



MOTHER HERB (“Mother Herb”), and ZION GARDENS, LLC (“Zion”) (collectively, “ETW Plaintiffs”), by and through their counsel of record, filed the Motion to Retax and Settle Costs (Doc ID# 2870), in this action on Aug. 8, 2022 (the “Motion”) regarding Defendant Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC (“Essence”) Memorandum of Costs filed August 5, 2022 (the “Memorandum”).

This Motion, having come before the Court on September 16, 2022, at 9:00 a.m. and again on October 21, 2022, at 8:30 a.m., with Settling Plaintiffs and Essence having appeared by and through their respective counsels of record on Settling Plaintiffs’ Motion. The Court having reviewed and considered the papers and pleadings on file herein, having heard the arguments of counsel, and for good cause appearing, hereby enters the following Findings of Fact, Conclusions of Law, and Order:<sup>1</sup>

**I.**

**FINDINGS OF FACT**

1. On December 10, 2018, Settling Plaintiffs MM and LivFree filed a Complaint, asserting causes of action for Declaratory Relief, Injunctive Relief, Violation of Procedural Due Process, Violation of Substantive Due Process, Equal Protection Violation, Petition for Judicial Review, and Petition for Writ of Mandamus.<sup>2</sup> The only named Defendant was the STATE OF NEVADA, DEPARTMENT OF TAXATION (“DOT”). Similarly, on January 15, 2019, Settling Plaintiff NWC filed a Complaint, asserting the same causes of action, and naming only DOT as a Defendant.<sup>3</sup> These actions, as originally brought by Settling Plaintiffs, sought relief from and against DOT, and alleged wrongdoing on the part of DOT, not the Essence Entities.

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<sup>1</sup> If any findings of fact are more properly conclusions of law (or vice versa), they shall be treated as if appropriately identified and designated.

<sup>2</sup> See Complaint and Petition for Judicial Review or Writ of Mandamus, filed in Case No. A-18-785818-W on December 10, 2018.

<sup>3</sup> See Complaint, filed January 15, 2019.

2. Essence then sought to intervene prior to being named as a party by any Plaintiffs. Among other things, Essence contended that the Plaintiffs' respective requested relief would impair the Essence entities' licenses.

3. NWC, MM, and LivFree opposed Essence's requests and believed there was no need for Essence to be included as parties in the instant litigation. The requests to intervene were variously granted over NWC, MM, and LivFree's oppositions. Essence participated in the extended preliminary injunction hearing over the summer of 2019.

4. On June 14, 2019, Essence filed an Answer to MM and LivFree's First Amended Complaint and Petition for Judicial Review or Writ of Mandamus. Also on June 14, 2019, Essence filed an Answer to TGIG/Serenity Plaintiffs' Complaint and an Answer to the ETW Plaintiffs' Second Amended Complaint.

5. Subsequently, the Court informed that the Settling Plaintiffs, the non-settling Plaintiffs, and Defendants/Intervenors that at least the winning applicants should be added as parties to their respective operative complaints..<sup>4</sup>

6. On December 31, 2019, the Court entered an Order Granting Plaintiffs Leave to File Amended Complaints. Under the order, the Court directed NWC and "[a]ll present Plaintiffs" to amend their complaints "to name the purported winners in their complaint." Based on the motion practice and Court decrees, the operative complaints were amended.<sup>5</sup>

7. On January 14, 2020, Essence filed an Answer to D.H. Flamingo's First Amended Complaint.

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<sup>4</sup> It should also be noted that if a party named as a Defendant did not want to participate, the Court allowed said Defendants to obtain a dismissal. See i.e. Transcript of Proceedings, dated December 2, 2019, at p. 31:2-32:8 and 43:18-44:5; see also Transcript of Proceedings, dated February 28, 2020, at p. 6:17-8:23; and Order Granting Motion for (1) Voluntary Dismissal of Certain Defendants/Respondents with Prejudice; and (2) Allowing Service By Electronic Means Only, dated March 11, 2020.

<sup>5</sup> Natural Medicine filed a Complaint-in-Intervention on February 7, 2020, based on the Court's order regarding potential plaintiffs.

1           8.       On January 28, 2020, Settling Plaintiffs, for the first time, filed Amended  
2 Complaints naming Essence as a party.

3           9.       On February 11, 2020, Essence filed a Motion to Dismiss or, Alternatively, Motion  
4 for Judgment on the Pleadings of All Plaintiffs' Operative Complaints. The Motion attacked all  
5 Plaintiffs' operative complaints and asserted that all Plaintiffs lacked standing to pursue this  
6 litigation. The motion was denied on March 19, 2020. However, Settling Plaintiffs never obtained  
7 a written order denying the motion even though they prevailed on it.

8           10.      Throughout the entirety of this litigation, Essence participated in discovery and  
9 was heavily involved in motion practice without any objection that it had not filed an answer. For  
10 instance, Essence served deposition notices on all of the Settling Plaintiffs' NRCP 30(b)(6)  
11 corporate representatives who appeared without objection at the Essence conducted depositions.  
12 Additionally, the Settling Plaintiffs served written discovery on Essence using devices that are  
13 reserved solely for parties. For example, NWC served interrogatories and requests for production  
14 of documents on Essence to which Essence responded. The ETW Plaintiffs also served  
15 interrogatories and requests for production on Essence. Again, Essence responded. And an  
16 Essence NRCP 30(b)(6) corporate representative appeared for deposition without a third party  
17 subpoena.

18           11.      In March 2020, Essence filed a "Motion for Summary Judgment Against All  
19 Plaintiffs," a "Motion in Limine to Preclude Plaintiffs from Admitting Evidence Contrary to Their  
20 NRCP 30(b)(6) Designee," and a "Motion for Case Terminating Sanction." The Settling Plaintiffs  
21 opposed these motions but did not dispute Essence's ability to file them as a party to the litigation.  
22 Additionally, Essence filed an "Omnibus Opposition to All Plaintiffs' Motions for Summary  
23 Judgment." Again, there was no protest that Essence could not file an opposition.

24           12.      On June 24, 2020, NWC filed a number of Three-Day Notice of Intent to Take  
25 Default against a number of entities. It did not file one against Essence.

26           13.      On July 8, 2020, Essence filed an Answer to NWC's Complaint, and to NM's  
27 Complaint-in-Intervention.  
28

1           14.     On July 8, 2020, Essence filed a Motion for Judgment as a Matter of Law for Lack  
2 of Standing by MM Development, Inc. and LivFree Wellnes LLC on Order Shortening Time.  
3 This motion was later denied.

4           15.     During the course of the litigation, Settling Plaintiffs won several motions,  
5 including summary judgment that (i) the Department acted beyond the scope of its authority by  
6 replacing the requirement for a background check on each prospective owner with the 5 percent  
7 or greater standard in NAC 453D.255(1)<sup>6</sup> and (ii) that MM and LivFree’s appeals are to be heard  
8 arising from the denial of their licensure of their applications in the September 2018 retail  
9 licensure application competition.<sup>7</sup>The trial in these proceedings began on July 13, 2020. The  
10 proceedings were conducted in a series of three phases where only certain claims would be  
11 examined and determined in each phase. The First Phase addressed only the petition for judicial  
12 review (the “First Phase Claim”), the Second Phase addressed the equal protection, due process,  
13 declaratory relief, and permanent injunction claims (the “Second Phase Claims”), and the Third  
14 Phase would address writ of mandamus claims and Section 1983 claims (the “Third Phase  
15 Claim”).<sup>8</sup>

16           16.     During the Second Phase of the proceedings, the Settling Plaintiffs settled with  
17 certain Defendants.<sup>9</sup> Essence was not among the Defendants that joined in any settlement. After  
18 the settlement, the Settling Plaintiffs largely stopped participating in the trial. As a result, the  
19  
20

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21           <sup>6</sup> See Order Regarding Plaintiff Nevada Wellness Center, LLC’s Motion for Summary Judgment  
22 on First Claim for Relief (“Order Granting Summary Judgment”), at 6:4-8, dated Aug. 15, 2020,  
23 on file herein.

24           <sup>7</sup> See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM  
25 Development Company, Inc. and LivFree Wellness, LLC’s Motion for Summary Judgment or for  
26 Writ of Mandamus (“FFCL re Summary Judgment”), at 3:10-14, dated July 11, 2020, on file  
27 herein.

28           <sup>8</sup> See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase  
preceded the First Phase.

<sup>9</sup> Natural Medicine entered into a subsequent settlement agreement on August 17, 2020 which  
was approved on August 27, 2020 by the NV Tax Commission.

Settling Plaintiffs obtained no relief against Essence and did not prevail against Essence on any issue in the litigation.

17. The Second Phase concluded with a decision issued by the Court on September 3, 2020.<sup>10</sup> Therein, the Court granted Plaintiffs' cause of action seeking declaratory relief but did not remove any licenses that had been granted to Essence as part of the 2018 application process.<sup>11</sup> The Court also granted Plaintiffs' cause of action seeking a permanent injunction. The Settling Plaintiffs obtained no relief against Essence and did not prevail on any issues against Essence.

18. The Court proceeded with and completed the First Phase thereafter. The Third Trial Phase has not yet commenced.

19. On August 4, 2022, the Court entered an Order Granting Motion to Certify Trial Phases 1 and 2 As Final Under 54(b).

20. On August 5, 2022, Essence filed its Memorandum.<sup>12</sup>

21. In the Memorandum, Essence claims a total of \$181,033.95 in costs, is comprised of the following:

- \$1,686.50.00 in filing fees;
- \$125,766.15 in reporters' fees for depositions that includes both reporting and videotaping;
- \$16,190.61 in process server fees;
- \$3,315.52 in photocopies at 20 cents per page;
- \$234.36 in long distance telephone charges;
- \$550.00 in runner fees;
- \$9,656.50 in hearing and trial transcript expenses;
- \$9,230.30 in Westlaw Legal Research;

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<sup>10</sup> See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the "Second Phase Judgment"). As noted therein, two additional Plaintiffs reached a settlement with the Department and certain Defendants prior to the issuance of the Second Phase Judgment. *Id.*

<sup>11</sup> *Id.* at 29:3.

<sup>12</sup> See First Phase Judgment and Second Phase Judgment, respectively.

- \$4,000.00 for deposition DVD synchronization;
- \$5,075.22 for a trial technician;
- \$4,887.27 for their own trial exhibits;
- \$372.00 in parking fees; and
- \$8,061.52 in “Discovery-related” expenses.<sup>13</sup>

22. Essence only requested costs beginning on August 9, 2019, after Essence was granted intervention and participated in the extended preliminary injunction hearing. Essence accrued these costs during its heavy participating in this litigation even though some of the costs were incurred prior to Essence being named a Defendant by any of the Settling Plaintiffs as ordered by the Court.

## II.

### CONCLUSIONS OF LAW

1. Under Nevada law, the prevailing party is entitled to recover its actual, reasonable, and necessary costs, which are defined by NRS 18.005(1)-(17). *See* NRS 18.110 and NRS 41.1395(2) (allowing for or requiring an award of costs); *see also* *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015); *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 971 P.2d 383 (1998).

2. NRS Chapter 18 states that costs are allowed only “to the prevailing party against any adverse party against whom judgment is rendered,” and only to “the party in whose favor judgment is rendered.” *See* NRS 18.020, NRS 18.110(1).

3. Costs must be reasonable, necessary, and actually incurred. NRS 18.005; *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998).

4. Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical*

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<sup>13</sup> *See* Mem. of Costs of Essence, Aug. 5, 2022.

1 *Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110  
2 Nev. 1201, 1205, 885 P.2d 540, 543 (1994).

3 5. The trial court’s discretion should also “be sparingly exercised when considering  
4 whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann*  
5 *v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993).

6 6. Notwithstanding the court’s discretion, the party seeking costs “must provide  
7 sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and  
8 actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78,  
9 112 P.3d 1082, 1093 (2005).

10 7. If a party does not present the district court with evidence enabling the court to  
11 determine that requested costs were both reasonable and necessary, they should be rejected.  
12 *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015); *see also*  
13 *Berosini*, 114 Nev. at 1353, 971 P.2d at 386 (rejecting costs, such as photocopies because only  
14 the date and cost of each copy were provided); *Fairway Chevrolet Co. v. Kelley*, 484 P.3d 276,  
15 2021 WL 1530748, \*1 (Nev. 2021) (rejecting legal research costs because internal ledger  
16 provided did not document what research was conducted and how long it lasted, thereby making  
17 it impossible to determine whether each instance of research was reasonable and necessary).

18 8. The Court finds that Essence was a prevailing party under NRS 18.110 as it was  
19 not required to relinquish any of the licenses it obtained from the 2018 application process. The  
20 Settling Plaintiffs did not prevail on any issue as against Essence. Essence’s licenses were not lost  
21 or impaired by the litigation. *See Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. 416,  
22 422, 373 P.3d 103, 107 (2016).

23 9. The Court also finds that—as argued by the Settling Plaintiffs—Essence failed to  
24 provide the necessary supporting documentation to substantiate whether certain costs were  
25 reasonably or necessarily incurred. *See Cadle*, 131 Nev. at 120, 345 P.3d at 1054; *Berosini*, 114  
26 Nev. at 1353, 971 P.2d at 386; and *Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276,  
27 112 P.3d 1082, 1092 (2005). The categories and amount of costs for which Essence did not  
28 provide the necessary supporting documentation to substantiate are included below:

- Video sync DVD copies: \$4,000.00
  - These are neither reasonable nor necessary for the case and are not an allowable under NRS 18.005(5), which permits “a reporter’s fee for one copy of each deposition.” The Court is not finding that syncing is not helpful. While the Court appreciates it is wonderful trial technology that gets utilized, but the Court finds it is not necessary.
- Photocopy costs: \$3,315.52
  - Nothing more than date and costs of bulk copies was provided. The Court needs more information per photocopy. *See Berosini*, 114 Nev. at 1353, 971 P.2d at 386.
- AT&T/long distance calls: \$234.36
  - Essence’s insufficient documentation does not show what calls were for or why they were reasonable or necessary. In today’s day and age, the Court cannot find it would be reasonable or necessary to incur long distance charges when people do have cell phones. If you choose to use some other function when you can use a cell phone, then it is not necessary. *See Cadle*, 131 Nev. at 120, 345 P.3d at 1054; *Berosini*, 114 Nev. at 1353, 971 P.2d at 386; and *Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005).
- Legal Research: \$9,230.30
  - The Court cannot determine from Essence’s ledger that was provided the details of what research was conducted, how it related to the litigation, or how long it lasted. *See Cadle*, 131 Nev. at 120, 345 P.3d at 1054; *Berosini*, 114 Nev. at 1353, 971 P.2d at 386; and *Fairway Chevrolet Co. v. Kelley*, 484 P.3d 276, 2021 WL 1530748, \*1 (Nev. 2021).

10. The Court also finds that Essence is not entitled to \$436.00 of e-filing charges for costs incurred after the entry of the Settlement Parties’ settlement on the record, on July 29, 2020.

11. As to the remainder of the costs included in Essence’s Memorandum of Costs, totaling \$163,817.77, the Court finds that Essence is entitled to those costs which were reasonably, necessarily, and actually incurred.

...

...

...



**III.**  
**ORDER**

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court GRANTS IN PART and DENIES IN PART Settling Plaintiffs' Motion to Retax and Settle Costs as described above and, for the reasons stated above, retaxes \$17,216.18 of Essence's costs and awards Essence costs totaling \$163,817.77 pursuant to NRS 18.110.

DATED: \_\_\_\_\_

Dated this 4th day of May, 2023

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

61C E59 BBB9 1349  
Joanna S. Kishner  
District Court Judge

DATED this 31st day of March, 2023.

**KEMP JONES, LLP**

/s/ Circulated Competing Order  
Forthcoming  
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/s/ Circulated Competing Order  
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CHTD.**

/s/ Circulated Competing Order Forthcoming  
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/s/ Circulated Competing Order  
Forthcoming

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*Attorneys for ETW Plaintiffs*

BY: /s/ Jordan T. Smith

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Las Vegas, NV 89101  
*Attorneys for Defendants in Intervention,*  
*Integral Associates LLC d/b/a Essence*  
*Cannabis Dispensaries, Essence Tropicana,*  
*LLC, Essence Henderson, LLC*

**From:** [Jordan T. Smith](#)  
**To:** [Nathanael Rulis](#)  
**Cc:** [Todd Bice](#); [Shannon M. Dinkel](#)  
**Subject:** RE: [External]Re: [External]Copy of Essence Costs Order  
**Attachments:** [image001.png](#)  
[Order re Essence Costs DRAFT 2 + PB 3.31.23.docx](#)

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Thanks, Nate. As we discussed on the phones, this attached version is what we plan to submit to the Court in response to your last round of redlines.

Thanks,

Jordan T. Smith  
Partner  
Pisanelli Bice PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
tel 702.214.2100  
fax 702.214.2101

---

**From:** Nathanael Rulis <n.rulis@kempjones.com>  
**Sent:** Friday, March 31, 2023 2:13 PM  
**To:** Jordan T. Smith <JTS@pisanellibice.com>  
**Cc:** Todd Bice <tlb@pisanellibice.com>; Shannon M. Dinkel <sd@pisanellibice.com>  
**Subject:** RE: [External]Re: [External]Copy of Essence Costs Order

CAUTION: This message is from an EXTERNAL SENDER.

Sorry, I hit send before getting the attachments sorted. The attachment to my **last email** is the latest version of the Settling Plaintiffs' proposed order. Attached to **this** email is the last version I received from you.

[Nathanael Rulis, Esq.](#)



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([profile](#)) ([vCard](#))

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

---

**From:** Nathanael Rulis  
**Sent:** Friday, March 31, 2023 2:11 PM  
**To:** 'Jordan T. Smith' <JTS@pisanellibice.com>  
**Cc:** Todd Bice <tlb@pisanellibice.com>; Shannon M. Dinkel <sd@pisanellibice.com>  
**Subject:** RE: [External]Re: [External]Copy of Essence Costs Order

It looks like it's probably best for us to submit orders at this point. But before doing that, do you have a couple minutes this afternoon to talk just to get on the same page?

---

**From:** Jordan T. Smith <JTS@pisanellibice.com>  
**Sent:** Friday, March 31, 2023 11:51 AM  
**To:** Nathanael Rulis <n.rulis@kempjones.com>  
**Cc:** Todd Bice <tlb@pisanellibice.com>; Shannon M. Dinkel <sd@pisanellibice.com>  
**Subject:** [External]Re: [External]Copy of Essence Costs Order

Hi Nate,

Following up about this. Are we submitting orders today or another stipulation?

---

**From:** Nathanael Rulis <n.rulis@kempjones.com>

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 In Re: D.O.T. Litigation

CASE NO: A-19-787004-B

7 DEPT. NO. Department 31  
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District  
11 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
12 system to all recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 5/4/2023

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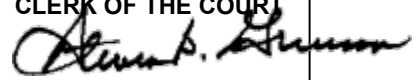
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# **Exhibit B**



NEFF  
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Email: [tparker@pnalaw.net](mailto:tparker@pnalaw.net)

*Attorneys for Plaintiff  
Nevada Wellness Center, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation

CASE NO.: A-19-787004-B  
DEPT. NO.: XXXI

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

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
GRANTING IN PART AND DENYING IN PART MOTION TO RETAX AND SETTLE  
COSTS REGARDING CLEAR RIVER, LLC'S MEMORANDUM OF COSTS**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that a Findings of Fact, Conclusions  
of Law, and Order Granting in Part and Denying in Part Motion to Retax and Settle Costs Regarding

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1 Clear River, LLC's Memorandum of Costs was entered in the above-entitled matter on the 3<sup>rd</sup> day of  
2 May, 2023, a copy of which is attached hereto.

3 DATED this 3<sup>rd</sup> day of May, 2023.

4 **PARKER, NELSON & ASSOCIATES, CHTD.**

5 */s/ Theodore Parker, III*

6 **THEODORE PARKER, III, ESQ.**

7 Nevada Bar No. 4716

8 2460 Professional Court, Suite 200

9 Las Vegas, Nevada 89128

10 *Attorneys for Plaintiff Nevada Wellness Center, LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER,  
3 NELSON & ASSOCIATES, CHTD., and that on this 3<sup>rd</sup> day of May, 2023, I served a true and correct  
4 copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF**  
5 **LAW, AND ORDER GRANTING IN PART AND DENYING IN PART MOTION TO RETAX**  
6 **AND SETTLE COSTS REGARDING CLEAR RIVER, LLC'S MEMORANDUM OF COSTS**  
7 on all parties currently on the electronic service list as set forth below:

- 8 ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing  
9 in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business  
10 practices.  
11 ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule  
12 7.26, by faxing a true and correct copy of the same to each party addressed as follows:  
13 ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es)  
14 set forth below on this date before 5:00 p.m.  
15 X By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file  
16 & E-serve (Odyssey) filing system.  
17 ☐ By Hand delivery.

18 /s/ Staci D. Ibarra  
19 An employee of Parker, Nelson & Associates, Chtd.  
20  
21  
22  
23  
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25  
26  
27  
28

1 **FFCL**  
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11 *Nevada Wellness Center, LLC*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 In Re: D.O.T. Litigation

CASE NO.: A-19-787004-B  
DEPT. NO.: XXXI

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

17 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING IN PART**  
18 **AND DENYING IN PART MOTION TO RETAX AND SETTLE COSTS REGARDING**  
19 **CLEAR RIVER, LLC'S MEMORANDUM OF COSTS**

20 Plaintiffs', NEVADA WELLNESS CENTER, LLC (hereinafter "NWC"), MM  
21 DEVELOPMENT COMPANY, INC. and LIVFREE WELLNESS, LLC (hereinafter collectively  
22 "MM"), NATURAL MEDICINE LLC (hereinafter "NM"), and QUALCAN, LLC (hereinafter  
23 "QUALCAN"), Motion to Retax and Settle Costs Regarding Clear River LLC's Memorandum of  
24 Costs, and Plaintiffs', ETW MANAGEMENT GROUP LLC, GLOBAL HARMONY LLC, JUST  
25 QUALITY, LLC, LIBRA WELLNESS CENTER, LLC, ROMBOUGH REAL ESTATE INC. DBA  
26 MOTHER HERB, and ZION GARDENS LLC (hereinafter collectively "ETW" and/or "ETW  
27 entities"), Joinder to said Motion, came up for hearing on November 16, 2022 and December 19, 2022,  
28 with the Honorable Judge Kishner presiding:

1 Plaintiff, NWC, appeared by and through its attorneys of record, THEODORE PARKER, III,  
2 ESQ. and JENNIFER DELCARMEN, ESQ., of the law firm of PARKER, NELSON &  
3 ASSOCIATES, CHTD.;

4 Plaintiffs, the ETW entities, appeared by and through their counsel of record, JAMES A.  
5 BECKSTROM, ESQ. of BECKSTROM & BECKSTROM;

6 Plaintiffs, MM, appeared by and through their counsel of record, NATHANAEL R. RULIS,  
7 ESQ. of KEMP JONES, LLP;

8 Plaintiff, NM, appeared by and through its counsel of record, JEFFERY A. BENDAVID, ESQ.  
9 and STEPHANIE J. SMITH, ESQ. of BENDAVID LAW;

10 Plaintiff, QUALCAN, appeared by and through its counsel of record, PETER S.  
11 CHRISTIANSEN, ESQ. and WHITNEY J. BARRETT, ESQ. of CHRISTIANSEN TRIAL  
12 LAWYERS<sup>1</sup>; and

13 Defendant-Intervenor, CLEAR RIVER, LLC (hereinafter “CR”), appeared by and through its  
14 counsel of record, RUSTY J. GRAF, ESQ. and BRIGID HIGGINS, ESQ., of BLACK & WADHAMS.

15 Having reviewed the papers and pleadings on file herein, and having entertained extensive oral  
16 arguments of the counsel, this Court makes the following Findings of Fact, Conclusions of Law, and  
17 Order:

### 18 **FINDINGS OF FACT**

19 1. On August 8, 2022, CR filed a Memorandum of Costs and a related appendix, seeking  
20 recovery of \$37,194.47 in total alleged costs. (Docs. 2876 and 2877.)

21 2. On August 11, 2022, NWC, MM, NM, and QUALCAN filed a joint Motion to Retax  
22 and Settle Costs Regarding CR’s Memorandum of Costs. (Doc. 2923.)

23 3. On August 12, 2022, CR filed an Amendment One to the Memorandum of Costs, along  
24 with a related appendix, claiming to be seeking a total of \$47,707.33 in costs. (Docs. 2950 and 2951.)

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28 <sup>1</sup> NWC, ETW entities, MM, NM, and QUALCAN are collectively referred to herein as the “Settling Plaintiffs”.

1           4.       On August 18, 2022, the ETW entities filed a timely Joinder to NWC, MM, NM, and  
2 QUALCAN filed a joint Motion to Retax and Settle Costs Regarding CR's Memorandum of Costs.  
3 (Doc. 3002.)

4           5.       On August 23, 2022, CR filed a Motion for Attorney's Fees and Costs, and related  
5 appendices. (Docs. 3010-3018.)

6           6.       On August 25, 2022, CR filed an Omnibus Opposition, and Declaration, in part  
7 opposing the Motion to Retax and Settle Costs Regarding CR's Memorandum of Costs and Joinder.  
8 (Docs. 3035 and 3036.)

9           7.       On September 6, 2022, the Settling Plaintiffs filed an Opposition to CR's Motion for  
10 Attorney's Fees and Costs. (Doc. 3062.)

11          8.       On September 9, 2022, the Settling Plaintiffs filed a Joint Reply in Support of the joint  
12 Motion to Retax and Settle Costs Regarding CR's Memorandum of Costs.

13          9.       On September 20, 2022, CR filed a Reply in Support of its Motion for Attorney's Fees  
14 and Costs. (Doc. 3104.)

15          10.      On November 4, 2022, the Settling Plaintiffs filed supplemental briefing pursuant to  
16 this Court's directive. (Docs. 3144, 3146, 3149, 3151 and 3152.)

17          11.      On November 4, 2022, CR filed a Supplement to Motion for Fees and Costs. (Doc. No.  
18 3147.)

19          12.      CR never filed an Answer to any of NWC's filed Complaints.

20          13.      NWC did not file a Default against CR as NWC only named CR as a Defendant  
21 pursuant to the Administrative Procedure Act.

22          14.      CR did not file an Answer to the ETW entities Complaint(s) until April 21, 2020.

23          15.      CR never filed an Answer to NM's Complaint-in-Intervention.

24          16.      CR never filed an Answer to any of QUALCAN'S filed Complaints.

25          17.      QUALCAN never filed a Default against CR as QUALCAN only named CR as a  
26 Defendant pursuant to the Administrative Procedure Act.

27          18.      NM never filed a Default against CR as NM only named CR as a Defendant pursuant  
28 to the Administrative Procedure Act.



1 19. CR did not file an Answer to MM's Complaint(s) until April 21, 2020.

2 20. NWC, MM, ETW, and QUALCAN settled out of the matter, and ceased questioning  
3 witnesses at trial, on July 29, 2020. NM subsequently also settled out of the matter, on August 17,  
4 2020.

5 21. This Court heard and ruled upon CR's Motion for Attorney's Fees and Costs, denying  
6 in part the same.<sup>2</sup>

### 7 CONCLUSIONS OF LAW

8 1. "[B]ecause statutes permitting costs are in derogation of the common law, they should  
9 be strictly construed." Albios v. Horizon Cmty's., Inc., 122 Nev. 409, 431 (2006). The plain language  
10 of the statute governs the manner in which it is applied, according to the language's plain and ordinary  
11 meaning. A.F. Const. Co. v. Virgin River Casino Corp., 118 Nev. 669, 703 (2002).

12 2. NRS 18.005 defines costs as follows:

- 13 1. Clerks' fees.
- 14 2. Reporters' fees for depositions, including a reporter's fee for one copy  
of each deposition.
- 15 3. Jurors' fees and expenses, together with reasonable compensation of  
an officer appointed to act in accordance with NRS 16.120.
- 16 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses,  
unless the court finds that the witness was called at the instance of the  
17 prevailing party without reason or necessity.
- 18 5. Reasonable fees of not more than five expert witnesses in an amount  
of not more than \$1,500 for each witness, unless the court allows a larger  
19 fee after determining that the circumstances surrounding the expert's  
testimony were of such necessity as to require the larger fee.
- 20 6. Reasonable fees of necessary interpreters.
- 21 7. The fee of any sheriff or licensed process server for the delivery or  
service of any summons or subpoena used in the action, unless the court  
22 determines that the service was not necessary.
- 23 8. Compensation for the official reporter or reporter pro tempore.
- 24 9. Reasonable costs for any bond or undertaking required as part of the  
action.
- 25 10. Fees of a court bailiff or deputy marshal who was required to work  
overtime.
- 26 11. Reasonable costs for telecopies.
- 27 12. Reasonable costs for photocopies.
- 28 13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions  
and conducting discovery.

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<sup>2</sup> There is and/or will be a separate Order regarding CR's Motion for Attorney's Fees and Costs against certain Settling Plaintiffs entered. While the Motion for Attorney's Fees and Costs was denied, CR was awarded some of its costs as reflected in the instant Order.

16. Fees charged pursuant to NRS 19.0335.

17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

3. NRS 18.020 provides as follows:

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

1. In an action for the recovery of real property or a possessory right thereto.

2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.

3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.

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

5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court.

4. NRS 18.110 provides in pertinent part as follows:

1. The party in whose favor judgment is rendered, and who claims costs, must file with the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment, or such further time as the court or judge may grant, a memorandum of the items of the costs in the action or proceeding, which memorandum must be verified by the oath of the party, or the party's attorney or agent, or by the clerk of the party's attorney, stating that to the best of his or her knowledge and belief the items are correct, and that the costs have been necessarily incurred in the action or proceeding.

5. Costs must be reasonable, necessary, and actually incurred.

6. In determining whether claimed costs are recoverable, this Court must strictly construe NRS 18.005 because statutes permitting the recovery of costs are in derogation of the common law. Berosini v. PETA, 114 Nev. 1348, 1352 (1998); Gibellini v. Klindt, 110 Nev. 1201, 1205-06 (1994); Bergmann v. Boyce, 109 Nev. 670, 679-80 (1993). Put another way, the Court's discretion in allowing costs that are not specifically allowed by statute or precedent must be used sparingly. Bergmann, 109 Nev. at 679-680. "A strict construction of the statute, however, requires that the phrase 'reasonable cost' be interpreted to mean actual costs that are also reasonable, rather than a reasonable estimate or calculation of such costs based upon administrative convenience." Gibellini, 110 Nev. at 1206. The Nevada Supreme Court has held a party moving for costs should "provide sufficient documentation and itemization in their respective cost memorandum." Berosini, 114 Nev. at 1352.199.

1           7.       In addition to showing a cost was actually incurred, the costs must also have been  
2 necessary in the action. Berosini, 114 Nev. at 1352-1353. Failure to justify the claimed costs is grounds  
3 for denial of a request for costs. Id. In regards to photocopy fees, simply identifying a date the  
4 photocopy was taken and a total charge has been found to be an insufficient basis upon which to award  
5 costs. Id. at 1353. Itemization is required in regards to long distance phone calls. Id. Proper  
6 documentation of costs is required in order to recover claimed costs. Id. In regards to legal research,  
7 sufficient documentation would include information showing what research was conducted and how  
8 long it lasted. Fairway Chevrolet Co. v. Kelly, 2021 Nev. Unpub. LEXIS 272, Case No.: 80160,  
9 unpublished disposition (Apr. 16, 2021).

10           8.       “When a statute allows the award of ‘reasonable costs,’ the party seeking them must  
11 demonstrate how such [costs] were necessary to and incurred in the present action. 24/7 Ltd. v. Schoen,  
12 2017 Nev. Unpub. 635, unpublished disposition, Case Nos.: 69365 and 69730, \*4 (Nev. Jul. 28, 2017)  
13 (internal citations and quotations omitted). Allowing an award of costs without “sufficient evidentiary  
14 support” is an abuse of discretion. Id. at \*4-5; see also Cadle Co. v. Woods & Erikson, LLP, 131 Nev.  
15 114, 121 (2015).

16           9.       Justifying documentation means something more than a memorandum of costs. Id. at  
17 121.

18           10.      EDCR 2.20(d) provides in pertinent part as follows:

19                   Within 7 days after service of the motion, a nonmoving party may file  
20 written joinder thereto, together with a memorandum of points and  
21 authorities and any supporting affidavits. If the motion becomes moot or is  
22 withdrawn by the movant, the joinder becomes its own stand-alone motion  
and the court shall consider its points and authorities in conjunction with  
those in the motion.

23           11.      This Court has authority to award costs and determine whether costs incurred after a  
24 partial settlement was reached should be assessed against a party, and to what degree. Cooper Sand  
25 Homeowners v. Flamingo 94 Ltd., 130 Nev. Ad. Op. 81, 335 P.3d 203, 207 (2014); see also Mayfield  
26 v. Koroghli, 124 Nev. 343, 353-354 (2008).

27           12.      Litigants “became parties” to an action by “entering an appearance and filing an answer  
28 on the merits.” Goolsby v. Papanikolau, 161 Pa. Cmwlth. 489, 493, 637 A.2d 707, 709 (1994). And,

1 while various cases were consolidated, “[a]n order consolidating actions does not necessarily work a  
2 merger of the issues and render the litigants parties to each other’s suits.” Randall v. Salvation Army,  
3 100 Nev. 466, 470, 686 P.2d 241, 243–44 (1984).

4 13. Courts view parties on an individual basis when assessing requests for fees or costs.  
5 Schouweiler v. Tancey Co., 101 Nev. 827 (1985); see also Semenza v. Caughlin Crafted Homes, 111  
6 Nev. 1089 (1995).

7 14. The plain language of NRS 18.020 requires costs be awarded to a prevailing party,  
8 against an adverse party.

9 15. NRCP 41 disallows a voluntary dismissal by plaintiff once an Answer is filed.

10 16. In order to recover costs under NRS 18.020, the party seeking costs must be an adverse  
11 party vis a vis the party from whom costs are sought. Golightly & Vannah, PLLC v. TJ Allen, LLC,  
12 132 Nev. 416 (2016) and Nev. Direct Ins Co. v. Torres, 2018 Nev. Unpub. LEXIS 674, case No.  
13 71918, unpublished disposition (Jul. 26, 2018).

14 17. Pre-litigation costs are not governed by NRS 18.020.

15 18. CR’s Amendment One to the Memorandum of Costs, along with a related appendix  
16 were not considered by this Court.

17 19. CR was not an adverse party vis-à-vis NWC, NM or QUALCAN, as CR never filed an  
18 Answer to any of these parties’ respective Complaint(s), and as such, is not a prevailing party vis-à-  
19 vis NWC, NM and/or QUALCAN, and therefore is not entitled to an award of costs from NWC, NM  
20 or QUALCAN.

21 20. CR was the prevailing party vis-à-vis MM and ETW.

22 21. CR is entitled to costs from MM, provided said costs were incurred between April 21,  
23 2020 and July 29, 2020. Any costs incurred, and sought from MM, prior to April 21, 2020, or after  
24 July 29, 2020, are retaxed.

25 22. CR is entitled to costs from ETW, provided said costs were incurred between April 21,  
26 2020 and July 29, 2020. Any costs incurred, and sought from ETW, prior to April 21, 2020, or after  
27 July 29, 2020, are retaxed.

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23. Setting aside dates of when costs were incurred, of the \$37,194.47 in costs sought by CR, the following costs are also retaxed and not awardable as sufficient, justifying documentation was not provided and therefore the costs cannot be considered reasonable, necessary, and incurred:

- a. \$10,588.80 in photocopy costs;
- b. \$4,612.56 in mediation costs<sup>3</sup>;
- c. \$3,212.50 in trial services; and
- d. \$6,291.37 in legal research charges.
- e. TOTAL: \$27,705.23.

24. Given the categories of costs retaxed, in combination with a calculation of the costs incurred between April 21, 2020 and July 29, 2020, the most CR could recover from MM in costs is \$135.63.

25. Given the categories of costs retaxed, in combination with a calculation of the costs incurred between April 21, 2020 and July 29, 2020, the most CR could recover from ETW in costs is \$135.63.

26. If any of these Conclusions of Law are more properly Findings of Fact, or vice versa, they shall be so designated as if properly identified herein.

### **ORDER**

Based on the foregoing, **IT IS HEREBY ORDERED** that NWC, MM, NM, and QUALCAN's joint Motion to Retax and Settle Costs Regarding CR's Memorandum of Costs, and the ETW entities' Joinder, is **GRANTED IN PART** and **DENIED IN PART** as set forth herein.

**IT IS HEREBY FURTHER ORDERED** that since CR failed to file an answer to the Complaints filed by NWC, NM, and QUALCAN, CR never became an adverse party to NWC, NM, or QUALCAN, and, therefore, NWC, NM, and QUALCAN's Motion to Retax and Settle Costs Regarding CR's Memorandum of Costs is **GRANTED** and all of CR's claimed costs are retaxed, and CR is entitled to no costs from NWC, NM, or QUALCAN.

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<sup>3</sup> Mediation charges also were incurred prior to CR filing an Answer to any of the Settling Plaintiffs' Complaints.

**IT IS HEREBY FURTHER ORDERED** that CR did not become an adverse party to MM until April 21, 2020, and since MM resolved its claims on July 29, 2020, the Motion to Retax and Settle Costs Regarding CR's Memorandum of Costs is **GRANTED IN PART** and **DENIED IN PART**, and \$37,058.84<sup>4</sup> in costs are retaxed. The total amount CR could recover from MM, in regards to costs, is \$135.63.

**IT IS HEREBY FURTHER ORDERED** that CR did not become an adverse party to ETW until April 21, 2020, and since ETW resolved its claims on July 29, 2020, the Motion to Retax and Settle Costs Regarding CR's Memorandum of Costs is **GRANTED IN PART** and **DENIED IN PART**, and \$37,058.84<sup>5</sup> in costs are retaxed. The total amount CR could recover from ETW, in regards to costs, is \$135.63.

**IT IS SO ORDERED.**

**Dated this 3rd day of May, 2023**

Joanna S Kishner

**A1D 206 F805 444A**  
**Joanna S. Kishner**  
**District Court Judge**

Respectfully submitted by:

**PARKER, NELSON & ASSOCIATES, CHTD.**

/s/ Theodore Parker, III

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<sup>4</sup> This number is the result of adding the costs that were retaxed for insufficient documentation/support to the cost incurred prior to CR's Answer date and after MM's settlement.

<sup>5</sup> This number is the result of adding the costs that were retaxed for insufficient documentation/support to the cost incurred prior to CR's Answer date and after ETW's settlement.

1 Approved as to form and content by:

2 **BLACK & WADHAMS**

3 /s/ Rusty Graf

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19 *Company, Inc. and LivFree Wellness, LLC*

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22 **PETER C. CHRISTIENSEN, ESQ.**

23 Nevada Bar No. 5254

24 **WHITNEY J. BARRETT, ESQ.**

25 Nevada Bar No. 13662

26 710 S. 7th Street

27 Las Vegas, NV 89101

28 *Attorneys for Plaintiff Qualcan, LLC*

**BECKSTROM & BECKSTROM, LLP**

/s/ James A. Beckstrom

**JAMES A. BECKSTROM, ESQ.**

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400 S. Fourth Street, Suite 650

Las Vegas, NV 89101

*Attorneys for Plaintiffs ETW Management Group*

*LLC, Global Harmony LLC, Just Quality, LLC,*

*Libra Wellness Center, LLC, Rombough Real Estate*

*Inc. dba Mother Herb, and Zion Gardens LLC*

**BENDAVID LAW**

/s/ Stephanie J. Smith

**JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

**STEPHANIE J. SMITH, ESQ.**

Nevada Bar No. 11280

7301 Peak Drive, Suite 150

Las Vegas, NV 89128

*Attorneys for Plaintiff Natural Medicine LLC*

## Staci Ibarra

---

**From:** Rusty Graf <rgraf@blackwadhams.law>  
**Sent:** Friday, March 31, 2023 2:42 PM  
**To:** Staci Ibarra  
**Cc:** Jennifer DelCarmen  
**Subject:** RE: In Re DOT | Clear River Orders

Approved.

Thank you and Stay safe.

**Rusty Graf, Esq.**  
Partner

**\*Please Note the new email address below.**



p: (702)869-8801  
f: (702)869-2669  
a: 10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135

W: [www.blackwadhams.law](http://www.blackwadhams.law)  
E: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law) (Effective until August 1, 2020)  
E: [rgraf@blackwadhams.law](mailto:rgraf@blackwadhams.law) (Effective August 1, 2020)



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**From:** Staci Ibarra <Sibarra@pnalaw.net>  
**Sent:** Friday, March 31, 2023 2:34 PM  
**To:** Rusty Graf <rgraf@blackwadhams.law>  
**Cc:** Jennifer DelCarmen <JDelCarmen@pnalaw.net>; Staci Ibarra <Sibarra@pnalaw.net>  
**Subject:** FW: In Re DOT | Clear River Orders

Mr. Graf,

Could you please approve Ms. Smith's requested revision to the Order regarding the Motions to Retax?



*Sincerely,*



---

Staci D. Ibarra  
Legal Assistant to Mahogany Turfley, Esq.  
and Jennifer DelCarmen, Esq.  
2460 Professional Court, Suite 200  
Las Vegas, Nevada 89128  
Direct No. (702) 868-8013  
Main No. (702) 868-8000  
Fax No. (702) 868-8001  
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**Cc:** Jennifer DelCarmen <[JDelCarmen@pnalaw.net](mailto:JDelCarmen@pnalaw.net)>; Staci Ibarra <[Sibarra@pnalaw.net](mailto:Sibarra@pnalaw.net)>  
**Subject:** RE: In Re DOT | Clear River Orders

Could everyone else please approve the order with Ms. Smith's requested revision?

*Sincerely,*



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and Jennifer DelCarmen, Esq.  
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Approved, thank you.

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Please see attached.

*Sincerely,*



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**Cc:** Jennifer DelCarmen <[JDelCarmen@pnalaw.net](mailto:JDelCarmen@pnalaw.net)>; Staci Ibarra <[Sibarra@pnalaw.net](mailto:Sibarra@pnalaw.net)>

**Subject:** In Re DOT | Clear River Orders

**Importance:** High

All,

Attached please find the final versions of the following orders:

- Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Motion to Retax and Settle Costs Regarding Clear River, LLC’s Memorandum of Costs; and
- Findings of Fact, Conclusions of Law, and Order Denying Clear River, LLC’s Motion for Attorney’s Fees and Costs

Please advise if we have approval to affix your electronic signatures. Thank you.

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## Staci Ibarra

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**From:** James Beckstrom <JB@beckstromlaw.com>  
**Sent:** Friday, March 31, 2023 12:43 PM  
**To:** Staci Ibarra; Stephanie Smith; Rusty Graf; Nathanael Rulis; Whitney J. Barrett  
**Cc:** Jennifer DelCarmen  
**Subject:** RE: In Re DOT | Clear River Orders

Approved

### James A. Beckstrom, Esq.

400 S. 4<sup>th</sup> Street, Suite 650

Las Vegas, NV 89101

O: 725.300.0599

M. 714.875.0351

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[jb@beckstromlaw.com](mailto:jb@beckstromlaw.com)

Admitted: NV & CA



**BECKSTROM  
& BECKSTROM**  
Attorneys and Counselors at Law

---

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**Cc:** Jennifer DelCarmen <JDelCarmen@pnalaw.net>; Staci Ibarra <Sibarra@pnalaw.net>  
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Could everyone else please approve the order with Ms. Smith's requested revision?

*Sincerely,*



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**Importance:** High

All,

Attached please find the final versions of the following orders:

- Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Motion to Retax and Settle Costs Regarding Clear River, LLC’s Memorandum of Costs; and
- Findings of Fact, Conclusions of Law, and Order Denying Clear River, LLC’s Motion for Attorney’s Fees and Costs

Please advise if we have approval to affix your electronic signatures. Thank you.

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and Jennifer DelCarmen, Esq.

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## Staci Ibarra

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**From:** Nathanael Rulis <n.rulis@kempjones.com>  
**Sent:** Friday, March 31, 2023 2:05 PM  
**To:** 'James Beckstrom'; Staci Ibarra; Stephanie Smith; Rusty Graf; Whitney J. Barrett  
**Cc:** Jennifer DelCarmen  
**Subject:** RE: [External]RE: In Re DOT | Clear River Orders

Approved

[Nathanael Rulis, Esq.](#)



3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169  
(P) 702-385-6000 | (F) 702 385-6001 | [n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)  
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**Cc:** Jennifer DelCarmen <JDelCarmen@pnalaw.net>  
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Approved

**James A. Beckstrom, Esq.**

400 S. 4<sup>th</sup> Street, Suite 650  
Las Vegas, NV 89101  
O: 725.300.0599  
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[jb@beckstromlaw.com](mailto:jb@beckstromlaw.com)

Admitted: NV & CA



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**Cc:** Jennifer DelCarmen <[JDelCarmen@pnalaw.net](mailto:JDelCarmen@pnalaw.net)>; Staci Ibarra <[Sbarra@pnalaw.net](mailto:Sbarra@pnalaw.net)>

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**Sent:** Friday, March 31, 2023 10:48 AM  
**To:** Staci Ibarra <[Sibarra@pnalaw.net](mailto:Sibarra@pnalaw.net)>; Rusty Graf <[rgraf@blackwadhamslaw.com](mailto:rgraf@blackwadhamslaw.com)>; Nathanael Rulis <[n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)>; James Beckstrom <[JB@beckstromlaw.com](mailto:JB@beckstromlaw.com)>; Whitney J. Barrett <[wbarrett@christiansenlaw.com](mailto:wbarrett@christiansenlaw.com)>  
**Cc:** Jennifer DelCarmen <[JDelCarmen@pnalaw.net](mailto:JDelCarmen@pnalaw.net)>  
**Subject:** RE: In Re DOT | Clear River Orders

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**Cc:** Jennifer DelCarmen <[JDelCarmen@pnalaw.net](mailto:JDelCarmen@pnalaw.net)>; Staci Ibarra <[Sibarra@pnalaw.net](mailto:Sibarra@pnalaw.net)>  
**Subject:** In Re DOT | Clear River Orders  
**Importance:** High

All,

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- Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Motion to Retax and Settle Costs Regarding Clear River, LLC’s Memorandum of Costs; and
- Findings of Fact, Conclusions of Law, and Order Denying Clear River, LLC’s Motion for Attorney’s Fees and Costs

Please advise if we have approval to affix your electronic signatures. Thank you.

*Sincerely,*



---

Staci D. Ibarra  
Legal Assistant to Mahogany Turfley, Esq.  
and Jennifer DelCarmen, Esq.  
2460 Professional Court, Suite 200  
Las Vegas, Nevada 89128  
Direct No. (702) 868-8013  
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## Staci Ibarra

---

**From:** Stephanie Smith <[ssmith@bendavidfirm.com](mailto:ssmith@bendavidfirm.com)>  
**Sent:** Friday, March 31, 2023 10:58 AM  
**To:** Staci Ibarra; Rusty Graf; Nathanael Rulis; James Beckstrom; Whitney J. Barrett  
**Cc:** Jennifer DelCarmen  
**Subject:** RE: In Re DOT | Clear River Orders

Approved, thank you.

---

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**Cc:** Jennifer DelCarmen <[JDelCarmen@pnalaw.net](mailto:JDelCarmen@pnalaw.net)>; Staci Ibarra <[SIbarra@pnalaw.net](mailto:SIbarra@pnalaw.net)>  
**Subject:** RE: In Re DOT | Clear River Orders

Please see attached.

*Sincerely,*



---

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**To:** Rusty Graf <[rgraf@blackwadhams.law](mailto:rgraf@blackwadhams.law)>; Nathanael Rulis <[n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)>; James Beckstrom <[JB@beckstromlaw.com](mailto:JB@beckstromlaw.com)>; Whitney J. Barrett <[wbarrett@christiansenlaw.com](mailto:wbarrett@christiansenlaw.com)>; Stephanie Smith <[ssmith@bendavidfirm.com](mailto:ssmith@bendavidfirm.com)>

**Cc:** Jennifer DelCarmen <[JDelCarmen@pnalaw.net](mailto:JDelCarmen@pnalaw.net)>; Staci Ibarra <[Sibarra@pnalaw.net](mailto:Sibarra@pnalaw.net)>

**Subject:** In Re DOT | Clear River Orders

**Importance:** High

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## Staci Ibarra

---

**From:** Whitney J. Barrett <wbarrett@christiansenlaw.com>  
**Sent:** Friday, March 31, 2023 2:05 PM  
**To:** Staci Ibarra  
**Cc:** Stephanie Smith; Rusty Graf; Nathanael Rulis; James Beckstrom; Jennifer DelCarmen  
**Subject:** RE: In Re DOT | Clear River Orders

Approved. Thank you.

Whitney J. Barrett  
Attorney  
Christiansen Trial Lawyers  
710 South 7th Street  
Las Vegas, NV 89101  
Phone (702) 240-7979  
Fax (866) 412-6992

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----- Original Message -----

On Friday, March 31st, 2023 at 12:41 PM, Staci Ibarra <Sibarra@pnalaw.net> wrote:

Could everyone else please approve the order with Ms. Smith's requested revision?

*Sincerely,*



---

Staci D. Ibarra

Legal Assistant to Mahogany Turfley, Esq.

and Jennifer DelCarmen, Esq.

2460 Professional Court, Suite 200

Las Vegas, Nevada 89128

Direct No. (702) 868-8013

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 In Re: D.O.T. Litigation

CASE NO: A-19-787004-B

7 DEPT. NO. Department 31  
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District  
11 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
12 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

13 Service Date: 5/3/2023

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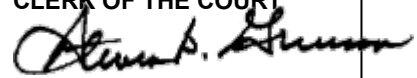
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16	James Beckstrom	JB@Beckstromlaw.com
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9	Marsha Stallsworth	mstallsworth@blackwadhams.law
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20	Mary Pizzariello	MPizzariello@ag.nv.gov
21	Kelly McGee	kom@h2law.com
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# **Exhibit C**





Will Kemp, Esq. (#1205)  
Nathanael R. Rulis, Esq. (#11259)  
n.rulis@kempjones.com  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
*Attorneys for Plaintiffs*  
*MM Development Company, Inc. &*  
*LivFree Wellness, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In Re: D.O.T. Litigation

**Case No.** A-19-787004-B

**Consolidated with:**

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

**Dept. No.** XI

**MM DEVELOPMENT COMPANY, INC. & LIVFREE WELLNESS, LLC'S**  
**SECOND AMENDED COMPLAINT AND**  
**PETITION FOR JUDICIAL REVIEW OR WRIT OF MANDAMUS**

COMES NOW Plaintiffs, MM DEVELOPMENT COMPANY, INC., and LIVFREE WELLNESS LLC, dba The Dispensary, by and through their counsel of record, Kemp, Jones & Coulthard, LLP, and hereby complains against Defendants STATE OF NEVADA, DEPARTMENT OF TAXATION; CHEYENNE MEDICAL, LLC; CIRCLE S FARMS, LLC; CLEAR RIVER, LLC; COMMERCE PARK MEDICAL, LLC; DEEP ROOTS MEDICAL, LLC; ESSENCE HENDERSON, LLC; ESSENCE TROPICANA, LLC; EUREKA NEWGEN FARMS, LLC; GREEN THERAPEUTICS, LLC; GREENMART OF NEVADA NLV, LLC; HELPING HANDS WELLNESS CENTER, INC.; LONE MOUNTAIN PARTNERS, LLC; NEVADA ORGANIC REMEDIES, LLC;

1 POLARIS WELLNESS CENTER, LLC; PURE TONIC CONCENTRATES, LLC; TRNVP098, LLC;  
2 WELLNESS CONNECTION OF NEVADA, LLC and Does I through X, and petitions this Court for  
3 Writ of Mandamus as follows:

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5 **I.**  
**PARTIES & JURISDICTION**

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

8 2. Plaintiff, LIVFREE WELLNESS, LLC, dba The Dispensary, is a Nevada limited  
9 liability company duly licensed under the laws of the State of Nevada.

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

13 4. Upon information and belief, Defendant CHEYENNE MEDICAL, LLC is a Nevada  
14 limited liability company doing business under the fictitious names Thrive Cannabis Marketplace,  
15 Thrive, and/or Cheyenne Medical.

16 5. Upon information and belief, Defendant CIRCLE S FARMS, LLC is a Nevada limited  
17 liability company doing business under the fictitious firm names Canna Starz, and/or Circle S.

18 6. Upon information and belief, Defendant CLEAR RIVER, LLC is a Nevada limited  
19 liability company doing business under the fictitious names United States Marijuana Company, United  
20 States Medical Marijuana, Nevada Medical Marijuana, Clear River Wellness, Clear River Infused,  
21 Nevada Made Marijuana, Greenwolf Nevada, Farm Direct Weed, Atomicrockz, and/or Giddystick.

22 7. Upon information and belief, Defendant COMMERCE PARK MEDICAL, LLC is a  
23 Nevada limited liability company doing business under the fictitious names Thrive Cannabis  
24 Marketplace, LivFree Las Vegas, and/or Commerce Park Medical.  
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1           8.       Upon information and belief, Defendant DEEP ROOTS MEDICAL, LLC is a Nevada  
2 limited liability company doing business under the fictitious name Deep Root Harvest.

3           9.       Upon information and belief, Defendant ESSENCE HENDERSON, LLC is a Nevada  
4 limited liability company doing business under the fictitious name Essence Cannabis Dispensary.

5           10.      Upon information and belief, Defendant ESSENCE TROPICANA, LLC is a Nevada  
6 limited liability company doing business under the fictitious name Essence.

7           11.      Upon information and belief, Defendant EUREKA NEWGEN FARMS, LLC is a  
8 Nevada limited liability company doing business under the fictitious name Eureka NewGen Farms.

9           12.      Upon information and belief, Defendant GREEN THERAPEUTICS, LLC is a Nevada  
10 limited liability company doing business under the fictitious name Provision.

11           13.      Upon information and belief, Defendant GREENMART OF NEVADA NLV, LLC is a  
12 Nevada limited liability company doing business under the fictitious name Health for Life.

13           14.      Upon information and belief, Defendant HELPING HANDS WELLNESS CENTER,  
14 INC. is a Nevada corporation doing business under the fictitious names Cannacare, Green Heaven  
15 Nursery, and/or Helping Hands Wellness Center.

16           15.      Upon information and belief, Defendant LONE MOUNTAIN PARTNERS, LLC is a  
17 Nevada limited liability company doing business under the fictitious names Zenleaf, Siena, Encore  
18 Cannabis, Bentley Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

19           16.      Upon information and belief, Defendant NEVADA ORGANIC REMEDIES, LLC is a  
20 Nevada limited liability company doing business under the fictitious names The Source and/or The  
21 Source Dispensary.

22           17.      Upon information and belief, Defendant POLARIS WELLNESS CENTER, LLC is a  
23 Nevada limited liability company doing business under the fictitious name Polaris MMJ.  
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1           24.     The Nevada State Legislature passed several bills during the 2017 legislative session  
2 that affected the licensing, regulation, and operation of recreational marijuana establishments in the  
3 state of Nevada. One of those bills, Assembly Bill 422, transferred responsibility for the registration,  
4 licensing, and regulation of marijuana establishments from the State of Nevada’s Division of Public  
5 and Behavioral Health to the Department of Taxation.

6           25.     On or around May 8, 2017, the Department adopted temporary regulations pertaining  
7 to, *inter alia*, the application for and the issuance of retail marijuana licenses.

8           26.     On or around January 16, 2018, the Department held a public hearing on the proposed  
9 permanent regulations (LCB File No. R092-17), which was attended by numerous members of the  
10 public and marijuana business industry.

11           27.     Then, on or around January 16, 2018, the Department adopted the proposed permanent  
12 regulations in LCB File No. R092-17 (the “Regulations”).

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

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

21           30.     The application period for those licenses, including thirty-one (31) licenses in Clark  
22 County, seven (7) licenses in Washoe County, one (1) license in Elko County, and one (1) license in  
23 Nye County, opened on September 7, 2018 and closed on September 20, 2018.

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

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- 8           a. Operating experience of another kind of business by the owners, officers or  
9 board members that has given them experience which is applicable to the  
10 operation of a marijuana establishment.
- 11           b. Diversity of the owners, officers or board members.
- 12           c. Evidence of the amount of taxes paid and other beneficial financial  
13 contributions.
- 14           d. Educational achievements of the owners, officers or board members.
- 15           e. The applicant's plan for care, quality and safekeeping of marijuana from seed to  
16 sale.
- 17           f. The financial plan and resources of the applicant, both liquid and illiquid.
- 18           g. The experience of key personnel that the applicant intends to employ.
- 19           h. Direct experience of the owners, officers or board members of a medical  
20 marijuana establishment or marijuana establishment in this State.
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23           32. No numerical scoring values were assigned to any of the foregoing criteria enumerated  
24 for the applications.

25           33. Section 6.3 of the Application further provided that "[a]pplications that have not  
26 demonstrated a sufficient response related to the criteria set forth above will not have **additional**

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1 **[unspecified, unpublished] criteria** considered in determining whether to issue a license **and will not**  
2 **move forward in the application process.”** (Bold added).

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

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

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

13 37. At that time, Plaintiff MM Development Company, Inc. received a score of 203.58 and  
14 was ranked as the fourth-highest applicant for a medical marijuana dispensary in unincorporated Clark  
15 County, Nevada. Plaintiff LivFree Wellness, LLC dba The Dispensary was ranked as the highest  
16 applicant for Henderson, Nevada with a score of 208.3; the highest applicant for Reno, Nevada with a  
17 score of 207; and the fifth-highest applicant in unincorporated Clark County, Nevada with a score of  
18 201.64.

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

21 39. The only major difference between the factors assessed for the 2015 rankings and the  
22 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners, officers,  
23 board members) to the existing merit criteria.

1           40.     Plaintiffs, both of which were already operating licensed recreational retail marijuana  
2 stores and possessed a share of the retail recreational marijuana market in their jurisdictions at the time,  
3 submitted applications for licenses to own and operate additional recreational marijuana retail stores  
4 and thereby to retain their market share in a highly competitive industry, in compliance with the  
5 specified, published requirements of Department regulations together with the required application fee  
6 in accordance with NRS 453D.210.

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8           41.     Plaintiff MM Development Company, Inc. submitted applications (i.e., RD 284, RD  
9 285, RD 286, RD 287, RD 288, and RD 289) for recreational marijuana retail store licenses to own and  
10 operate recreational marijuana retail stores in the following jurisdictions: unincorporated Clark County,  
11 Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; and Nye  
12 County, Nevada.

13           42.     Plaintiff LivFree Wellness, LLC dba The Dispensary submitted applications (i.e., RD  
14 292, RD 293, RD 294, RD 295, RD 296, and RD 297) for recreational marijuana retail store licenses  
15 to own and operate recreational marijuana retail stores in the following jurisdictions: unincorporated  
16 Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Reno, Nevada; Elko County,  
17 Nevada; and Nye County, Nevada.

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19           43.     On or about December 5, 2018, despite their prior exceptional ranking, Plaintiffs were  
20 informed by the Department that all their applications to operate recreational marijuana retail stores  
21 were denied.

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23           44.     Plaintiffs are informed and believe that the Department improperly granted  
24 “conditional” licenses to applicants/Defendants that were ranked substantially lower than Plaintiffs on  
25 the 2015 rankings.



1           45.     Plaintiffs are informed and believe that the Department improperly denied conditional  
2 licenses to Plaintiffs because there were significant errors in the numerical scoring values and  
3 corresponding rankings given to each of Plaintiffs' applications.

4           46.     Plaintiffs are informed and believe that the Department improperly granted more than  
5 one recreational marijuana store license per jurisdiction to certain Defendants/applicants, owners,  
6 and/or ownership groups.

7           47.     On information and belief, Plaintiffs allege that the Department arbitrarily, capriciously,  
8 and improperly granted licenses to the other Defendants, without actual implementation of the impartial  
9 and numerically scored competitive bidding process mandated by NRS 453D.210.

10           48.     Plaintiffs allege that the Department unlawfully deprived Plaintiffs of legal protections  
11 to which they are entitled, including:  
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13               a.     granting more than one conditional recreational marijuana store license per  
14 jurisdiction to certain applicants, owners, or ownership groups in violation of the administration  
15 of an impartial and numerically scored competitive bidding process;  
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17               b.     granting conditional licenses to applicants who benefitted from information that  
18 was not made available to all applicants, but rather conveyed to these favored applicants (or  
19 their attorneys or agents) by Department personnel in a manner that gave these favored  
20 applicants an advantage in the scoring process over other applicants, and thereby destroying the  
21 mandated impartiality of the competitive bidding process;  
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23               c.     granting conditional licenses to applicants who benefitted from the Department's  
24 failure or refusal to include State regulatory compliance history as part of the graded and/or  
25 scored criteria in contravention of the governing regulations and in violation of the  
26 Department's mission to conduct an impartial numerically scored competitive bidding process;  
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1 d. granting conditional licenses to applicants who, after receiving information not  
2 available to all applicants, failed to disclose the true addresses of the locations at which they  
3 proposed to open a retail recreational marijuana store, the Department thereby totally abdicating  
4 the requirement that the application be impartially numerically scored with regard to the impact  
5 that it was likely to have on the community in which it would operate;

6 e. granting conditional licenses to applicants who impermissibly amended  
7 applications after they were purportedly “complete and in compliance” when submitted;

8 f. granting conditional licenses to applicants without investigating discrepancies  
9 between the owners, officers and directors listed on the application where they were different  
10 from those officially listed with the Nevada Secretary of State;

11 g. granting conditional licenses to applicants who benefitted from the Department  
12 implementing – in a manner that was partial and subject to manipulation – the awarding of  
13 points for diversity, resulting in the abdicating its mission to conduct an impartial numerically  
14 scored competitive bidding process;

15 h. failing to train the temporary employees hired to performing the impartial  
16 numerically scored competitive bid process and/or put in place, adequately supervise and/or  
17 maintain quality assurance and/or quality control over the process which, in turn, rendered the  
18 grading process inconsistent and unfair to Plaintiffs;

19 i. granting conditional licenses to applicants in direct contravention of the  
20 legislative and regulatory mandate to operate the impartial numerically scored competitive  
21 bidding process in a manner that will prevent monopolistic practices in a county with a  
22 population of 100,000 or more;

23 j. granting conditional licenses to applicants in other unlawful manners to be  
24 further developed at trial.  
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1           49. Pursuant to NRS 360.245, Plaintiffs each filed administrative appeals of the denials of  
2 their applications with the Nevada Tax Commission.

3           50. On January 10, 2019, Plaintiffs each received a letter on the letterhead of the Nevada  
4 Department of Taxation—signed by Mr. Jorge Pupo—which acknowledged receipt of the Notices of  
5 Appeal to the Nevada Tax Commission and stated “[t]here is no statutory or regulatory allowance for  
6 appealing the scoring, ranking, or denial [of an application for a retail marijuana store license]. . . . As  
7 there is no allowance for an appeal of the denial of your application for the issuance of a retail marijuana  
8 store license, no further action will be taken by the Department on your Notice of Appeal.”

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10           51. After receiving Mr. Pupo’s letters unilaterally rejecting Plaintiffs’ appeals, Plaintiffs  
11 each filed second administrative appeals of the denials of their applications and appeals with the Nevada  
12 Tax Commission.

13           52. The Nevada Tax Commission never responded in any way to Plaintiffs’ second  
14 administrative appeals.

15           53. To date, the Commission has never scheduled a special meeting to address the numerous  
16 problems with the recreational marijuana dispensary licensing or included it on the agenda of any  
17 regularly scheduled meeting. Moreover, the Commission never took any action to remedy Mr. Pupo’s  
18 denial of the Plaintiffs’ notices of appeal.  
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21                           **III.**  
22                           **CLAIMS FOR RELIEF**

23                           **FIRST CLAIM FOR RELIEF**  
24                           **(Declaratory Relief)**

25           54. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

26           55. A justiciable controversy exists that warrants a declaratory judgment pursuant to  
27 Nevada’s Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.  
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1           56. Plaintiffs and the Defendants have adverse and/or competing interests as the  
2 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' applications but  
3 conditionally granted Defendants' in a manner that violates Plaintiffs' Constitutional Rights, Nevada  
4 law, and State policy.

5           57. The Department's refusal to issue Plaintiffs any "conditional" licenses affects Plaintiffs'  
6 rights afforded them by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

7           58. Further, the Department's improper ranking of the other applicants for a recreational  
8 marijuana establishment license and the Department's subsequent, improper issuance to each of  
9 Defendants a "conditional" license also affects the rights of Plaintiffs afforded them by NRS 453D,  
10 NAC 453D, R092-17, and other Nevada laws and regulations.

11           59. The Department's actions and/or inactions also have created an actual justiciable  
12 controversy ripe for judicial determination between Plaintiffs and the Defendants with respect to the  
13 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17. Plaintiffs  
14 have been harmed, and will continue to be harmed, by the Defendants' actions.

15           60. The Department's actions and/or inactions failed to appropriately address the necessary  
16 considerations and intent of NRS 453D.210, designed to restrict monopolies.

17           61. Accordingly, Plaintiffs seek a declaration from this Court that, *inter alia*:

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- 19           a. That the Department improperly denied each Plaintiff six (6) "conditional"
- 20 licenses for the operation of a recreational marijuana establishment in the
- 21 following jurisdictions: unincorporated Clark County, Nevada; Las Vegas,
- 22 Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; Elko
- 23 County, Nevada; and Nye County, Nevada.
- 24           b. The denial of a "conditional" license to Plaintiffs is void *ab initio*;
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- c. The procedures employed in the denial violated Plaintiffs’ procedural due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- d. The denial violates Plaintiffs’ substantive due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- e. The denial is void for vagueness and therefore unenforceable;
- f. The Department acted arbitrarily and capriciously or in contravention of a legal duty and Plaintiffs are therefore entitled to a writ of mandamus;
- g. Plaintiffs are entitled to judicial review; and
- h. The Department’s denial lacked substantial evidence.

62. Plaintiffs also seek a declaration from this Court that the Department must issue each Plaintiff six (6) “conditional” licenses for the operation of a recreational marijuana establishment in unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; Mesquite, Nevada; Reno, Nevada; Elko County, Nevada; and Nye County, Nevada since Plaintiffs’ scores issued by the Department would have ranked high enough to entitle them to a “conditional” license had the Department properly applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

63. Plaintiffs assert and contend that a declaratory judgment is both necessary and proper at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of the Plaintiffs afforded them by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and regulations.

64. Plaintiffs have found it necessary to retain the legal services of Kemp, Jones & Coulthard, LLP, to bring this action, and Plaintiffs are entitled to recover their reasonable attorneys’ fees and costs therefor.

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

65. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

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

67. The purpose of this refusal was and is to unreasonably interfere with Plaintiffs' business and causing Plaintiffs to suffer irreparable harm.

68. The Department will suffer no harm by following the law with respect to issuing "conditional" licenses.

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

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

71. Therefore, Plaintiffs are entitled to preliminary injunctive relief, and after a trial on the merits, permanent injunctive relief, ordering the Department to issue "conditional" licenses to Plaintiffs in accordance with NRS 453D, NAC 453D, and R092-17.

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

72. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

73. NRS 598A offers certain prohibitions and corresponding protections meant to preserve and protect the free, open and competitive nature of our market system, and penalize anticompetitive practices to the full extent allowed by law.

1           74.     NRS 598A.210, in providing a cause of action for injunctive relief and/or damages,  
2 represents a recognition under Nevada law and policy that a business's sales and the resulting value of  
3 its market share are a property interest entitled to protection by the courts.

4           75.     Such a statutorily recognized "property interest" is within the meaning and subject to  
5 the due process protections of the Fourteenth Amendment to the Constitution of the United States and  
6 Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and may not be denied arbitrarily,  
7 capriciously, or based upon administrative partiality or favoritism, as when present as in the instances  
8 complained of herein, none of those trigger any exemptions set out in NRS 598A.

9           76.     While acting under color of state law, the Department has effectively nullified and  
10 rendered illusory the legislative statutory entitlement which all Plaintiffs – and all applicants – have to  
11 an impartial numerically scored competitive bidding system for licensure of applicants who comply  
12 with and prevail competitively in accordance with the objective and impartial standards and procedures  
13 prescribed by the provisions of NRS 453D.

14           77.     Pursuant to the implementation of the foregoing licensing process, the denial of  
15 Plaintiffs' applications, when coupled with the issuing of conditional licenses to Defendants pursuant  
16 to a constitutionally invalid process has and will continue cause a diminution of Plaintiffs' sales and  
17 market share values as a direct result of the conduct of the Department issuing the conditional licenses  
18 to Defendants and the business operations conducted thereafter by the Defendants of that  
19 unconstitutional licensing process.

20           78.     The procedures employed by the Department in denying Plaintiffs' applications have  
21 deprived Plaintiffs of due process of law as guaranteed by the Nevada Constitution and the United  
22 States Constitution.

23           79.     The process in which denial was considered, noticed to the public, and passed failed to  
24 provide Plaintiffs any meaningful opportunity to be heard at a consequential time and was  
25

1 fundamentally unfair and violated the due process requirements of the Nevada and United States  
2 Constitutions.

3 80. The Constitutional infirmity of this entire process renders the denial void and  
4 unenforceable, and Plaintiffs are entitled to a declaration as to the denials' ineffectiveness and an order  
5 enjoining its enforcement.

6 81. Plaintiffs are also entitled to damages for these due process violations.

7 82. As the action of the Department necessitated that Plaintiffs retain the legal services of  
8 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiffs are also entitled  
9 to attorneys' fees and costs of suit.

10 83. Plaintiffs have found it necessary to bring this action, and Plaintiffs are entitled to  
11 recover their reasonable attorneys' fees and costs therefor.

12  
13 **FOURTH CLAIM FOR RELIEF**  
14 **(Violation of Substantive Due Process)**

15 84. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

16 85. The denial violates Plaintiffs' substantive due process rights guaranteed by the Nevada  
17 Constitution and the United States Constitution.

18 86. The Constitutional infirmity of this entire process and the Department's denial renders  
19 the denials void and unenforceable, and Plaintiffs are entitled to a declaration as to the denials'  
20 ineffectiveness and an order enjoining its enforcement.

21 87. Plaintiffs are also entitled to damages for these due process violations.

22 88. As the action of the Department necessitated that Plaintiffs retain the legal services of  
23 Kemp, Jones & Coulthard, LLP, and incur fees and costs to bring this action, Plaintiffs are also entitled  
24 to attorneys' fees and costs of suit.

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

89. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

90. By improperly denying Plaintiffs' applications for licensure under the provisions of NRS 453D.200 and NRS 453D.210, while improperly granting the applications of Defendants, under color of state law, the Department has, without justification, disparately treated Plaintiffs' applications absent rational basis, and has thereby violated Plaintiffs' rights to equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

91. The denial of Plaintiffs' applications violates Plaintiffs' right to equal protection under the Nevada and United States Constitutions.

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

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

94. The constitutional infirmity of the denials renders them void and unenforceable, and Plaintiffs are entitled to a declaration as to the denials' ineffectiveness and an order enjoining any enforcement.

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

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

96. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

97. The Department, in misinterpreting and incorrectly applying NRS 453D, NAC 453D and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing "conditional"

1 licenses to Defendants that do not merit “conditional” licenses under NRS 453D, NAC 453D, and  
2 R092-17.

3 98. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs’  
4 applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC 453D,  
5 R092-17, and other Nevada state laws or regulations.

6 99. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an  
7 administrative appeal of the Department’s decision, and apart from injunctive relief, no plain, speedy,  
8 and adequate remedy for the Department’s improper actions.

9 100. Accordingly, Plaintiffs petition this Court for judicial review of the record on which the  
10 Department’s denial was based, including but not limited to:

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- 12 a. A determination that the decision lacked substantial evidence;
  - 13 b. A determination that the denial is void *ab initio* for non-compliance with NRS
  - 14 453D, NAC 453D, R092-17, and other Nevada state laws or regulations; and
  - 15 c. Other relief consistent with those determinations.
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17 101. Plaintiffs have found it necessary to retain the legal services of Kemp, Jones &  
18 Coulthard, LLP, to bring this action, and Plaintiffs are entitled to recover their reasonable attorneys’  
19 fees and costs therefor.

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

22 102. Plaintiffs repeat and reallege all prior paragraphs as though fully set forth herein.

23 103. When a governmental body fails to perform an act “that the law requires” or acts in an  
24 arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev. Rev. Stat. §  
25 34.160.

26 104. The Department failed to perform various acts that the law requires including but not  
27 limited to:  
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1 a. Providing proper pre-hearing notice of the denial; and

2 b. Arbitrarily and capriciously denying the applications for no legitimate reason.

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

5 a. There were significant errors in the numerical scoring values and corresponding  
6 rankings assigned to each of Plaintiffs' applications;

7 b. The Department lacked substantial evidence to deny the applications; and

8 c. The Department denied the application solely to approve the applications of  
9 competing Defendants without regard to the merit of Plaintiffs' application.

10 106. These violations of the Plaintiffs' legal duties were arbitrary and capricious actions that  
11 compel this Court to issue a Writ of Mandamus directing the Department to review the applications on  
12 their merits and/or approve it.

13 107. As a result of the Defendants' unlawful and arbitrary and capricious actions, Plaintiffs  
14 have been forced to retain legal counsel to prosecute this action and are therefore also entitled to their  
15 damages, costs in this suit, and an award of attorneys' fees pursuant to NRS 34.270.

16 **IV.**  
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment as follows:

19 1. For declaratory relief as set forth above;

20 2. For a preliminary and permanent injunction enjoining the enforcement of the denial;

21 3. For judicial review of the record and history on which the denial was based;

22 4. For the issuance of a writ of mandamus;

23 5. For compensatory and special damages as set forth herein;

24 6. For attorneys' fees and costs of suit; and

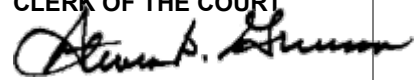


**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of January, 2020, I served a true and correct copy of the foregoing **Plaintiffs' Second Amended Complaint and Petition for Judicial Review or Writ of Mandamus** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list; documents hand delivered to Litigation Services Depository.

/s/ Ali Augustine

An employee of Kemp, Jones & Coulthard, LLP



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT  
OF TAXATION,

Defendant.

CASE NO. A-19-786962-B  
DEPT. XI

**CORRECTED  
FIRST AMENDED COMPLAINT**

1 Plaintiffs, SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company,  
2 TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a  
3 Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited  
4 liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company,  
5 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, GBS NEVADA  
6 PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada  
7 limited liability company, GRAVITAS NEVADA, LTD, a Nevada limited liability company,  
8 NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada  
9 limited liability company MEDIFARM IV, LLC, a Nevada limited liability company; DOE  
10 PLAINTIFFS I through X; and ROE ENTITIES I through X, by and through their counsel,  
11 DOMINIC P. GENTILE, ESQ. and VINCENT SAVARESE III, ESQ., MICHAEL V.  
12 CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the law firm of Gentile Cristalli Miller  
13 Armeni Savarese, hereby complain and allege against DEFENDANT STATE OF NEVADA,  
14 DEPARTMENT OF TAXATION; DOE DEFENDANTS I through X; and ROE ENTITY  
15 DEFENDANTS I through X, in their official and personal capacities, as follows:  
16  
17

18 **I.**

19 **PARTIES, JURISDICTION, AND VENUE**

- 20 1. Plaintiff SERENITY WELLNESS CENTER, LLC, was and is a Nevada limited  
21 liability company and does business in Clark County, Nevada.  
22 2. Plaintiff TGIG, LLC, was and is a Nevada limited liability company and does  
23 business in Clark County, Nevada.  
24 3. Plaintiff NULEAF INCLINE DISPENSARY, LLC, was and is a Nevada limited  
25 liability company and does business in Clark County, Nevada.  
26 4. Plaintiff NEVADA HOLISTIC MEDICINE, LLC, was and is a Nevada limited  
27 liability company and does business in Clark County, Nevada.  
28 5. Plaintiff TRYKE COMPANIES SO NV, LLC was and is a Nevada limited

1 liability company and does business in Clark County, Nevada.

2 6. Plaintiff TRYKE COMPANIES RENO, LLC, was and is a Nevada limited  
3 liability company and does business in Clark County, Nevada.

4 7. Plaintiff GBS NEVADA PARTNERS, LLC, was and is a Nevada limited liability  
5 company and does business in Clark County, Nevada.

6 8. Plaintiff FIDELIS HOLDINGS, LLC, was and is a Nevada limited liability  
7 company and does business in Clark County, Nevada.

8 9. Plaintiff GRAVITAS NEVADA, LTD, was and is a Nevada limited liability  
9 company and does business in Clark County, Nevada.

10 10. Plaintiff NEVADPURE, LLC, was and is a Nevada limited liability company and  
11 does business in Clark County, Nevada.

12 11. Plaintiff MEDIFARM, LLC was and is a Nevada limited liability company and  
13 does business in Clark County, Nevada.

14 12. Plaintiff MEDIFARM IV, LLC was and is a Nevada limited liability company  
15 and does business in Clark County, Nevada.

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

20 14. The true names and capacities, whether individual, corporate, association or  
21 otherwise of Doe Plaintiffs I through X, Roe Entity Plaintiffs I through X; Doe Defendants I  
22 through X; and Roe Entity Defendants I through X, inclusive, are unknown to Plaintiffs at  
23 this time, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed  
24 and believe, and thereupon allege, that each of the Defendants designated herein as Doe  
25 and/or Roe Entities is responsible in some manner for the events and occurrences herein  
26 referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein.  
27 And Plaintiffs will ask leave of the Court to amend this Complaint to insert the true names  
28 and capacities of all Doe and/or Roe Entity Plaintiffs and Defendants when the same have



1 been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join  
2 such parties in this action.

3 15. Both jurisdiction and venue with respect to this action properly lie in this Court  
4 pursuant to Nev. Rev. Stat. § 13.040.

## 5 II.

### 6 GENERAL ALLEGATIONS

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

12 17. This legislation was added to the voters' approval at the 2016 General Election of  
13 2016 initiative petition, Ballot Question No. 2; is known as the "Regulation and Taxation of  
14 Marijuana Act"; and is codified at NRS 453D.010, *et seq.* Nevada Revised Statutes ("NRS")  
15 pursuant to

16 18. NRS 453D.020 (Findings and declarations) provides:

17 "1. In the interest of public health and public safety, and in  
18 order to better focus state and local law enforcement resources on  
19 crimes involving violence and personal property, the People of the  
20 State of Nevada find and declare that the use of marijuana should  
be legal for persons 21 years of age or older, and its cultivation and  
sale should be regulated similar to other legal businesses.

21 2. The People of the State of Nevada find and declare that the  
22 cultivation and sale of marijuana should be taken from the domain  
23 of criminals and be regulated under a controlled system, where  
businesses will be taxed and the revenue will be dedicated to  
public education and the enforcement of the regulations of this  
chapter.

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

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

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

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

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

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

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

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

19. NRS 453D.200 (Duties of Department relating to regulation and licensing of marijuana establishments; information about consumers) provides:

“1. Not later than January 1, 2018, the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:

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

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

....

2. The Department shall approve or deny applications for licenses *pursuant to NRS 453D.210*” (emphasis added).

20. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing; conditions for approval of application; limitations on issuance of licenses to retail marijuana stores; competing applications), in turn, provides, in pertinent part:

“4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

(a) *Issue the appropriate license if the license application is approved.*

5. The Department shall approve a license application if:

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to NRS 453D.2;

6. When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall use an *impartial and numerically scored competitive bidding process* to determine which application or applications among those competing will be approved” (emphasis added).

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

7  
8                   22. The Department issued a notice for an application period wherein the  
9                   Department sought applications from qualified applicants to award sixty-four (64) recreational  
10                  marijuana retail store licenses throughout various jurisdictions in Nevada.

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

14                  24. Pursuant to Section 6.2 of the Recreational Marijuana Establishment License  
15                  Application ("the Application") issued by the Department, as enabled under the above-quoted  
16                  provisions of NRS 453D.210, if the Department received more than one application for a license  
17                  for a recreational marijuana retail store and the Department determined that more than one of the  
18                  applications was complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department  
19                  was required to rank the applications within each applicable locality for any applicants in a  
20                  jurisdiction that limits the number of retail marijuana stores in order from first to last, with ranking  
21                  being based on compliance with the provisions of R092-17 Sec. 80, NRS 453D and on the content of  
22                  the applications relating to the following specifically-enumerated and objective published criteria:

- 23                  a. Operating experience of another kind of business by the owners, officers or board  
24                          members that has given them experience which is applicable to the operation of a  
25                          marijuana establishment.  
26                  b. Diversity of the owners, officers or board members.  
27                  c. Evidence of the amount of taxes paid and other beneficial financial contributions.  
28                  d. Educational achievements of the owners, officers or board members.

- 1 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
- 2 sale.
- 3 f. The financial plan and resources of the applicant, both liquid and illiquid.
- 4 g. The experience of key personnel that the applicant intends to employ.
- 5 h. Direct experience of the owners, officers, or board members of a medical
- 6 marijuana establishment or marijuana establishment in this State.

7 24. However, no numerical scoring values are assigned to any of the foregoing

8 criteria enumerated in the Application.

9 25. Moreover, Section 6.3 of the Application further provides that "[a]pplications

10 that have not demonstrated a sufficient response related to the criteria set forth above will not

11 have *additional [unspecified, unpublished] criteria* considered in determining whether to issue a

12 license *and will not move forward in the application process*" (emphasis added).

13 26. Thus, by necessary implication, conversely, Section 6.3 of the Application

14 textually subjects an Application which *has* in fact demonstrated a "sufficient" response related

15 to the specific, published criteria set forth above to "*additional [unspecified, unpublished]*

16 *criteria*," consideration of which by the Department will determine whether or not a license is

17 issued and whether or not a license Application will "*move forward in the application process*,

18 notwithstanding the textual requirement of NRS 453 D. 200.1(b) that the Department shall adopt

19 only regulations that prescribe "[q]ualifications for licensure that are directly and *demonstrably*

20 related to the operation of a marijuana establishment" (emphasis added).

21 27. No later than December 5, 2018, the Department was responsible for issuing

22 conditional licenses to those applicants who score and rank high enough in each jurisdiction to be

23 awarded one of the allocated licenses in accordance with the impartial competitive bidding process

24 mandated by NRS 453D.210.

25 28. The Department allocated ten (10) licenses for unincorporated Clark County,

26 Nevada; ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5)

27 licenses for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks,

28 Nevada; and one (1) license for Nye County, Nevada.

29. Plaintiffs submitted Applications for licenses to own and operate recreational marijuana retail stores in compliance with the specified, published requirements of Department regulations together with the required application fee in accordance with NRS 453D.210.

30. Plaintiffs have been informed by the Department that all of their Applications to operate recreational marijuana retail stores were denied.

31. In each instance, Plaintiffs were informed by letter from the Department stating that a license was not granted to the applicant “because it did not achieve a score high enough to receive an available license.”

32. On information and belief, Plaintiffs allege that the Department's denial of their license applications was not properly based upon actual implementation of the impartial and objective competitive bidding process mandated by NRS 453D.210, but rather, was in fact based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

33. On information and belief, Plaintiffs allege conversely that that the Department improperly granted licenses to other competing applicants, likewise without actual implementation of the impartial and objective competitive bidding process mandated by NRS 453D.210, but rather, based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

34. On information and belief, Plaintiffs allege that the Department has improperly granted more than one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership groups.

### III.

## CLAIMS FOR RELIEF

## **FIRST CLAIM FOR RELIEF** **(Violation of Civil Rights)**

**(Due Process: Deprivation of Property)**

**(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)**

35. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

1           36. The provisions of NRS 453D.200.2 and NRS 453D.210.4-6, affirmatively  
2 mandating that the Department “shall” approve and issue the appropriate license within a time  
3 certain if the prospective establishment submits an Application in compliance with published  
4 Department regulations promulgated in accordance with the limitations imposed by NRS 453.  
5 D.200.1(b) together with the required application fee; and, in the case of competing  
6 Applications, outranks competing applicants in accordance with an objective, impartial and  
7 numerically scored competitive bidding process, serve to create, as a matter of legislative intent,  
8 a *statutory entitlement* to receipt of the license by applicants who comply with and prevail  
9 competitively in accordance with those objective and impartial standards and procedures.

10           37. Such a statutory entitlement constitutes a “property interest” within the meaning  
11 and subject to the due process protections of the Fourteenth Amendment to the Constitution of  
12 the United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and  
13 therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon  
14 administrative partiality or favoritism.

15           38. However, acting under color of state law, the Department has effectively nullified  
16 and rendered illusory the legislative statutory entitlement to licensure of applicants who comply  
17 with and prevail competitively in accordance with the objective and impartial standards and  
18 procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by  
19 textually subjecting an Application which in fact provides “sufficient” responses related to the  
20 published, enumerated and specific criteria set forth in the Application to approval pursuant to  
21 further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth  
22 therein, as a silent supplemental condition of licensure, thereby rendering the administrative  
23 regulation governing the Application and licensing process susceptible to *ad hoc*, non-  
24 transparent, arbitrary, capricious or corrupt decision-making based upon administrative partiality  
25 or favoritism which cannot be discounted; thereby rendering that regulatory scheme  
26 unconstitutional on its face.

27           39. On information and belief, Plaintiffs further allege that pursuant to the  
28 implementation of the foregoing constitutionally-repugnant licensing process, the denial of their

1 Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt  
2 decision-making based upon administrative partiality or favoritism; and therefore, that that  
3 licensing process has thereby been rendered unconstitutional in its application as well as to  
4 Plaintiffs.

5 40. Plaintiffs have therefore been deprived of property without due process under  
6 color of state law in violation of the Fourteenth Amendment to the Constitution of the United  
7 States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

8 41. The Constitutional infirmity of the entire licensing process renders the denial of  
9 Plaintiffs' Applications for licensure void and unenforceable, and Plaintiffs are entitled to a  
10 declaration as to the ineffectiveness thereof and an order enjoining the enforcement of those  
11 license denials.

12 42. Plaintiffs are entitled to declaratory relief with respect to the forgoing federal  
13 constitutional infirmities of the administrative licensing scheme pursuant to the provisions of  
14 Title 42, United States Code ("U.S.C."), Section 1983 and otherwise.

15 43. Plaintiffs are entitled to declaratory relief because a justiciable controversy exists  
16 that warrants a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act,  
17 codified at NRS 30.010 to 30.160, inclusive.

18 44. Plaintiffs and Defendant have adverse and/or competing interests in that the  
19 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' Applications in  
20 in violation of Plaintiff's constitutional rights, Nevada law, and state policy.

21 45. The Department's refusal to issue licenses to Plaintiffs affects Plaintiffs' rights  
22 under NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

23 46. Further, the Department's improper ranking of other applicants for licensure and  
24 subsequent, improper issuance of licenses to such other applicants adversely affects the rights of  
25 Plaintiff under NRS 453D, NAC 453D, R09217, and other Nevada laws and regulations.

26 47. The Department's actions and/or inactions also have created an actual justiciable  
27 controversy ripe for judicial determination between Plaintiffs and the Department with respect to  
28 the construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17,

1 and Plaintiffs have been harmed, and will continue to be harmed, by the Defendants' actions  
2 and/or inactions.

3 48. The Department's actions and/or inactions have further failed to appropriately  
4 address the necessary considerations and legislative intent of NRS 453D.210, designed to restrict  
5 monopolies.

6 49. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 7 a. The Department improperly denied Plaintiffs' license Applications for the  
8 operation of a recreational marijuana establishment.
- 9 b. The denial of such licenses to Plaintiffs was void *ab initio*;
- 10 c. The procedures employed in denying Plaintiffs' license Applications violated  
11 Plaintiffs' procedural and substantive due process rights and entitlement to  
12 equal protection of the law (as set forth *infra*) under the Nevada and United  
13 States Constitutions and, therefore, those license denials are void and  
14 unenforceable;
- 15 d. The denials are void for vagueness and therefore unenforceable;
- 16 e. Defendant acted arbitrarily and capriciously or in contravention of a legal duty  
17 and Plaintiffs are therefore entitled to a writ of mandamus;
- 18 f. Plaintiffs are entitled to judicial review; and
- 19 g. The Department's denial of Plaintiffs' license Applications lacked substantial  
20 evidence.

21 50. Plaintiffs also seek a declaration from this Court that the Department must issue  
22 licenses to Plaintiffs for the operation of a recreational marijuana establishment as applied for in  
23 that Plaintiffs' would have been entitled to receive said licenses had the Department properly  
24 applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

25 51. Plaintiffs contend that a declaratory judgment is both necessary and proper at  
26 this time for the Court to determine the respective rights, duties, responsibilities and liabilities  
27 of Plaintiffs under NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and  
28 regulations.



1           52. Plaintiffs are also entitled to injunctive relief from the foregoing federal  
2 constitutional violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

3           53. The Department's flawed interpretation of the provisions of NRS 453D, NAC  
4 Chapter 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the  
5 law constitute and cause continuing and irreparable harm to Plaintiffs, who have no adequate  
6 remedy at law.

7           54. The purpose of this administrative refusal was and is to unreasonably interfere  
8 with Plaintiffs' business and cause Plaintiffs to suffer irreparable harm.

9           55. The Department will suffer no harm by following the law with respect to issuing  
10 the licenses in question.

11           56. The Department's interpretation of NRS 453D, NAC Chapter 453D, and R092-17  
12 is flawed and Plaintiffs are likely to succeed on the merits in this litigation.

13           57. The public interest favors Plaintiffs because in the absence of injunctive relief, the  
14 consumers who would have benefitted by Plaintiffs' licensure will have less available options  
15 from which they can receive recreational marijuana in accordance with legislative intent.

16           58. Therefore, Plaintiffs are entitled to preliminary injunctive relief, and after a trial  
17 on the merits, permanent injunctive relief, ordering the Department to issue the subject licenses  
18 to Plaintiffs in accordance with NRS 453D, NAC 453D, and R092-17.

19           59. Plaintiffs are also entitled to damages attributable to the above-identified due  
20 process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

21           60. As the actions of the Department have necessitated that Plaintiffs retain the legal  
22 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,  
23 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

24                                   **SECOND CLAIM FOR RELIEF**  
25                                   **(Violation of Civil Rights)**

26                                   **(Due Process: Deprivation of Liberty)**

27                   **(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)**

28           61. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

1           62.     The fundamental constitutional right to pursue a lawful occupation constitutes a  
2     “liberty interest” within the meaning and subject to the due process protections of the Fourteenth  
3     Amendment to the Constitution of the United States and Article 1, Sections 1 and 8 of the  
4     Constitution of the State of Nevada; and therefore, by definition, may not be denied arbitrarily,  
5     capriciously, corruptly or based upon administrative partiality or favoritism.

6           63.     However, acting under color of state law, the Department has effectively nullified  
7     and rendered illusory the legislative statutory entitlement to licensure of applicants who comply  
8     with and prevail competitively in accordance with the objective and impartial standards and  
9     procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by  
10    textually subjecting an Application which in fact provides “sufficient” responses related to the  
11    published, enumerated and specific criteria set forth in the Application to approval pursuant to  
12    further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth  
13    therein, as a silent supplemental condition of licensure, in violation of NRS 200.D.1(b) thereby  
14    rendering the administrative regulation governing the Application and licensing process  
15    susceptible to *ad hoc*, non-transparent, arbitrary, capricious or corrupt decision-making based  
16    upon administrative partiality or favoritism which cannot be discounted; thereby rendering that  
17    regulatory scheme unconstitutional on its face.

18          64.     On information and belief, Plaintiffs further allege that the pursuant to the  
19    implementation of the foregoing constitutionally-repugnant licensing process, the denial of their  
20    Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt  
21    decision-making based upon administrative partiality or favoritism; and therefore, that that  
22    licensing process has thereby been rendered unconstitutional in its application as well.

23          65.     Plaintiffs have therefore likewise been deprived of liberty without due process  
24    under color of state law in violation of the Fourteenth Amendment to the Constitution of the  
25    United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

26          66.     The Constitutional infirmity of the entire licensing process renders the denial of  
27    Plaintiffs’ Applications for licensure void and unenforceable, and, for the reasons set forth supra  
28    in Plaintiffs’ FIRST CAUSE OF ACTION at paragraphs 30 through 47, inclusive, Plaintiffs are

1 entitled to a declaration as to the ineffectiveness thereof and an order enjoining the enforcement  
2 of those license denials.

3 67. Plaintiffs are also entitled to damages for these due process violations pursuant  
4 to the provisions of 42 U.S.C. Section 1983 and otherwise.

5 68. As the actions of the Department have necessitated that Plaintiffs retain the legal  
6 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,  
7 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

### 8 **THIRD CLAIM FOR RELIEF**

#### 9 **(Violation of Civil Rights)**

#### 10 **(Equal Protection)**

#### 11 **(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1; Title 42 U.S.C. § 1983)**

12 69. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

13 70. By improperly denying Plaintiffs' Applications for licensure under the provisions  
14 of NRS 453D.200.2 and NRS 453D.210.4-6 while improperly granting the Applications of other  
15 applicants under color of state law as set forth *supra* in Plaintiffs' FIRST CAUSE OF ACTION  
16 and SECOND CAUSE OF ACTION, the Department has, without justification, disparately  
17 treated Plaintiffs' Applications absent rational basis, and has thereby violated Plaintiffs' rights to  
18 equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of  
19 the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

20 71. The constitutional infirmity of the entire licensing process and the resulting denial  
21 of equal protection renders the denial of Plaintiffs' Applications for licensure void and  
22 unenforceable, and, for the reasons set forth *supra* in Plaintiffs' FIRST CAUSE OF ACTION at  
23 paragraphs 30 through 47, inclusive, Plaintiffs are entitled to a declaration as to the  
24 ineffectiveness thereof and an order enjoining the enforcement of those license denials.

25 72. Plaintiffs are also entitled to damages for these equal protection violations  
26 pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

27 73. As the actions of the Department have necessitated that Plaintiffs retain the legal  
28 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,

1 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Petition for Judicial Review)**

4 74. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth  
5 herein.

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

10 76. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs'  
11 Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC  
12 453D, R092-17, and other Nevada state laws or regulations.

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

16 78. Accordingly, Plaintiff petitions this Court for judicial review of the record on which  
17 the Department's denials were based, and an order providing *inter alia*:

- 18 a. A determination that the decision lacked substantial evidence;  
19 b. A determination that the denials are void *ab initio* for non-compliance with  
20 NRS 453D, NAC 453D, R092-17, and other Nevada laws or regulations; and  
21 c. Such other relief as is consistent with those determinations.

22 79. As the actions of the Department have necessitated that Plaintiffs retain the legal  
23 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,  
24 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

25 **FIFTH CLAIM FOR RELIEF**

26 **(Petition for Writ of Mandamus)**

27 80. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

28 81. When a governmental body fails to perform an act "that the law requires" or acts

1 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev.  
2 Rev. Stat. § 34.160.

3 82. The Department has failed to perform various acts that the law requires including  
4 but not limited to:

- 5 a. Providing proper pre-hearing notice of the denial; and
- 6 b. Arbitrarily and capriciously denying the applications for no legitimate reason.

7 83. The Department acted arbitrarily and capriciously in the denial by performing  
8 and/or failing to perform the acts set forth *supra*, and because, *inter alia*:

- 9 a. The Board lacked substantial evidence to deny Plaintiffs' Applications; and
- 10 b. The Board denied Plaintiffs' Applications in order to approve the Applications  
11 of other competing applicants without regard to the merit of Plaintiffs'  
12 Applications and the lack of merit of the Applications of other competing  
13 applicants.

14 84. These violations of the Defendants' legal duties were arbitrary and capricious  
15 actions that compel this Court to issue a Writ of Mandamus directing the Department to review  
16 Plaintiffs' Applications on their merits and/or approve them.

17 85. As a result of the Defendants' unlawful and arbitrary and capricious actions,  
18 Plaintiff has been forced to retain legal counsel to prosecute this action and is therefore also  
19 entitled to its damages, costs in this suit, and an award of attorneys' fees pursuant to NRS  
20 34.270.

### 21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFFS pray for relief as follows:

- 23 1. For declaratory relief as set forth above;
- 24 2. For a preliminary and permanent injunction enjoining the enforcement of the  
25 denial of their Applications for licensure;
- 26 3. For judicial review of the record and history on which the denial of those  
27 Applications was based;
- 28 4. For the issuance of a writ of mandamus;

5. For compensatory and special damages as set forth herein;
6. For attorneys' fees and costs of suit; and
7. For all other and further relief as the Court deems just and proper.

## DEMAND FOR JURY TRIAL

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

DATED this 3rd day of July, 2019.

GENTILE CRISTALLI  
MILLER ARMENI SAVARESE

/s/ Vincent Savarese, III, Esq.

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CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile, Cristalli, Miller, Armeni Savarese, hereby certifies that on the 3<sup>rd</sup> day of July, 2019, I caused a copy of the foregoing **CORRECTED FIRST AMENDED COMPLAINT** by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's [Odyssey E-File & Serve](#) system.

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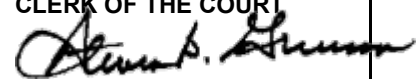
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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.: XI

**THIRD AMENDED COMPLAINT**

Plaintiffs ETW MANAGEMENT GROUP LLC (“ETW”), GLOBAL HARMONY LLC (“Global Harmony”), GREEN LEAF FARMS HOLDINGS LLC (“GLFH”), GREEN THERAPEUTICS LLC (“GT”), HERBAL CHOICE INC. (“Herbal Choice”), JUST QUALITY, LLC (“Just Quality”), LIBRA WELLNESS CENTER, LLC (“Libra”), ROMBOUGH REAL ESTATE INC. dba MOTHER HERB (“Mother Herb”), NEVCANN LLC (“NEVCANN”), RED EARTH LLC (“Red Earth”), THC NEVADA LLC (“THCNV”), ZION GARDENS LLC (“Zion”), and MMOF VEGAS RETAIL, INC. (“MMOF”) (collectively, the “Plaintiffs”), by and



through their undersigned counsel of record Adam K. Bult, Esq., Maximilien D. Fetaz, Esq., and Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Adam R. Fulton, Esq., of the law firm of Jennings & Fulton, Ltd., hereby file their Third Amended Complaint against the STATE OF NEVADA, DEPARTMENT OF TAXATION (the “DOT”); CHEYENNE MEDICAL, LLC; CIRCLE S FARMS, LLC; CLEAR RIVER, LLC; COMMERCE PARK MEDICAL L.L.C.; DEEP ROOTS MEDICAL LLC; ESSENCE HENDERSON, LLC, ESSENCE TROPICANA, LLC; EUREKA NEWGEN FARMS LLC; GREEN THERAPEUTICS LLC; GREENMART OF NEVADA NLV, LLC; HELPING HANDS WELLNESS CENTER, INC.; LONE MOUNTAIN PARTNERS, LLC; NEVADA ORGANIC REMEDIES LLC; POLARIS WELLNESS CENTER L.L.C.; PURE TONIC CONCENTRATES LLC; TRNVP098; WELLNESS CONNECTION OF NEVADA, LLC; DOES 1 through 20 inclusive, and ROE CORPORATIONS 19 through 20, inclusive, alleging and complaining as follows:

### **PARTIES**

1. At all times relevant hereto, ETW is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

2. At all times relevant hereto, Global Harmony is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

3. At all times relevant hereto, GLFH is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

4. At all times relevant hereto, GT is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

5. At all times relevant hereto, Herbal Choice is and was a Nevada corporation authorized to do business in Clark County, Nevada.

6. At all times relevant hereto, Just Quality is and was a limited liability company

1 organized and existing under the laws of the State of Nevada and authorized to do business in  
2 Clark County, Nevada.

3 7. At all times relevant hereto, Libra is and was a limited liability company organized  
4 and existing under the laws of the State of Nevada and authorized to do business in Clark County,  
5 Nevada.

6 8. At all times relevant hereto, Mother Herb is and was a Nevada corporation and  
7 authorized to do business in Clark County, Nevada.

8 9. At all times relevant hereto, NEVCANN is and was a limited liability company  
9 organized and existing under the laws of the State of Nevada and authorized to do business in  
10 Clark County, Nevada.

11 10. At all times relevant hereto, Red Earth is and was a limited liability company  
12 organized and existing under the laws of the State of Nevada and authorized to do business in  
13 Clark County, Nevada.

14 11. At all times relevant hereto, THCNV is and was a limited liability company  
15 organized and existing under the laws of the State of Nevada and authorized to do business in  
16 Clark County, Nevada.

17 12. At all times relevant hereto, Zion is and was a limited liability company organized  
18 and existing under the laws of the State of Nevada and authorized to do business in Clark County,  
19 Nevada.

20 13. At all times relevant hereto, MMOF is and was a Nevada corporation authorized to  
21 do business in Clark County, Nevada.

22 14. At all times relevant hereto, the DOT is and was an agency and political  
23 subdivision of the State of Nevada.

24 15. The true name and capacity of ROE CORPORATION 1 is Cheyenne Medical,  
25 LLC. At all times relevant hereto, Cheyenne Medical, LLC is and was a limited liability  
26 company organized and existing under the laws of the State of Nevada and authorized to do  
27 business in Clark County, Nevada.

28 16. The true name and capacity of ROE CORPORATION 2 is Circle S Farms, LLC.

At all times relevant hereto, Circle S Farms, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

17. The true name and capacity of ROE CORPORATION 3 is Clear River, LLC. At all times relevant hereto, Clear River, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

18. The true name and capacity of ROE CORPORATION 4 is Commerce Park Medical L.L.C. At all times relevant hereto, Commerce Park Medical L.L.C. is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

19. The true name and capacity of ROE CORPORATION 5 is Deep Roots Medical LLC. At all times relevant hereto, Deep Roots Medical LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

20. The true name and capacity of ROE CORPORATION 6 is Essence Henderson, LLC. At all times relevant hereto, Essence Henderson, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

21. The true name and capacity of ROE CORPORATION 7 is Essence Tropicana, LLC. At all times relevant hereto, Essence Tropicana, LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

22. The true name and capacity of ROE CORPORATION 8 is Eureka NewGen Farms LLC. At all times relevant hereto, Eureka NewGen Farms LLC is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

23. The true name and capacity of ROE CORPORATION 9 is Green Therapeutics

1 LLC. At all times relevant hereto, Green Therapeutics LLC is and was a limited liability  
2 company organized and existing under the laws of the State of Nevada and authorized to do  
3 business in Clark County, Nevada.

4 24. The true name and capacity of ROE CORPORATION 10 is Greenmart of Nevada  
5 NLV. At all times relevant hereto, Greenmart of Nevada NLV is and was a limited liability  
6 company organized and existing under the laws of the State of Nevada and authorized to do  
7 business in Clark County, Nevada.

8 25. The true name and capacity of ROE CORPORATION 11 is Helping Hands  
9 Wellness Center, Inc. At all times relevant hereto, Helping Hands Wellness Center, Inc. is and  
10 was a limited liability company organized and existing under the laws of the State of Nevada and  
11 authorized to do business in Clark County, Nevada.

12 26. The true name and capacity of ROE CORPORATION 12 is Lone Mountain  
13 Partners, LLC. At all times relevant hereto, Lone Mountain Partners, LLC is and was a limited  
14 liability company organized and existing under the laws of the State of Nevada and authorized to  
15 do business in Clark County, Nevada.

16 27. The true name and capacity of ROE CORPORATION 13 is Nevada Organic  
17 Remedies LLC. At all times relevant hereto, Nevada Organic Remedies LLC is and was a limited  
18 liability company organized and existing under the laws of the State of Nevada and authorized to  
19 do business in Clark County, Nevada.

20 28. The true name and capacity of ROE CORPORATION 14 is Polaris Wellness  
21 Center L.L.C. At all times relevant hereto, Polaris Wellness Center L.L.C. is and was a limited  
22 liability company organized and existing under the laws of the State of Nevada and authorized to  
23 do business in Clark County, Nevada.

24 29. The true name and capacity of ROE CORPORATION 15 is Pure Tonic  
25 Concentrates LLC. At all times relevant hereto, Pure Tonic Concentrates LLC is and was a  
26 limited liability company organized and existing under the laws of the State of Nevada and  
27 authorized to do business in Clark County, Nevada.

28 30. The true name and capacity of ROE CORPORATION 16 is TRNVP098. At all

1 times relevant hereto, TRNVP098 is and was a limited liability company organized and existing  
2 under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

3 31. The true name and capacity of ROE CORPORATION 17 is Wellness Connection  
4 of Nevada, LLC. At all times relevant hereto, Wellness Connection of Nevada, LLC is and was a  
5 limited liability company organized and existing under the laws of the State of Nevada and  
6 authorized to do business in Clark County, Nevada.

7 32. Upon information and belief, Defendants identified in Paragraphs 15-31 were  
8 granted conditional recreational dispensary licenses by the DOT on or after December 5, 2018  
9 (the "Successful Applicants").

10 33. The true names and capacities, whether individual, corporate, associate or  
11 otherwise, of Defendants Does 1-20, inclusive, and Roe Corporations 18-20, inclusive, are  
12 unknown to Plaintiffs, which therefore sue said Defendants by such fictitious names. Plaintiffs  
13 will amend this Third Amended Complaint to state the true names and capacities of said fictitious  
14 Defendants when they have been ascertained.

15 34. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously  
16 named Defendants are responsible in some manner for the occurrences herein alleged, and that  
17 Plaintiffs' damages as herein alleged were proximately caused by Defendants' acts. Each  
18 reference in this Complaint to "Defendant" or "Defendants," or a specifically named Defendant  
19 refers also to all Defendants sued under fictitious names.

#### 20 **JURISDICTION AND VENUE**

21 35. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,  
22 § 6, NRS 4.370(2), NRS 30, and because the acts and omissions complained of herein occurred  
23 and caused harm within Clark County, Nevada. Further, the amount in controversy exceeds  
24 \$15,000.00.

25 36. Venue is proper in this Court pursuant to NRS 13.020(2)-(3).

#### 26 **GENERAL ALLEGATIONS**

27 37. Plaintiffs incorporate and reallege Paragraphs 1 through 18 as though fully set  
28 forth herein.

***The Statutory Scheme Governing Retail Marijuana Licenses***

38. In or around November 2016, the citizens of the State of Nevada approved a statutory ballot initiative that, *inter alia*, legalized the recreational use of marijuana and allowed for the licensing of recreational marijuana dispensaries.

39. The statutory scheme approved by the voters was codified in NRS Chapter 453D and vested authority for the issuance of licenses for retail marijuana dispensaries in the DOT.

40. NRS 453D.200(1) required the DOT to “adopt all regulations necessary or convenient to carry out the provisions of” that Chapter, including procedures for the issuance of retail marijuana licenses, no later than January 1, 2018.

41. NRS 453D.200(6) provides that the “[DOT] shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.”

42. NRS 453D.210(5)(b) required that for an application to be complete, the applicant must include the “physical address where the proposed marijuana establishment will operate” and the proposed marijuana establishment “is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property.”

43. NRS 453D.210(4)-(5) permits the DOT to issue a retail marijuana license only to those entities or persons that have submitted a complete license application to the DOT in compliance with regulations adopted by the DOT. The circumstances under which an application was to be considered complete were to be promulgated into regulations by the DOT, pursuant to NRS 453D.200(1)(a).

44. NRS 453D.210(5)(d) limits the number of retail marijuana licenses that may be issued by the DOT in the various counties across the State of Nevada.

45. However, NRS 453D.210(d)(5) provides that a county government may request that the DOT issue retail marijuana licenses above the limits set forth in NRS 453D.210(5)(d).

46. As mandated by NRS 453D.210(6), “[w]hen competing applications are submitted for a proposed retail marijuana store within a single county, the Department **shall use an**

1 **impartial and numerically scored competitive bidding process** to determine which application  
2 or applications among those competing will be approved.” (emphasis added).

3 ***The DOT’s Adoption of Flawed Regulations that Do Not Comply with Chapter 453D***

4 47. On or around May 8, 2017, the DOT adopted temporary regulations pertaining to,  
5 *inter alia*, the application for and the issuance of retail marijuana licenses.

6 48. The DOT continued preparing draft permanent regulations as required by NRS  
7 453D.200(1) and held public workshops with respect to the same on July 24 and July 25, 2017.

8 49. On or around December 16, 2017, the DOT issued a Notice of Intent to Adopt  
9 permanent regulations pursuant to the mandates of NRS 453D.200(1).

10 50. On or around January 16, 2018, the DOT held a public hearing on the proposed  
11 permanent regulations (LCB File No. R092-17), which was attended by numerous members of  
12 the public and marijuana business industry.

13 51. At the hearing, the DOT was informed that the licensure factors contained in the  
14 proposed permanent regulations would have the effect of favoring vertically-integrated  
15 cultivators/dispensaries and would result in arbitrary weight being placed upon certain  
16 applications that were submitted by well-known, well-connected, and longtime Nevada families.

17 52. Despite the issues raised at the hearing, on or around January 16, 2018, the DOT  
18 adopted the proposed permanent regulations in LCB File No. R092-17, which have since been  
19 codified in NAC 453D (the “Regulations”).

20 53. As required by NRS 453D.200(1)(a), the DOT issued NAC 453D.268, which sets  
21 forth a host of elements that are required to be submitted to form a complete application. NAC  
22 453D.272 relates to the DOT’s method of evaluating competing retail marijuana license  
23 applications.

24 54. NAC 453D.272(1) provides that where the DOT receives competing applications,  
25 it will “rank the applications...in order from first to last based on compliance with the provisions  
26 of this chapter and chapter 453D of NRS and on the content of the applications relating to”  
27 several enumerated factors.

28 55. The factors set forth in NAC 453D.272(1) that are used to rank competing

1 applications (collectively, the “Factors”) are:

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

26 56. Aside from the Factors, there is no other competitive bidding process used by the  
27 DOT to evaluate competing applications.

28 57. NAC 453D.272(5) provides that the DOT will not issue more than one retail



1 marijuana license to the same person, group of persons, or entity.

2 58. NRS 453D.210(4)(b) and NAC 453D.312(4) requires the DOT to provide the  
3 specific reasons that any license application is rejected.

4 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

5 59. NRS 453D.210 required the DOT to accept applications and issue licenses only to  
6 medical marijuana establishments for 18 months following the date upon which the DOT began  
7 to receive applications for recreational dispensaries (the “Early Start Program”).

8 60. Upon information and belief, the DOT began to accept applications for  
9 recreational dispensary licenses on or around May 15, 2017.

10 61. Beginning upon the expiration of the Early Start Program (or on or around  
11 November 15, 2018), the DOT was to receive and consider applications for a recreational  
12 dispensary license from any qualified applicant.

13 62. The DOT released the application package for non-Early Start Program applicants  
14 on July 6, 2018 and required those applications to be returned in complete form between  
15 September 7 and September 20, 2018. A true and correct copy of the application package is  
16 attached hereto as **Exhibit 1**.

17 63. Following that release, the DOT revised the application package. However, the  
18 DOT only notified certain applicants about the revised application package. A true and correct  
19 copy of the revised application package is attached hereto as **Exhibit 2**.

20 64. Each of the Plaintiffs submitted a complete Application for issuance of a retail  
21 marijuana license after the expiration of the Early Start Program during the period specified by  
22 the DOT and some Plaintiffs submitted multiple Applications for different localities that  
23 contained the same substantive information.

24 65. Each and every Application submitted by Plaintiffs was full, complete, and  
25 contained substantive information and data for each and every factor outlined in the application  
26 form.

27 66. Some of the information requested by the form application was “identified,” such  
28 that the reviewer would know the identity of the applicant when scoring the same, while some

1 was unidentified, such that the reviewer would not know the identity of the applicant.

2 67. Each of the Successful Applicants also submitted an application to the DOT for  
3 retail marijuana licenses.

4 68. However, some or all of the Successful Applicants' applications were not  
5 complete when submitted to the DOT as required by NAC 453D.268.

6 69. For example, some or all of the Successful Applicants' applications failed to  
7 include the following information:

- 8 a. The physical address where the proposed establishment was to be located,  
9 which precluded a determination of the applicant's community impact;
- 10 b. The physical address of co-owned or affiliated marijuana establishments;
- 11 c. Disclosure of all owners, officers, and board members of the applicant  
12 entity, allowing for inaccurate and manipulated diversity scoring;
- 13 d. Whether those persons were had served or was currently serving as an  
14 owner, officer, or board member of another marijuana establishment;
- 15 e. Whether those persons were health care providers currently providing  
16 written documentation for medical marijuana cards;
- 17 f. Whether those persons had an ownership or financial interest in any other  
18 marijuana establishment; and
- 19 g. Documentation concerning the size of the proposed marijuana  
20 establishment, including the building and floor plan.

21 70. In addition, some or all of the Successful Applicants' applications did not include  
22 information required by NRS 453D.210(5), including, but not limited to:

- 23 a. The physical address where the establishment will operate;
- 24 b. The location of the proposed establishment in relation to schools; and
- 25 c. The identities of all owners, officers, and board members of the applicant  
26 entity, such that a background check could be performed on each as  
27 required by NRS 453D.200(6).

28 71. Further, the revised application submitted by certain applicants omitted the

1 statutorily required affirmation that the applicant either own the proposed location or have the  
2 consent of the owner to operate a marijuana establishment. *See* NRS 453D.210(5)(b).

3 72. On or around December 5, 2018, despite submission of incomplete applications,  
4 each of the Successful Applicants were awarded conditional recreational dispensary licenses by  
5 the DOT.

6 73. On or around December 5, 2018, each of the Plaintiffs' Applications was denied  
7 by identical written notices issued by the DOT.

8 74. Each of the written notices from the DOT does not contain any specific reasons  
9 why the Applications were denied and instead states merely that "NRS 453D.210 limits the total  
10 number of licenses that can be issued in each local jurisdiction. This applicant was not issued a  
11 conditional license because it did not achieve a score high enough to receive an available  
12 license..."

13 75. The DOT utilized the Factors in evaluating each of the Applications, assigning a  
14 numerical score to each Factor, but the Factors are partial and arbitrary on their face.

15 76. In addition, the DOT's review and scoring of each of the Plaintiffs' Applications  
16 was done errantly, arbitrarily, irrationally, and partially because, *inter alia*:

- 17 a. The Applications were complete but received zero scores for some Factors  
18 and the only way to receive a zero score is to fail to submit information  
19 with respect to that Factor;
- 20 b. The scoring method used by the DOT combined certain Factors into one  
21 grouping, effectively omitting certain Factors from consideration;
- 22 c. Plaintiffs that submitted multiple Applications containing the same  
23 substantive information and data for different localities received widely  
24 different scores for certain Factors; and
- 25 d. The Plaintiffs received much higher scores for the unidentified data and  
26 information when compared with the identified data and information  
27 submitted.

28 77. Moreover, the highest scored Factor was the organizational structure of the

1 application and the DOT required that Plaintiffs disclose information about the identities of “key  
2 personnel” with respect to that Factor, resulting in arbitrary and partial weight being placed upon  
3 applications from well-known and well-connected applicants.

4 78. The DOT improperly engaged Manpower US Inc. (“Manpower”) to provide  
5 temporary personnel for the review and scoring of submitted license Applications without  
6 providing them with any uniform method of review to ensure consistency and impartiality, which  
7 further contributed to the arbitrary and partial scoring of Plaintiff’s Applications.

8 79. Tthe DOT issued multiple licenses to the same entity or group of persons to the  
9 exclusion of other applicants, including Plaintiffs, in violation of the DOT’s own Regulations.

#### 10 **FIRST CLAIM FOR RELIEF**

##### 11 **Violation of Substantive Due Process – The DOT**

12 80. Plaintiffs incorporate and reallege Paragraphs 1 through 69 as though fully set  
13 forth herein.

14 81. The Fourteenth Amendment to the United States Constitution provides that “no  
15 state [may] deprive any person of life, liberty, or property, without due process of law.”

16 82. Similarly, Article 1, Section 8 of the Nevada Constitution provides that “[n]o  
17 person shall be deprived of life, liberty, or property, without due process of law.”

18 83. Plaintiffs are persons within the meaning of the United States and Nevada  
19 Constitutions’ guarantees of due process.

20 84. NRS 453D.210 mandates the DOT to issue a retail marijuana license to an  
21 applicant where a lesser number of complete applications are submitted than the statutory cap on  
22 the number of licenses for a given county.

23 85. Similarly, where a greater number of complete applications are submitted than the  
24 statutory cap on the number of licenses for a given county, NRS 453D.210 mandates the award of  
25 licenses to those applicants who score the best in an impartial and numerically scored competitive  
26 bidding process and does not permit the DOT to deny or reject all applications in such a process.

27 86. Impartial and numerically scored competitive bidding processes create a legitimate  
28 claim of entitlement to award of a contract in the lowest bid or bidders, where that process

1 requires the award to the lowest bid or bidders and does not grant the awarding body unfettered  
2 discretion to reject all bids.

3 87. Thus, the right to a retail marijuana license under a statutory scheme with limited  
4 discretion and under an impartial and numerically scored competitive bidding process constitute  
5 protectable property interests under the Nevada and United States Constitutions.

6 88. Here, either a lesser number of complete applications than the statutory cap were  
7 submitted to the DOT due to the Successful Applicants' omission of information as described  
8 herein or Plaintiffs were, or should have been, among the lowest bidders (i.e., the highest scoring  
9 applicants) in the impartial and numerically scored bidding process.

10 89. As a result, Plaintiffs had a protected property interest in the approval of their  
11 Applications and the issuance of a license to them.

12 90. The denials of Plaintiffs' complete Applications were arbitrary and irrational  
13 because a lesser number of complete applications was received than the statutory cap, requiring a  
14 license to be issued to the Plaintiffs.

15 91. Alternatively, the denials of Plaintiffs' Applications were based upon the Factors.

16 92. The Factors are arbitrary, irrational, and lack impartiality on their face.

17 93. As a result of the DOT's use of the Factors in denying Plaintiffs' Applications,  
18 Plaintiffs have been deprived of their fundamental property rights in violation of the substantive  
19 due process guarantees of the Nevada and United States Constitutions.

20 94. In addition, the Factors violate due process as applied to Plaintiffs' Applications  
21 because, *inter alia*:

- 22 a. The Applications were complete but received zero scores for some Factors  
23 and the only way to receive a zero score is to fail to submit information  
24 with respect to that Factor;
- 25 b. The scoring method used by the DOT combined certain Factors into one  
26 grouping, effectively omitting certain Factors from consideration;
- 27 c. Plaintiffs that submitted multiple Applications containing the same  
28 substantive information and data for different localities received widely

different scores for certain Factors;

d. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;

e. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and

f. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

95. As a result of the DOT's arbitrary, irrational, and partial application of the Factors to Plaintiffs' applications, Plaintiffs have been deprived of their fundamental property rights in violation of the substantive due process guarantees of the Nevada and United States Constitutions, as applied.

96. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

97. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

## **SECOND CLAIM FOR RELIEF**

### **Violation of Procedural Due Process – The DOT**

98. Plaintiffs incorporate and reallege Paragraphs 1 through 81 as though fully set forth herein.

99. The Fourteenth Amendment to the United States Constitution provides that "no state [may] deprive any person of life, liberty, or property, without due process of law."

100. Similarly, Article 1, Section 8 of the Nevada Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

101. Plaintiffs are persons within the meaning of the United States and Nevada Constitutions' guarantees of due process.

102. NRS 453D.210 mandates the DOT to issue a retail marijuana license to an applicant where a lesser number of complete applications are submitted than the statutory cap on the number of licenses for a given county.

103. Similarly, where a greater number of complete applications are submitted than the statutory cap on the number of licenses for a given county, NRS 453D.210 mandates the award of licenses to those applicants who score the best in an impartial and numerically scored competitive bidding process and does not permit the DOT to deny or reject all applications in such a process.

104. Impartial and numerically scored competitive bidding processes create a legitimate claim of entitlement to award of a contract in the lowest bid or bidders, where that process requires the award to the lowest bid or bidders and does not grant the awarding body unfettered discretion to reject all bids.

105. Thus, the right to a retail marijuana license under a statutory scheme with limited discretion and under an impartial and numerically scored competitive bidding process constitute protectable property interests under the Nevada and United States Constitutions.

106. Here, either a lesser number of complete applications than the statutory cap were submitted to the DOT due to the Successful Applicants' omission of information as described herein or Plaintiffs were, or should have been, among the lowest bidders (i.e., the highest scoring applicants) in the impartial and numerically scored bidding process.

107. As a result, Plaintiffs had a protected property interest in the approval of their Applications and the issuance of a license to them.

108.

109. NRS 453D, in conjunction with the Regulations, govern the application for and the issuance of retail marijuana licenses within the State of Nevada.

110. Under those provisions, the DOT denied Plaintiffs' Applications for a retail marijuana license without notice or a hearing.

111. The denial notices sent by the DOT did not comply with NRS 453D.210(4)(b) or procedural due process because they do not specify the substantive reasons that Plaintiffs' Applications were denied.

112. Neither NRS 453D nor the Regulations provide for a mechanism through which Plaintiffs may have their Applications fully and finally determined, either before or after denial of the same.

113. As a result of the denial of Plaintiffs' Applications without notice or a hearing, Plaintiffs have been denied their right to procedural due process guaranteed by the Nevada and United States Constitutions.

114. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

115. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

### **THIRD CLAIM FOR RELIEF**

#### **Violation of Equal Protection – The DOT**

116. Plaintiffs incorporate and reallege Paragraphs 1 through 93 as though fully set forth herein.

117. The Fourteenth Amendment to the United States Constitution provides that no "state [may]...deny to any person within its jurisdiction the equal protection of the laws."

118. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be "general and of uniform operation throughout the State."

119. Plaintiffs are persons within the meaning of the Nevada and United States Constitutions' guarantees of equal protection.

120. Plaintiffs have a fundamental right to engage in a profession or business, including that of retail marijuana establishments.

121. The DOT utilized the Factors when evaluating Plaintiffs' Applications.

122. The Factors violate equal protection on their face because they contain arbitrary, partial, and unreasonable classifications that bear no rational relationship to a legitimate governmental interest.

123. Specifically, these Factors favor those entities that already have retail marijuana licenses, to the detriment of those entities that have only a cultivation licenses, production license,



1 or no license at all.

2 124. Additionally, the Factors favor those entities that are vertically-integrated and  
3 allow for the winners to easily vertically integrate and crowd out the market, thereby creating a  
4 regulatory scheme that encourages a monopolistic market.

5 125. These Factors were promulgated by the DOT for the sake of economic  
6 protectionism, and therefore the Factors are *de facto* irrational.

7 126. The Factors further violate equal protection on their face because they contain  
8 arbitrary, partial, and unreasonable classifications that are not narrowly tailored to the  
9 advancement of any compelling interest.

10 127. In addition, the application of the Factors to Plaintiffs' Applications violates equal  
11 protection because it was arbitrary, partial and unreasonable, bearing no rational relationship to a  
12 legitimate governmental interest and/or failing to be narrowly tailored to any compelling  
13 government interest, to wit:

- 14 a. The Applications were complete but received zero scores for some Factors  
15 and the only way to receive a zero score is to fail to submit information  
16 with respect to that Factor;
- 17 b. The scoring method used by the DOT combined certain Factors into one  
18 grouping, effectively omitting certain Factors from consideration;
- 19 c. Plaintiffs that submitted multiple Applications containing the same  
20 substantive information and data for different localities received widely  
21 different scores for certain Factors;
- 22 d. The Plaintiffs received much higher scores for the unidentified data and  
23 information when compared with the identified data and information  
24 submitted;
- 25 e. The DOT placed improper weight upon other applications simply because  
26 they were submitted by well-known and well-connected persons; and
- 27 f. The DOT improperly utilized Manpower temporary workers who had little  
28 to no experience in retail marijuana licensure to review the Applications

and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

128. As a result of the DOT's actions as set forth herein, Plaintiffs' rights to equal protection of the law were violated.

129. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

130. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

#### **FOURTH CLAIM FOR RELIEF**

##### **Declaratory Judgment – All Defendants**

131. Plaintiffs incorporate and reallege Paragraphs 1 through 105 as though fully set forth herein.

132. Under NRS 30.010, *et seq.*, the Uniform Declaratory Judgment Act, any person whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

133. Plaintiffs and the Successful Applicants submitted Applications for issuance of a retail marijuana license between September 7 and September 20, 2018.

134. Some Plaintiffs and the Successful Applicants submitted multiple Applications for different localities that contained the same substantive information.

135. NRS 453D.210(4)-(5)(a) permits the DOT to approve an application only if it is complete, as defined in NRS 453D.210(4)-(5)(a) and NAC 453D.268.

136. NRS 453D.210(5) sets forth additional objective factors that must be met in order for the DOT to approve a given application.

137. Further, the DOT enacted the Regulations, including the Factors and NAC 453D.272(5), pursuant to NRS 453D.200 and NRS 453D.210(6).

138. NRS 453D.210(6) requires that the Factors be "an impartial and numerically

1 scored competitive bidding process.”

2 139. Plaintiffs contend that:

- 3 a. Each and every Application submitted by Plaintiffs was full and complete  
4 as defined by NRS 453D.210 and NAC 453D.268, and contained  
5 substantive information and data for each and every factor outlined in the  
6 application form;
- 7 b. Some or all of the Applications submitted by the Successful Applicants  
8 were not full and complete as defined by NRS 453D.210 and NAC  
9 453D.268, and failed to contain substantive information and data for each  
10 and every factor outlined in the application form;
- 11 c. Some or all of the Applications submitted by the Successful Applicants  
12 also omitted statutorily required information outlined in NRS 453D.200  
13 and NRS 453D.210;
- 14 d. The denials of Plaintiffs’ Applications were based upon the Factors, which  
15 were are arbitrary, irrational, and lack impartiality on their face;
- 16 e. As a result of the DOT’s use of the Factors in denying Plaintiffs’  
17 Applications, Plaintiffs were arbitrarily denied retail marijuana licenses;
- 18 f. The Factors were not applied equally and fairly to all applicants;
- 19 g. The DOT violated NRS 453D.210(6) because the Factors are not impartial  
20 and are instead partial, arbitrary, and discretionary, in contravention of  
21 NRS 453D.210(6);
- 22 h. The DOT applied the Factors to their Applications in an arbitrary and  
23 partial manner, including because:
- 24 i. The Applications were complete but received zero scores for some  
25 Factors and the only way to receive a zero score is to fail to submit  
26 information with respect to that Factor;
- 27 ii. The scoring method used by the DOT combined certain Factors into  
28 one grouping, effectively omitting certain Factors from

- consideration;
- iii. Plaintiffs that submitted multiple Applications containing the same substantive information and data for different localities received widely different scores for certain Factors;
- iv. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;
- v. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and
- vi. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process;
- i. The DOT violated NRS 453D.210(6) because the Factor evaluation procedure is not a competitive bidding process, as required by NRS 453D.210(6);
- j. The DOT violated NAC 453D.272(5) because multiple retail marijuana licenses were issued to the same entity or group of persons, including certain of the Successful Applicants; and
- k. The denial notices sent by the DOT failed to comply with NRS 453D.210(4)(b) because they do not give the specific substantive reasons for the denial of Plaintiffs' Applications.
140. The DOT contends that:
- a. The Factors are compliant with NRS 453D.210(6);
- b. All applications it approved were complete and were done so in a valid manner; and

c. The denial notices complied with NRS 453D.210(4)(b).

141. The Successful Applicants contend that:

a. Each and every Application submitted by Successful Applicants was full, complete, and contained substantive information and data for each and every factor outlined in the application form and as required by NRS 453D.210; and

b. The Factors were applied equally and fairly to all applicants.

142. The foregoing issues are ripe for judicial determination because there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

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

### **FIFTH CLAIM FOR RELIEF**

#### **Petition for Judicial Review – All Defendants**

144. Plaintiffs incorporate and reallege Paragraphs 1 through 116 as though fully set forth herein.

145. The DOT exceeded its jurisdiction when it misinterpreted and incorrectly applied the provisions of NRS 453D, NAC 453D and the related Nevada laws or regulations and improperly issued licenses to the applicants that do not merit licenses under the provisions of NRS 453D, NAC 453D, and the related Nevada laws or regulations.

146. Plaintiffs are aggrieved by the decision of the DOT to deny Plaintiffs' Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC

1 453D, and the related Nevada laws or regulations.

2 147. There is no provision in NRS 453D, NAC 453D, and the related Nevada laws or  
3 regulations allowing for an administrative appeal of the DOT's decision, and apart from  
4 injunctive relief, no plain, speedy, and adequate remedy for the DOT's improper actions.

5 148. Accordingly, Plaintiff petitions this Court for judicial review of the record on  
6 which the DOT's denials were based, and an order providing *inter alia*:

- 7 a. A determination that the DOT's decision lacked substantial evidence;  
8 b. A determination that the DOT's denials are void *ab initio* for non-  
9 compliance with NRS 453D, NAC 453D, and the related Nevada laws or  
10 regulations; and  
11 c. Such other relief as is consistent with those determinations.

12 149. Plaintiffs have been forced to retain counsel to prosecute this action and are thus  
13 entitled to an award of attorneys' fees and costs as provided by applicable law.

14 **SIXTH CLAIM FOR RELIEF**

15 **Petition for Writ of Mandamus – The DOT**

16 150. Plaintiffs incorporate and reallege Paragraphs 1 through 122 as though fully set  
17 forth herein.

18 151. When a governmental body fails to perform an act "that the law requires" or acts  
19 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action.

20 152. The DOT failed to perform various acts that the law requires including but not  
21 limited to:

- 22 a. Providing proper pre-hearing notice of the denial; and  
23 b. Arbitrarily and capriciously denying the Applications for no legitimate  
24 reason.

25 153. The DOT acted arbitrarily and capriciously in the denial by performing and/or  
26 failing to perform the acts set forth supra, and because, *inter alia*:

- 27 a. The DOT lacked substantial evidence to deny Plaintiffs' Applications; and  
28 b. The DOT denied Plaintiffs' Applications in order to approve the

Applications of other competing applicants without regard to the merit or completeness of Plaintiffs' Applications and the lack of merit or completeness of the Applications of other competing applicants.

154. These violations of the DOT's legal duties were arbitrary and capricious actions that compel this Court to issue a writ of mandamus directing the DOT to review Plaintiffs' Applications on their completeness and merits and/or approve them.

155. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law, including but not limited to NRS 34.270.

**WHEREFORE**, Plaintiffs pray for relief from this Court as follows:

1. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' substantive due process rights, as set forth herein;
2. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' procedural due process rights, as set forth herein;
3. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' rights to equal protection of the law, as set forth herein;
4. For relief in the form of a judgment from this Court that: (1) the Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive bidding process; (2) the DOT applied the Factors to Plaintiffs' Applications in a wholly arbitrary and irrational manner; (3) the Factors were not applied equally and fairly to all applicants; (4) several of the Successful Applicants had incomplete applications or deficient, making the grant of a conditional license to them void; (5) the DOT violated NAC 453D.272(5) by issuing multiple retail marijuana licenses to the same entity or group of persons; and (6) the denial notices did not comply with

1 NRS 453D.210(4)(b);

2 5. For judicial review of the record and history on which the denial of those  
3 Applications was based;

4 6. For the issuance of a writ of mandamus;

5 7. For preliminary and permanent injunctive relief to cease, abate, and/or  
6 remedy the unconstitutional, unlawful, and/or wrongful conduct as  
7 described herein;

8 8. For an award of attorneys' fees and costs in bringing the instant action as  
9 provided by applicable law; and

10 9. For any additional relief this Court deems just and proper.

11 DATED this 29<sup>th</sup> day of January, 2020.

12 BROWNSTEIN HYATT FARBER SCHRECK, LLP

13 /s/ Adam K. Bult

14 ADAM K. BULT, ESQ., Nevada Bar No. 9332

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17 JENNINGS & FULTON, LTD.

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19 *Attorneys for Plaintiffs*  
20  
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22  
23  
24  
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26  
27  
28



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **THIRD AMENDED COMPLAINT** to be submitted electronically for filing and/or service with the Eighth Judicial District Court's Electronic Filing System on the 29<sup>th</sup> day of January, 2020, to the following:

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/s/ Wendy Cosby  
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# **EXHIBIT 1**



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Chair, Nevada Tax Commission  
WILLIAM D. ANDERSON  
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# **Recreational Marijuana Establishment License Application**

## **Recreational Retail Marijuana Store Only**

**Release Date: July 6, 2018**

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

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

For additional information, please contact:

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

[marijuana@tax.state.nv.us](mailto:marijuana@tax.state.nv.us)



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APPLICANT INFORMATION

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

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



BRIAN SANDOVAL  
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BRIAN SANDOVAL  
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Chair, Nevada Tax Commission  
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# STATE OF NEVADA DEPARTMENT OF TAXATION

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## 1. TERMS AND DEFINITIONS

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

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



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



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





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



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## 2. APPLICATION OVERVIEW

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

### **Assembly Bill 422 (AB422):**

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

### **LCB File No. Regulation R092-17:**

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

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

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

## 3. APPLICATION TIMELINE

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

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



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### 4. APPLICATION INSTRUCTIONS

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

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

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

### 5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

#### 5.1. General Submission Requirements

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



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### 5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

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

#### 5.2.1. Tab I – Title Page

The title page must include the following:

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

#### 5.2.2. Tab II – Table of Contents

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

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

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

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

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

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

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

#### 5.2.6. Tab VI – Identifier Legend (Attachment H)

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



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

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

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

5.2.8.2. The source of those liquid assets.

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

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

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

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

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

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

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

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

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

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



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

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

5.2.10.7. A copy of each individual's completed fingerprint submission form demonstrating he or she has submitted fingerprints to the Nevada Department of Public Safety.

### 5.2.11. **Tab XI– Financial plan**

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

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

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

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

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

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

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

### 5.2.13. **Application Fee**

5.2.13.1. Include with this packet the \$5,000.00 non-refundable application fee per NRS 453D.230(1).

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

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

The NON-IDENTIFIED CRITERIA RESPONSE must include:

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



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

## 5.3.1. **Tab I – Title Page**

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

The title page must include the following:

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

## 5.3.2. **Tab II – Table of Contents**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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





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## 5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

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

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



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## 5.5. Application Packaging and Instructions

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

### Department of Taxation

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

- OR -

### Department of Taxation

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

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



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## 6. APPLICATION EVALUATION AND AWARD PROCESS

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

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

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

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



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

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

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



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



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

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



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### ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

#### GENERAL INFORMATION

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

#### APPLYING ENTITY INFORMATION

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

#### DESIGNEE INFORMATION

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

Last Name:	First Name:	MI:
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#### SUPPLEMENTAL REQUESTS

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



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## ATTACHMENT A (continued)

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

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

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





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### ATTACHMENT A (continued)

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

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

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

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed



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## ATTACHMENT B OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, \_\_\_\_\_ (PRINT NAME)

Attest that:

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

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

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

All information provided is true and correct.

\_\_\_\_\_  
Signature of Owner, Officer or Board Member

\_\_\_\_\_  
Date Signed

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



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

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Building L, Suite 235  
Reno, Nevada 89502  
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HENDERSON OFFICE  
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## ATTACHMENT C OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

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







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

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

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

\_\_\_\_\_  
Signature of Requestor/Applicant or Designee Date: \_\_\_\_\_

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



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ATTACHMENT E  
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

*To be completed by the applicant for the physical address of the proposed marijuana establishment.*

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

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

City:

County:

State:

Zip Code:

Legal Description of the Property:



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### ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

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

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

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

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

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

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

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





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

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

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

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



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### ATTACHMENT H IDENTIFIER LEGEND FORM

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

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



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## ATTACHMENT I FACILITY JURISDICTION FORM

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

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

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

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



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### ATTACHMENT J

#### FEDERAL LAWS AND AUTHORITIES

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

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

#### ENVIRONMENTAL:

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

#### ECONOMIC:

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

#### SOCIAL LEGISLATION:

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

#### MISCELLANEOUS AUTHORITY:

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

# **EXHIBIT 2**



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# **Recreational Marijuana Establishment License Application**

## **Recreational Retail Marijuana Store Only**

**Release Date: July 6, 2018**

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

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

For additional information, please contact:

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

[marijuana@tax.state.nv.us](mailto:marijuana@tax.state.nv.us)



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## APPLICANT INFORMATION

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

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



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## 1. TERMS AND DEFINITIONS

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

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



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



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



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



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## 2. APPLICATION OVERVIEW

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

### **Assembly Bill 422 (AB422):**

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

### **LCB File No. Regulation R092-17:**

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

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

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

## 3. APPLICATION TIMELINE

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

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



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### 4. APPLICATION INSTRUCTIONS

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

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

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

### 5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

#### 5.1. General Submission Requirements

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



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## 5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

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

### 5.2.1. Tab I – Title Page

The title page must include the following:

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

### 5.2.2. Tab II – Table of Contents

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

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

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

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

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

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

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

### 5.2.6. Tab VI – Identifier Legend (Attachment H)

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



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

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

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

5.2.8.2. The source of those liquid assets.

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

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

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

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

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

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

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

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

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

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





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

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

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

### 5.2.11. **Tab XI– Financial plan**

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

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

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

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

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

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

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

### 5.2.13. **Application Fee**

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

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

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

The NON-IDENTIFIED CRITERIA RESPONSE must include:

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



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

**5.3.1. Tab I – Title Page**

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

The title page must include the following:

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

**5.3.2. Tab II – Table of Contents**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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### 5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

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

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



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Fax: (702) 486-3377

### 5.5. Application Packaging and Instructions

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

**Department of Taxation**

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

**- OR -**

**Department of Taxation**

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

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



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## 6. APPLICATION EVALUATION AND AWARD PROCESS

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

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

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

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



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

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

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



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





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

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



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### ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

#### GENERAL INFORMATION

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

#### APPLYING ENTITY INFORMATION

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

#### DESIGNEE INFORMATION

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

Last Name:	First Name:	MI:
------------	-------------	-----

#### SUPPLEMENTAL REQUESTS

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



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## ATTACHMENT A (continued)

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

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

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



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### ATTACHMENT A (continued)

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

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

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

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

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

---

Print Name

---

Title

---

Signature

---

Date Signed

---

Print Name

---

Title

---

Signature

---

Date Signed



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## ATTACHMENT B OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, \_\_\_\_\_ (PRINT NAME)

Attest that:

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

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

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

All information provided is true and correct.

\_\_\_\_\_  
Signature of Owner, Officer or Board Member

\_\_\_\_\_  
Date Signed

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



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## ATTACHMENT C OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

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









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

I, \_\_\_\_\_, am the duly authorized representative of

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

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

\_\_\_\_\_  
Signature of Requestor/Applicant or Designee Date: \_\_\_\_\_

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



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

STATE OF NEVADA  
DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

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Carson City, Nevada 89706-7937  
Phone: (775) 684-2000 Fax: (775) 684-2020

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Reno, Nevada 89502  
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Phone: (702) 486-2300 Fax: (702) 486-2373

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

ATTACHMENT E  
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

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

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

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

City:

County:

State:

Zip Code:

Legal Description of the Property:



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### ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

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

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

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

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

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

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

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



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

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

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

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



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### ATTACHMENT H IDENTIFIER LEGEND FORM

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

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



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### ATTACHMENT I FACILITY JURISDICTION FORM

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

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

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

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



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### ATTACHMENT J

#### FEDERAL LAWS AND AUTHORITIES

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

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

#### ENVIRONMENTAL:

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

#### ECONOMIC:

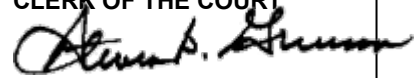
- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts,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

#### SOCIAL LEGISLATION:

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

#### MISCELLANEOUS AUTHORITY:

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



1 **COMPL**  
2 **JEFFERY A. BENDAVID, ESQ.**  
3 Nevada Bar No. 6220  
4 **STEPHANIE J. SMITH, ESQ.**  
5 Nevada Bar No. 11280  
6 **BENDAVID LAW**  
7 7301 Peak Dr., Suite 150  
8 Las Vegas, NV 89128  
9 (702)385-6114  
10 jbendavid@bendavidfirm.com  
11 ssmith@bendavidfirm.com  
12 *Attorneys for Defendant, Natural Medicine L.L.C.*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 In Re: D.O.T. Litigation

12 Consolidated Case No.: A-19-787004-B

13 **CONSOLIDATED WITH:**

14 A-18-785818-W  
15 A-18-786357-W  
16 A-19-786962-B  
17 A-19-787035-C  
18 A-19-787540-W  
19 A-19-787726-C  
20 A-19-801416-B

21 Dept. No. XI

22 **DEFENDANT/RESPONDENT**  
23 **NATURAL MEDICINE LLC'S**  
24 **COMPLAINT IN INTERVENTION,**  
25 **PETITION FOR JUDICIAL**  
**REVIEW AND/OR WRITS OF**  
**CERTIORARI, MANDAMUS, AND**  
**PROHIBITION**

26 **BendavidLaw**

27 702.385.6114  
7301 Peak Drive, Suite 150  
Las Vegas, Nevada 89128

28



COMES NOW Defendant/Respondent NATURAL MEDICINE LLC, a Nevada Limited Liability Company, by and through its counsel of record, JEFFERY A. BENDAVID, ESQ., and STEPHANIE J. SMITH, ESQ. of BENDAVID LAW, and hereby complains and alleges against Defendant STATE OF NEVADA DEPARTMENT OF TAXATION; DOES I through X; and ROE BUSINESS ENTITIES I through X, in their official and personal capacities, as follows:

**I. PARTIES**

1. Plaintiff, NATURAL MEDICINE, LLC (“Plaintiff” and/or “Natural Medicine”), was and is a Nevada Limited Liability Company that is duly authorized to conduct business, including business related to medical marijuana, within the State of Nevada. Plaintiff Natural Medicine LLC, has members who are comprised of some minority individuals and are members of a protected class.

2. Defendant STATE OF NEVADA DEPARTMENT OF TAXATION (“DOT”) was and is an agency of the State of Nevada. DOT was, at all relevant times, and is responsible for the licensing, and regulation of medical and retail marijuana businesses in Nevada, which is effectuated through its Marijuana Enforcement Division.

3. Defendant/Respondent Nevada Tax Commission (the “Commission”) is the head of the DOT.

4. This is a Complaint and Petition for Judicial Review. As required by NRS 233B.130(2)(a) and *Washoe Cnty. v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012), all parties to the proceeding being challenged in this petition are named as defendants/respondents. As such, upon information and belief, each of the following Defendants within this Paragraph applied for recreational marijuana licenses, and each is being named in accordance with Nevada

1 Administrative Procedure Act: D.H. FLAMINGO, INC., d/b/a THE APOTHECARY SHOPPE,  
2 a Nevada corporation; CLARK NATURAL MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA,  
3 a Nevada limited liability company; NYE NATURAL MEDICINAL SOLUTIONS LLC, d/b/a.  
4 NUVEDA, a Nevada limited liability company; 5SEAT INVESTMENTS LLC, a Nevada limited  
5 liability company; ACRES DISPENSARY LLC, a Nevada limited liability company; ACRES  
6 MEDICAL LLC, a Nevada limited liability company; AGUA STREET LLC, a Nevada limited  
7 liability company; ALTERNATIVE MEDICINE ASSOCIATION LC, a Nevada limited liability  
8 company; BIONEVA INNOVATIONS OF CARSON CITY LLC, a Nevada limited liability  
9 company; BLOSSUM GROUP LLC, a Nevada limited liability company; BLUE COYOTE  
10 RANCH LLC, a Nevada limited liability company; CARSON CITY AGENCY SOLUTIONS  
11 L.L.C., a Nevada limited liability company; INYO FINE CANNABIS DISPENSARY L.L.C.,  
12 d/b/a INYO FINE CANNABIS DISPENSARY, a Nevada limited liability company; and.  
13 SURTERRA HOLDINGS. INC., a Delaware corporation; CHEYENNE MEDICAL, LLC, a  
14 Nevada limited liability company; CIRCLE S FARMS LLC, a Nevada limited liability company;  
15 CLEAR RIVER, LLC, a Nevada limited liability company; CN LICENSECO I, Inc., a Nevada  
16 corporation; COMMERCE PARK MEDICAL L.L.C., a Nevada limited liability company;  
17 COMPASSIONATE TEAM OF LAS VEGAS LLC , a Nevada limited liability company;  
18 CWNEVADA, LLC, a Nevada limited liability company; D LUX LLC, a Nevada limited liability  
19 company; DEEP ROOTS MEDICAL LLC, a Nevada limited liability company; DIVERSIFIED  
20 MODALITIES MARKETING LTD., a Nevada limited liability company; .DP HOLDINGS,  
21 INC., a Nevada corporation; ECONEVADA LLC, a Nevada limited liability company;  
22 ESSENCE HENDERSON, LLC, a Nevada limited liability company; ESSENCE TROPICANA,

1 LLC, a Nevada limited liability company; ETW MANAGEMENT GROUP LLC, a Nevada  
2 limited liability company; EUPHORIA WELLNESS LLC, a Nevada limited liability company;  
3 EUREKA NEWGEN FARMS LLC, a Nevada limited liability company; FIDELIS HOLDINGS,  
4 LLC., a Nevada limited liability company; FOREVER GREEN, LLC, a Nevada limited liability  
5 company; FRANKLIN BIOSCIENCE NV LLC, a Nevada limited liability company; FSWFL,  
6 LLC, a Nevada limited liability company; GB SCIENCES NEVADA LLC, a Nevada limited  
7 liability company; GBS NEVADA PARTNERS, LLC, a Nevada limited liability company;  
8 GFIVE CULTIVATION LLC, a Nevada limited liability company; GLOBAL HARMONY LLC,  
9 a Nevada limited liability company; GOOD CHEMISTRY NEVADA, LLC, a Nevada limited  
10 liability company; GRAVITAS HENDERSON L.L.C., a Nevada limited liability company;  
11 GRAVITAS NEVADA LTD., a Nevada limited liability company; GREEN LEAF FARMS  
12 HOLDINGS LLC, a Nevada limited liability company; GREEN LIFE PRODUCTIONS LLC, a  
13 Nevada limited liability company; GREEN THERAPEUTICS LLC, a Nevada limited liability  
14 company; GREENLEAF WELLNESS, INC., a Nevada corporation; GREENMART OF  
15 NEVADA NLV, LLC, a Nevada limited liability company; GREENPOINT NEVADA INC., a  
16 Nevada corporation; GREENSCAPE PRODUCTIONS LLC, a Nevada limited liability company;  
17 GREENWAY HEALTH COMMUNITY L.L.C., a Nevada limited liability company;  
18 GREENWAY MEDICAL LLC, a Nevada limited liability company; GTI NEVADA, LLC, a  
19 Nevada limited liability company; H & K GROWERS CORP., a Nevada corporation; HARVEST  
20 OF NEVADA LLC; a Nevada limited liability company; HEALTHCARE OPTIONS FOR  
21 PATIENTS ENTERPRISES, LLC, a Nevada limited liability company; HELIOS NV LLC, a  
22 Nevada limited liability company; HELPING HANDS WELLNESS CENTER, INC., a Nevada  
23  
24  
25

1 corporation; HERBAL CHOICE INC., a Nevada corporation; HIGH SIERRA CULTIVATION  
2 LLC, a Nevada limited liability company; HIGH SIERRA HOLISTICS LLC, a Nevada limited  
3 liability company; INTERNATIONAL SERVICE AND REBUILDING, INC., a domestic  
4 corporation; JUST QUALITY, LLC, a Nevada limited liability company; KINDIBLES LLC, a  
5 Nevada limited liability company; LAS VEGAS WELLNESS AND COMPASSION LLC; a  
6 Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a Nevada limited  
7 liability company; LIVFREE WELLNESS LLC, a Nevada limited liability company; LNP, LLC,  
8 a Nevada limited liability company; LONE MOUNTAIN PARTNERS, LLC, a Nevada limited  
9 liability company; LUFF ENTERPRISES NV, INC., a Nevada corporation; LVMC C&P LLC, a  
10 Nevada limited liability company; MALANA LV L.L.C., a Nevada limited liability company;  
11 MATRIX NV, LLC, a Nevada limited liability company; MEDIFARM IV, LLC, a Nevada  
12 limited liability company; MILLER FARMS, LLC, a Nevada limited liability company; MM  
13 DEVELOPMENT COMPANY, INC., a Nevada corporation; MM R & D, LLC, a Nevada limited  
14 liability company; MMNV2 HOLDINGS I, LLC, a Nevada limited liability company; MMOF  
15 VEGAS RETAIL, INC. a Nevada corporation; NCMM, LLC, a Nevada limited liability  
16 company; NEVADA BOTANICAL SCIENCE, INC., a Nevada corporation; NEVADA GROUP  
17 WELLNESS LLC, a Nevada limited liability company; NEVADA HOLISTIC MEDICINE LLC,  
18 a Nevada limited liability company; NEVADA MEDICAL GROUP LLC, a Nevada limited  
19 liability company; NEVADA ORGANIC REMEDIES LLC, a Nevada limited liability company;  
20 NEVADA WELLNESS CENTER LLC, a Nevada limited liability company; NEVADAPURE,  
21 LLC, a Nevada limited liability company; NEVCANN LLC, a Nevada limited liability company;  
22 NLV WELLNESS LLC, a Nevada limited liability company; NLVG, LLC, a Nevada limited

1 liability company; NULEAF INCLINE DISPENSARY LLC, a Nevada limited liability company;  
2 NV 3480 PARTNERS LLC, a Nevada limited liability company; NV GREEN INC., a Nevada  
3 corporation; NYE FARM TECH LTD., a Nevada limited liability company; PARADISE  
4 WELLNESS CENTER LLC, a Nevada limited liability company; PHENOFARM NV LLC, a  
5 Nevada limited liability company; PHYSIS ONE LLC, a Nevada limited liability company;  
6 POLARIS WELLNESS CENTER L.L.C., a Nevada limited liability company; PURE TONIC  
7 CONCENTRATES LLC, a Nevada limited liability company; QUALCAN L.L.C., a Nevada  
8 limited liability company; RED EARTH, LLC, a Nevada limited liability company; RELEAF  
9 CULTIVATION, LLC, a Nevada limited liability company, RG HIGHLAND ENTERPRISES  
10 INC., a Nevada corporation; ROMBOUGH REAL ESTATE INC., a Nevada corporation;  
11 RURAL REMEDIES LLC, a Nevada limited liability company; SERENITY WELLNESS  
12 CENTER LLC, a Nevada limited liability company; SILVER SAGE WELLNESS LLC, a  
13 Nevada limited liability company; SOLACE ENTERPRISES, LLLP, a Nevada limited-liability  
14 limited partnership; SOUTHERN NEVADA GROWERS, LLC, a Nevada limited liability  
15 company; STRIVE WELLNESS OF NEVADA, LLC, a Nevada limited liability company;  
16 SWEET GOLDY LLC, a Nevada limited liability company; TGIG, LLC, a Nevada limited  
17 liability company; THC NEVADA LLC, a Nevada limited liability company; THE HARVEST  
18 FOUNDATION LLC, a Nevada limited liability company; THOMPSON FARM ONE L.L.C., a  
19 Nevada limited liability company; TRNVP098 LLC, a Nevada limited liability company; TRYKE  
20 COMPANIES RENO, LLC, a Nevada limited liability company; TRYKE COMPANIES SO NV,  
21 LLC, a Nevada limited liability company; TWELVE TWELVE LLC, a Nevada limited liability  
22 company; VEGAS VALLEY GROWERS LLC, a Nevada limited liability company;

1 WAVESEER OF NEVADA, LLC, a Nevada limited liability company; WELLNESS &  
2 CAREGIVERS OF NEVADA NLV, LLC, a Nevada limited liability company; WELLNESS  
3 CONNECTION OF NEVADA, LLC, a Nevada limited liability company; WENDOVERA LLC,  
4 a Nevada limited liability company; WEST COAST DEVELOPMENT NEVADA, LLC, a  
5 Nevada limited liability company; WSCC, INC., a Nevada corporation; YMY VENTURES LLC,  
6 a Nevada limited liability company; ZION GARDENS LLC, a Nevada limited liability company;

7  
8 5. The true names of DOES I and X and ROE BUSINESS ENTITIES I through X, their  
9 citizenship and capacities, where individual, corporate, associate, partnership or otherwise,  
10 are unknown to Plaintiff, who therefore alleges that each of the unknown DOE and ROE  
11 Defendants are legally responsible for the events referred in this action.  
12

13 6. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,  
14 Section 6, NEA 4.370(2), NRS 30, and because the events complained of herein occurred and  
15 caused harm throughout the State of Nevada, and within Clark County, Nevada. Further, the  
16 amount in controversy exceeds \$15,000.00.  
17

18 7. Venue is proper pursuant to NRS 13.020.

19 **II. FACTUAL ALLEGATIONS**

20 8. In or around 2016, Nevada voters approved an initiative petition which has been  
21 codified as Chapter 453D of the Nevada Revised Statutes (“Initiative”). The DOT which  
22 administers and oversees both Nevada's medical and adult-use marijuana (“recreational”)  
23 programs, is upon information and belief, charged with numerous duties, including but not  
24 necessarily limited strictly to the following:  
25

a. Overseeing the licensing of marijuana establishments and agents (establishing

1 licensing qualifications; granting, transferring, suspending, revoking, and  
2 reinstating licenses);

3 b. Establishing all standards and procedures for the cultivation, production, testing,  
4 distribution, and sale of marijuana in Nevada; and

5 c. Ensuring full and ongoing compliance of marijuana establishments with state laws and  
6 regulations.

7  
8 9. The DOT has a specific Marijuana Enforcement Division (“Division”) that reported it  
9 had 44 budgeted positions, based on review of publicly available information.

10 10. Despite its responsibility to oversee approximately 659 final medical and adult-use  
11 certificates/licenses, and their holders; 245 provisional certificates/conditional licenses; and upon  
12 information and belief, approximately 11,932 holders of marijuana agent cards, the Division does  
13 not have a specific licensing department or any employees specifically responsible for licensing,  
14 and only has approximately thirty-one (31) employees to actually monitor compliance and  
15 perform enforcement duties.

16  
17 11. Between July 1, 2017 – June 30, 2018, the Division initiated only 234 investigations.  
18 As such, based on these figures, the resources of the DOT are not adequate to competently and  
19 effectively regulate the number of marijuana licensees (medical or adult-use).

20 12. NRS Chapter 453D and NAC 453D provide the statutory guidelines for legalized  
21 recreational marijuana in the State of Nevada.

22 13. NRS 453D.020 (findings and declarations) provides in relevant part:

23  
24 In the interest of public health and public safety, and in order to better focus state and local  
25 law enforcement resources on crimes involving violence and personal property, the People  
of the State of Nevada find and declare that the use of marijuana should be legal for persons

1 21 years of age or older, and its cultivation and sale should be regulated similar to other  
2 legal businesses.

3 2. The People of the State of Nevada find and declare that the cultivation and sale of  
4 marijuana should be taken from the domain of criminals and be regulated under a  
5 controlled system, where businesses will be taxed and the revenue will be dedicated to  
6 public education and the enforcement of the regulations of this chapter.

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

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

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

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

15 NRS 453D.200 (Duties of Department relating to regulation and licensing of marijuana  
16 establishments; information about consumers) provides:

17 1. Not later than January 1, 2018, the Department shall adopt all regulations  
18 necessary or convenient to carry out the provisions of this chapter. The regulations must  
19 not prohibit the operation of marijuana establishments, either expressly or through  
20 regulations that make their operation unreasonably impracticable. The regulations shall  
21 include:

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

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

(c) Requirements for the security of marijuana establishments;

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

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



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

(g) Requirements for record keeping by marijuana establishments;

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

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

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

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

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

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

The Department shall approve or deny applications for licenses pursuant to NRS 453D.210.

14. NRS 453D.200(6) mandates also that the DOT "conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant."

15. The provisions of the 2016 ballot initiative and NRS 453D which are presently in effect, with the exception of NRS 453D.205 are identical.

16. NRS 453D.205 provides as follows:

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

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

5  
6       17. NRS 453D.210 (4)-(6) (Acceptance of applications for licensing; priority in  
7 licensing; conditions for approval of application; limitations on issuance of licenses to retail  
8 marijuana stores; competing applications), provides in pertinent part:

9           4. Upon receipt of a complete marijuana establishment license application, the  
10 Department shall, within 90 days:

- 11           (a) Issue the appropriate license if the license application is approved.  
12           (b) Send a notice of rejection setting forth the reasons why the Department did not  
13 approve the license application.

14       5. The Department shall approve a license application if:

- 15           (a) The prospective marijuana establishment has submitted an application in compliance  
16 with regulations adopted by the Department and the application fee required pursuant  
to NRS 453D.230;  
17           (b) The physical address where the proposed marijuana establishment will operate is  
18 owned by the applicant or the applicant has the written permission of the property  
owner to operate the proposed marijuana establishment on that property;  
19           (c) The property is not located within:

20                   (1) One thousand feet of a public or private school that provides formal education  
21 traditionally associated with preschool or kindergarten through grade 12 and that  
22 existed on the date on which the application for the proposed marijuana  
establishment was submitted to the Department;

23                   (2) Three hundred feet of a community facility that existed on the date on which  
24 the application for the proposed marijuana establishment was submitted to the  
Department; or

25                   (3) If the proposed marijuana establishment will be located in a county whose  
population is 100,000 or more, 1,500 feet of an establishment that holds a  
nonrestricted gaming license described in subsection 1 or 2 of NRS 463.0177 and

1                   that existed on the date on which the application for the proposed marijuana  
2                   establishment was submitted to the Department;

3                   (d) The proposed marijuana establishment is a proposed retail marijuana store and there  
4                   are not more than:

5                   (1) Eighty licenses already issued in a county with a population greater than  
6                   700,000;

7                   (2) Twenty licenses already issued in a county with a population that is less than  
8                   700,000 but more than 100,000;

9                   (3) Four licenses already issued in a county with a population that is less than  
10                  100,000 but more than 55,000;

11                  (4) Two licenses already issued in a county with a population that is less than  
12                  55,000;

13                  (5) Upon request of a county government, the Department may issue retail  
14                  marijuana store licenses in that county in addition to the number otherwise  
15                  allowed pursuant to this paragraph;

16                  (e) The locality in which the proposed marijuana establishment will be located does not  
17                  affirm to the Department that the proposed marijuana establishment will be in  
18                  violation of zoning or land use rules adopted by the locality; and

19                  (f) The persons who are proposed to be owners, officers, or board members of the  
20                  proposed marijuana establishment:

21                  (1) Have not been convicted of an excluded felony offense; and

22                  (2) Have not served as an owner, officer, or board member for a medical marijuana  
23                  establishment or a marijuana establishment that has had its registration certificate or license  
24                  revoked.

25                  6. When competing applications are submitted for a proposed retail marijuana store within a  
single county, the Department shall use an impartial and numerically scored competitive  
bidding process to determine which application or applications among those competing will  
be approved. (emphasis added).

18.       On November 8, 2016, by Executive Order 2017-02, Governor Brian Sandoval

1 established a Task Force comprised of 19 people in order to offer suggestions and proposals for  
2 legislative, regulatory, and executive actions to be taken in implementing the approved ballot  
3 initiative, which included the recommendation that "the qualifications for licensure of a marijuana  
4 establishment and the impartial numerically scored bidding process for retail marijuana stores be  
5 maintained as in the medical marijuana program except for a change in how local jurisdictions  
6 participate in selection of locations."

8 19. During the 2017 legislative session, Assembly Bill 422 transferred all responsibility for  
9 regulating marijuana establishments to the DOT, and on or about February 27, 2018, the DOT  
10 adopted its own regulations governing the issuance, suspension, or revocation of retail  
11 recreational marijuana licenses, which were codified in NAC 453D (the "Regulations").

13 20. The Regulations for licensing were to be "directly and demonstrably related to the  
14 operation of a marijuana establishment." NRS 453D.200(1)(b)(emphasis added), and such  
15 directive was taken from the ballot initiative language.

#### 16 **REGULATIONS AND THE LICENSING APPLICATION PROCESS**

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

23  
24 22. The DOT issued notice for an application period wherein the DOT sought  
25

1 applications from qualified applicants to award sixty-four (64) recreational marijuana retail store  
2 licenses throughout various jurisdictions in Nevada. Plaintiff holds a certificate as a medical  
3 marijuana cultivation facility.

4 23. The DOT posted the original license application on its website and released the  
5 application for recreational marijuana establishment licenses on or about July 6, 2018, which  
6 required, amongst other information, disclosure of an actual physical address for each  
7 establishment.  
8

9 24. The DOT published a revised license application on or about July 30, 2018 making  
10 substantive revisions, including but not necessarily limited to the requirement that applicants  
11 prove ownership or written permission of owner for the proposed marijuana establishment  
12 property, eliminating the physical address of the prospective establishment requirement, which  
13 was not publicly available and was only disseminated to some but not all of the applicants via a  
14 DOT listserv.  
15

16 25. Upon information and belief, these changes occurred within the DOT and were not made  
17 available for public comment or review prior to publishing. These revisions were also not  
18 correlated to any amendments in the Approved Regulations or NRS Chapter 453D.  
19

20 26. The application period for the submission of retail recreational marijuana licenses ran  
21 from September 7, 2018 through September 20, 2018 and the DOT received a total of 462  
22 applications during this time.

23 27. When competing applications for licenses were submitted, as was the scenario based on  
24  
25

1 the number of applications received during the application period, the DOT was legally required  
2 to use "an impartial and numerically scored competitive bidding process" to determine successful  
3 license applicants. NRS 453D.210(6).

4 28. Under NAC 453D.272(1), when the DOT received more than one "complete"  
5 application in compliance with the Regulations and NRS 453D, the DOT was required to "rank  
6 the applications... in order from first to last based on the compliance with the provisions of [NAC  
7 453D] and [NRS 453D] and on the content of the applications relating to..." several enumerated  
8 factors, which was the case based on the application period.

9 29. The factors set forth in NAC 453D.272(1) used to rank competing applications  
10 and also to prevent "monopolistic practices" (collectively, the "Factors") are:  
11

- 12 a. Whether the owners, officers or board members have experience operating  
13 another kind of business that has given them experience which is applicable to  
14 the operation of a marijuana establishment;
- 15 b. The diversity of the owners, officers or board members of the proposed  
16 marijuana establishment;
- 17 c. The educational achievements of the owners, officers or board members of the  
18 proposed marijuana establishment;
- 19 d. The financial plan and resources of the applicant, both liquid and illiquid;
- 20 e. Whether the applicant has an adequate integrated plan for the care, quality and  
21 safekeeping of marijuana from seed to sale;
- 22 f. The amount of taxes paid and other beneficial financial contributions,  
23 including, without limitation, civic or philanthropic involvement with this State  
24 or its political subdivisions, by the applicant or the owners, officers or board  
25 members of the proposed marijuana establishment;
- g. Whether the owners, officers or board members of the proposed marijuana  
establishment have direct experience with the operation of a medical marijuana  
establishment or marijuana establishment in this State and have demonstrated a

1 record of operating such an establishment in compliance with the laws and  
2 regulations of this State for an adequate period of time to demonstrate success;

3 h. The experience of key personnel that the applicant intends to employ in  
4 operating the type of marijuana establishment for which the applicant seeks a  
license; and

5 i. Any other criteria that the Department determines to be relevant.

6 30. NAC 453D.255 enacted by Defendant DOT in contravention of NRS Chapter 453D and  
7 implemented by various employees, agents, and/or contractors of the DOT, provides as follows:  
8

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

11 31. If, in the judgment of the Department, the public interest will be served by requiring any  
12 owner with an ownership interest of less than 5 percent in a marijuana establishment to comply  
13 with any provisions of this chapter concerning owners of marijuana establishments, the  
14 Department will notify that owner and he or she must comply with those provisions.  
15

16 32. Defendant DOT also enacted NAC 453D.258, NAC 453D.260, NAC 453D.265, NAC  
17 453D.268 and NAC 453D.272. These administrated codes enforced by the employees and  
18 agents, and department personnel established the procedures for recreational application process,  
19 to be charged for applying, fees to be charged for applying if the applicant holds a medical  
20 marijuana establishment registration certificate, and the ranking of applications if the DOT.  
21 received more than one application for a retail marijuana license.  
22

23 33. The original application published by the DOT described how applications were to be  
24 scored, dividing scoring criteria into identified criteria and non-identified criteria. The Approved  
25 Regulations included a point values system that had a possible 250 total points.

26 34. The application provided that "[applications that have not demonstrated a sufficient  
27

1 response related to the criteria set forth above will not have additional [unspecified, unpublished]  
2 criteria considered in determining whether to issue a license and will not move forward in the  
3 application process." (emphasis added).

4 35. NAC 453D.272(1) required the DOT to determine that an application is "complete and  
5 in compliance" with the provisions of NAC 453D in order to properly apply the licensing criteria  
6 set forth therein and the provisions of voter approved initiative and NRS 453D.

7 36. The DOT was responsible for issuing conditional licenses to applicants whose score and  
8 rank were high enough in each jurisdiction to be awarded one of the allocated licenses in  
9 accordance with the impartial allocation process mandated by NRS 453D.210 by December 5,  
10 2018.

11 37. The DOT identified, hired, and internally trained eight temporary employees to review  
12 and grade the applications allegedly in accordance with the applicable code and statutes, including  
13 NRS 453D, to purportedly establish a fair and impartial analysis and system for grading all  
14 complete applications.

15  
16  
17 **PLAINTIFF'S APPLICATION AND SUBSEQUENT PROCEEDINGS**  
18

19 38. Plaintiff submitted applications to the DOT for conditional licenses for Recreational  
20 Marijuana Establishments in order to own and operate recreational marijuana retail stores in  
21 compliance with the specified, published requirements of DOT regulations together with the  
22 required application fee in accordance with NRS 453D.210 for Las Vegas, North Las Vegas, and  
23 Unincorporated Clark County.

24 39. Plaintiff's applications identified its prospective owners, members, and/or board  
25 members for background check pursuant to the requirements of NRS 453D.200(6).



1 40. Plaintiff identified in its application, addresses for each proposed recreational  
2 marijuana establishment it intended to operate, also pursuant NRS 453D.210(5).

3 41. Plaintiff was subsequently informed by a general letter from the DOT that its applications  
4 to operate any recreational marijuana retail store was denied "because it did not achieve a score  
5 high enough to receive an available license..." within the applicable jurisdiction for which it  
6 proposed a location.

7  
8 42. Plaintiff's denial letter contained no additional information regarding its scoring, scores  
9 received in various categories, or any additional information in order to assess its position.

10 43. On or about May 24, 2019, upon information and belief the Honorable Elizabeth  
11 Gonzalez commenced an extensive evidentiary hearing concerning a motion for preliminary  
12 injunction brought by an unrelated group of applicants who were also denied a conditional  
13 licenses for retail marijuana facilities in Nevada, against the DOT. Successful applicants also  
14 participated in the evidentiary hearing, as intervenor defendants. The hearing concluded on  
15 August 16, 2019.  
16

17 44. On August 23, 2019, Judge Gonzalez entered findings of Fact and Conclusions of Law  
18 regarding the substantial evidentiary hearing. See Findings of Fact and Conclusions of Law  
19 Granting Preliminary Injunction, filed August 23, 2019, Clark County District Court Case No. A-  
20 19-786962-B.  
21

22 45. Judge Gonzalez found that based on the evidence presented, that the DOT undertook no  
23 effort to determine if the applications were in fact "complete and in compliance." Id., ¶37.

24 46. Additionally, Judge Gonzalez also found that the DOT did not make any "effort to verify  
25 owners, officers or board members..." Id. at ¶38.

1 47. Judge Gonzalez also found that the DOT created its own Regulation that modified the  
2 mandatory language of NRS 453D.200(6) requiring “a background check of each prospective  
3 owner, officer, and board member of a marijuana establishment license applicant” and made no  
4 attempt in the application process to verify that the applicant’s complied with the mandatory  
5 language of the BQ2 or even the impermissibly modified language.” Id., ¶¶40-41.  
6

7 48. Judge Gonzalez also found that the evidence established that the DOT failed to properly  
8 train the temporary employees hired to review and grade the applications/applicants, and that it  
9 similarly failed to establish any quality assurance or quality control of the grading performed. Id.  
10 at ¶¶ 78-79.  
11

12 49. Further upon information and belief, due to evidence presented, the DOT improperly  
13 issued conditional licenses to applicants who did not properly disclose a physical address for the  
14 actual location of all proposed retail recreational marijuana establishments.  
15

16 50. Further upon information and belief the DOT failed to implement regulations, procedures  
17 and protocols that would have ensured a fair and impartial grading, consideration, and award of  
18 recreational marijuana licenses within the State of Nevada.

19 51. Additionally, at the evidentiary hearing, testimony and/or evidence was presented that  
20 also suggests persons within the DOT potentially committed violations of NRS 281A, which sets  
21 for a code of ethical standards for government employees. As such, upon information and belief,  
22 the violations of NRS 281A committed by employees within the DOT, including but not  
23 necessarily limited to Jorge Pupo, led to the improper scoring and/or the impermissible  
24 implementation of procedures and/or policies that directly led to the denial of Plaintiff’s  
25 application.  
26

1 52. Upon information and belief, the DOT's flawed scoring system, inconsistent processes,  
2 and additional improper conduct, the DOT's denial of Plaintiff's applications was not based upon  
3 actual implementation of an impartial and objective scoring and bidding process as mandated by  
4 NRS 453D.210, but was instead based upon the arbitrary and capricious exercise of administrative  
5 power, that failed to actually implement training, review, policies, and procedures that were  
6 otherwise legally mandated by statutory authority.  
7

8 53. Upon information and belief, by revising the application on July 30, 2018, eliminating  
9 the requirement to disclose an actual physical address for each proposed retail recreational  
10 marijuana establishment, and selectively choosing to communicate this information, the DOT  
11 limited the ability of the temporary employees to adequately assess graded criteria such as (i)  
12 prohibited proximity to schools and certain other public facilities, (ii) impact on the community,  
13 (iii) security, (iv) building plans and (v) other material considerations prescribed by the  
14 regulations, which led to flawed scoring and/or incomplete applications.  
15

16 53. Upon information and belief, if an applicant's disclosure in its application of its owners,  
17 officers, and board members did not match the DOT's records, the DOT permitted the grading,  
18 and in some cases, awarded a conditional license.  
19

20 54. Upon information and belief, the DOT's determination that only owners of a 5% or  
21 greater interest in the business were required to submit information on the application was an  
22 impermissible regulatory modification of BQ2 and violated Article 19, Section 3 of the Nevada  
23 Constitution, and improperly impacted the scoring/grading of applicants, and/or the award of  
24 conditional licenses to successful applicants.  
25

55. Upon information and belief, the DOT's adoption of NAC 453D.255(1) as it applied to

1 the marijuana establishment license application process regarding was an unconstitutional  
2 modification of BQ2, which was presented to the voters of Nevada.

3 56. Upon information and belief, the numerous failures of the DOT to implement the  
4 mandatory provisions of NRS 453D.200(6), impermissible modification and of statutory  
5 language, collective improprieties regarding the applications including its modification in July  
6 2018, the lack of training and other personal relationship fatally impacted the overall scoring and  
7 bid process to award recreational marijuana licenses, and resulted in the denial of Plaintiff's  
8 application.  
9

10 57. The DOT did not comply with NRS 453D by requiring applicants to provide  
11 information for each prospective owner, officer and board member or verify ownership of  
12 applicants who applying for retail recreational marijuana licenses.  
13

14 58. Upon information and belief, the DOT's inclusion of the diversity category in the  
15 factors was implemented in a way that created a process which was subject to manipulation  
16 and/or inconsistent consideration by applicants, and/or the DOT, which was further  
17 compounded by the DOT's insufficient training of temporary employees hired to grade the  
18 applications.  
19

20 59. Upon information and belief the DOT's scoring process was impacted by personal  
21 relationships, improper conduct, and/or inconsistent application of the requirements of the law in  
22 decisions related to the requirements of the application and the ownership structures of competing  
23 applicants.  
24

25 60. Upon information and belief, due to the DOT's conduct including impermissible

1 modifications and violations of NRS 453 et seq. Plaintiff was unconstitutionally denied  
2 recreational marijuana licenses.

3 61. The DOT's constitutional violations and refusal to issue conditional licenses to Plaintiff  
4 has resulted in, and continues to create, irreparable harm to Plaintiff.  
5

6 **FIRST CLAIM FOR RELIEF**

7 **(Declaratory Relief)**

8 62. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though  
9 fully set forth herein.

10 63. A justiciable controversy exists between Plaintiff and Defendant DOT that warrants  
11 a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010  
12 to 30.160, inclusive.  
13

14 64. Plaintiff and Defendant have adverse and/or competing interests as the DOT, through  
15 its Marijuana Enforcement Division, has denied the application that violates Plaintiff's  
16 Constitutional Rights, Nevada law, and State policy, and involve a derogation of Defendant's  
17 duties pursuant to applicable law and regulation  
18

19 65. The DOT's refusal to issue Plaintiff a conditional license affects Plaintiff's rights afforded  
20 by NRS 453D, and other Nevada laws and regulations.

21 66. The DOT's improper conduct and inconsistent and ranking of other applicants for a  
22 recreational marijuana establishment license and the DOT's subsequent, improper issuance of  
23 conditional licenses also affects the rights of Plaintiff afforded to it by NRS 453D, and other  
24 Nevada laws and regulations.  
25

67. The DOT's actions and/or inactions also have created an actual justiciable controversy

1 ripe for judicial determination between Plaintiff and the DOT with respect to the construction,  
2 interpretation, and implementation of NRS 453D, as to Plaintiff. Plaintiff has been harmed, and  
3 will continue to be harmed, by Defendants' actions.

4  
5 68. The DOT's actions and/or inactions failed to appropriately address the necessary  
6 considerations and intent of both the Initiative and NRS 453D.210, designed to restrict  
7 monopolies.

8 69. On August 23, 2019, Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case  
9 No. A-19-786962-B, issued an Order Granting Preliminary Injunction enjoining the DOT "from  
10 conducting a final inspection of any of the conditional licenses issued in or about December 2018  
11 who did not provide the identification of each prospective owner, officer and board member as  
12 required by NRS 453D.200(6) pending a trial on the merits."

13  
14 70. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

- 15 a. The Department improperly denied Plaintiff conditional licenses for the  
16 operation for a recreational marijuana establishments;
- 17 b. The denial of conditional licenses to Plaintiff is void ab initio;
- 18 c. The procedures employed in the denial violated Plaintiff's procedural,  
19 substantive due process rights and equal protection rights under the Nevada  
20 and United States Constitutions and therefore, the denial is void and  
21 unenforceable;
- 22 d. The denial violates Plaintiff's substantive due process rights and equal  
23 protection rights under the Nevada and United States Constitutions and,  
24 therefore, the denial is void and unenforceable;
- 25 e. Defendant acted in contravention of a legal duty and Plaintiff is therefore  
entitled to a writ of mandamus;
- f. Plaintiff is entitled to judicial review; and
- g. The DOT's denial lacked substantial evidence.

1  
2 71. Plaintiff also seeks a declaration from this Court that the DOT must revoke the  
3 conditional licenses of those applicants whose applications are not in compliance with  
4 Nevada law.

5  
6 72. Plaintiff also seeks a declaration from this Court that the DOT must issue Plaintiff  
7 conditional licenses for the operation of a recreational marijuana establishments applied  
8 for.

9 73. Plaintiff asserts and contends that a declaratory judgment is both necessary and proper at  
10 this time for the Court to determine the respective rights, duties, responsibilities and  
11 liabilities of the Plaintiff afforded to it by NRS 453D, NAC 453D, R092-17, and other  
12 Nevada laws and regulations.  
13

14 74. Plaintiff is entitled to reasonable attorney's fees and costs.

15 **SECOND CLAIM FOR RELIEF**

16 **(Petition for Judicial Review)**

17  
18 75. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though  
19 fully set forth herein.

20 76. Plaintiff is a party to a proceeding with the DOT—specifically, the submission, review,  
21 scoring, and ranking of applications for and issuance of recreational marijuana dispensary  
22 licenses—and have been damaged and irreparably aggrieved by the DOT's conduct and decisions.

23  
24 77. As set forth herein,

25 a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of  
the Approved Regulations;

1 b. The Department's scoring and ranking of the applications submitted for  
2 recreational dispensary licenses between 8:00 a.m. on September 7, 2018 and  
3 5:00 p.m. on September 20, 2018 was arbitrary, capricious, unlawful, clearly  
4 erroneous, and in excess of the Department's jurisdiction;

5  
6 c. The Department's denial and award of Conditional Licenses for recreational  
7 dispensaries was unlawful, clearly erroneous, arbitrary, capricious, and in excess  
8 of the Department's jurisdiction; and

9 d. The Department's misconduct and failure to properly administer the application  
10 process denied Plaintiffs of due process and equal protection as guaranteed by  
11 the Nevada Constitution.  
12

13 78. Under NRS 233B.010, *et seq.*, Plaintiffs/Petitioners are entitled to Judicial Review  
14 of the Department's decision by which they were denied the rights and privileges afforded to them  
15 by Nevada law.

16 79. Neither NRS 453D or NAC 453D provides for any right or procedure to appeal or  
17 review the decision denying an application for a recreational marijuana license, as such, judicial  
18 review is the appropriate means of seeking relief.  
19

20 80. Accordingly, Plaintiff petitions this Court for Judicial Review of the all of the  
21 proceedings at the Department whereby the applications for recreational Dispensary licenses were  
22 reviewed, scored, and ranked, and demand that the entire record of the proceeding (for each and  
23 every application submitted by Plaintiff, the Denied Applicants, and the Successful Applicants)  
24 be transmitted in accordance with NRS 233B.131.  
25

81. Further after Judicial Review, Plaintiff seeks an order remanding this matter back to the



1 DOT for review, reissuance, and/or any other relief deemed appropriate by this Court to rectify  
2 Plaintiff's aggrieved position.

3 **THIRD CLAIM FOR RELIEF**

4 **(Petition for Writ of Certiorari)**

5  
6 82. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though  
7 fully set forth herein.

8  
9 83. The Department has exceeded its jurisdiction to review, score, and rank applications  
10 for recreational marijuana dispensary licenses and to issue conditional recreational dispensary  
11 licenses by, amongst other things:

- 12  
13 a. Employing and failing to properly train temporary employees to conduct the review,  
14 scoring, and ranking of applications;  
15  
16 b. Failing to ensure uniformity in the assessment of the applications and the  
17 assignment of scores to various categories of information in the applications;  
18  
19 c. Allowing the license application process to be corrupted by unfairly favoring  
20 certain applicants over others and by eliminating categories of information from  
21 the license application despite such categories being required under the  
22 Approved Regulations and/or NRS Chapter 453D;  
23  
24 d. Adding a new category of information to the license application after issuing the  
25 Notice for license application submissions without providing adequate notice to  
the license applicants;  
e. Improperly omitting or destroying incident reports and/or other evidence of

- 1 statutory or regulatory infractions by licensees;
- 2 f. Failing to inform the Plaintiffs/Petitioners of the specific reasons for the denial of
- 3 their applications;
- 4 g. Improperly communicating with certain licensees (or their counsel) regarding the
- 5 application process;
- 6 h. Impermissibly creating a Regulation that modified the mandatory Initiative provision
- 7 regarding background checks;
- 8 g. Failing to carry out mandatory provisions of NRS 453D.200(6); and
- 9 h. acting in an arbitrary and capricious manner in evaluating, reviewing, scoring and
- 10 ranking applicants, and issuing conditional recreational marijuana dispensary licenses.
- 11
- 12

13 84. Upon information and belief, the DOT has denied any appeal rights of aggrieved parties

14 regarding the issuance of licenses, and therefore Plaintiff has no plain, speedy or adequate

15 remedy for addressing the DOT's improper conduct.

16 85. Plaintiff petitions this Court for a writ of certiorari regarding the DOT's reviewing,

17 scoring, and ranking of Plaintiff's applications for recreational marijuana dispensary licenses, and

18 that this Court undertake such review of the DOT's conduct as it deems necessary and appropriate

19

20 86. Plaintiff also requests that the Court order the DOT to provide the complete record of the

21 Department's proceeding with respect to the Plaintiff's applications for recreational marijuana

22 dispensary licenses.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Petition for Writ of Mandamus)**

25 87. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though

1 fully set forth herein.

2 88. The DOT failed to perform an act which the law mandates it to perform;  
3 specifically,

- 4 a. Use of an using an impartial and numerically scored competitive bidding process  
5 to evaluate license applications and issue licenses in compliance with Nevada  
6 laws and regulations; and  
7  
8 b. Preservation of public records and other evidence not subject to the Preservation  
9 Order.

10 89. Upon information and belief, the DOT has denied a right to appeal the licensing  
11 decision. Therefore, there is no plain, speedy, and adequate remedy in the ordinary course of law  
12 to correct the failure to perform the acts required by law.  
13

14 90. The Plaintiffs/Petitioners therefore petition this Court to issue a writ of mandamus to  
15 the DOT compelling it to issue a new Notice for recreational Dispensary license applications  
16 and to conduct the scoring and ranking of such applications in accordance with Nevada law and  
17 the Approved Regulations.  
18

19 **FIFTH CLAIM FOR RELIEF**

20 **Petition for Writ of Prohibition**

21 91. Plaintiff repeats, restates, and hereby re-alleges all preceding paragraphs, as though  
22 fully set forth herein.

23 92. The DOT has issued conditional recreational marijuana dispensary licenses in excess of  
24 its jurisdiction by, among other things: (1) eliminating key categories of information from the  
25 application (despite the Approved Regulations and NRS Chapter 453D requiring that the

1 Department consider such information); (2) by adding a new category of information to the  
2 application after it issued its Notice for license applications and failing to adequately inform  
3 license applicants of this new category of information; and (3) failing to comply with NRS  
4 Chapter 453D and the Approved Regulations related to dispensary licensing;

5  
6 93. Upon information and belief, the DOT has denied a right to appeal the licensing  
7 decision. Therefore, there is no plain, speedy, and adequate remedy in the ordinary course of law  
8 to correct the failure of the DOT to lawfully and impartially, review core, and rank license  
9 applications as detailed herein.

10 94. Plaintiff therefore petitions the Court to issue a writ of prohibition which prohibits the  
11 Department from issuing and/or recognizing any new recreational Dispensary licenses  
12 (conditional or final) for applicants who submitted a license application between 8:00 a.m. on  
13 September 7, 2018 and 5:00 p.m. on September 20, 2018.

14  
15 WHEREFORE, Plaintiff prays for judgment as follows:

- 16 1. For declaratory relief set forth above;
- 17 2. For a continuation of the preliminary injunction enjoining the enforcement of the denial;
- 18 3. For judicial review of the record and history on which the denial was based;
- 19 4. Writ of certiorari ordering review of the DOT's entire process regarding applications
- 20 submitted between September 7, 2018 and September 20, 2018;
- 21
- 22 5. For issuance of a writ of mandamus;
- 23 6. For the issuance of a writ of prohibition;
- 24
- 25

1 7. Any other relief that the court deems necessary and proper.

2 DATED this 7<sup>th</sup> day of February, 2020

3 **BENDAVID LAW**

4  
5 /s/ Jeffery A. Bendavid, Esq.

6 **JEFFERY A. BENDAVID, ESQ.**

7 Nevada Bar No. 6220

8 **STEPHANIE J. SMITH, ESQ.**

9 Nevada Bar No. 11280

10 **BENDAVID LAW**

11 7301 Peak Dr., Suite 150

12 Las Vegas, NV 89128

13 *Attorneys for Defendant, Natural Medicine L.L.C.*

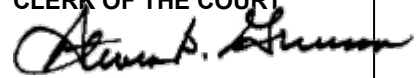
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*Attorneys for Qualcan, LLC*

**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

**SECOND AMENDED COMPLAINT**

QUALCAN, LLC, Plaintiff in Case No. A-19-801416-B, a Nevada limited liability company, by and through its attorneys of record, PETER CHRISTIANSEN, ESQ. and WHITNEY J. BARRETT, ESQ. of CHRISTIENSEN LAW OFFICES hereby complain and allege against DEFENDANTS, in their official and personal capacities, as follows:

**I.**

**PARTIES**

1. Plaintiff QUALCAN, LLC, was and is a Nevada limited liability company and does business in the State of Nevada, County of Clark.

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

4           3.       Upon information and belief, Defendant CHEYENNE MEDICAL, LLC is a  
5 Nevada limited liability company doing business under the fictitious names Thrive Cannabis  
6 Marketplace, Thrive, and/or Cheyenne Medical.

7           4.       Upon information and belief, Defendant CIRCLE S FARMS, LLC is a Nevada  
8 limited liability company doing business under the fictitious firm names Canna Straz, and/or  
9 Circle S.

10          5.       Upon information and belief, Defendant CLEAR RIVER, LLC is a Nevada limited  
11 liability company doing business under the fictitious names United States Marijuana Company,  
12 United States Medical Marijuana, Nevada Medical Marijuana, Clear River Wellness, Clear River  
13 Infused, Nevada Made Marijuana, Greenwolf Nevada, Farm Direct Weed, Atomicrockz, and/or  
14 Giddystick.

15          6.       Upon information and belief, Defendant COMMERCE PARK MEDICAL L.L.C.  
16 is a Nevada limited liability company doing business under the fictitious names Thrive Cannabis  
17 Marketplace, LivFree Las Vegas, and/or Commerce Park Medical.

18          7.       Upon information and belief, Defendant DEEP ROOTS MEDICAL LLC is a  
19 Nevada limited liability company doing business under the fictitious name Deep Root Harvest.

20          8.       Upon information and belief, Defendant ESSENCE HENDERSON LLC is a  
21 Nevada limited liability company doing business under the fictitious name Essence Cannabis  
22 Dispensary.

23          9.       Upon information and belief, Defendant ESSENCE TROPICANA LLC is a  
24 Nevada limited liability company doing business under the fictitious name Essence.

25          10.      Upon information and belief, Defendant EUREKA NEWGEN FARMS LLC is a  
26 Nevada limited liability company doing business under the fictitious name Eureka NewGen  
27 Farms.

1           11.     Upon information and belief, Defendant GREEN THERAPEUTICS LLC is a  
2 Nevada limited liability company doing business under the fictitious name Provision.

3           12.     Upon information and belief, Defendant GREENMART OF NEVADA LLC is a  
4 Nevada limited liability company doing business under the fictitious name Health for Life.

5           13.     Upon information and belief, Defendant HELPING HANDS WELLNESS  
6 CENTER, INC. is a Nevada corporation doing business under the fictitious names Cannacare,  
7 Green Heaven Nursery, and/or Helping Hands Wellness Center.

8           14.     Upon information and belief, Defendant LONE MOUNTAIN PARTNERS LLC  
9 is a Nevada limited liability company doing business under the fictitious names Zenleaf, Siena,  
10 Encore Cannabis, Bentley Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

11          15.     Upon information and belief, Defendant NEVADA ORGANIC REMEDIES LLC  
12 is a Nevada limited liability company doing business under the fictitious names The Source and/or  
13 The Source Dispensary.

14          16.     Upon information and belief, Defendant POLARIS WELLNESS CENTER L.L.C.  
15 is a Nevada limited liability company doing business under the fictitious name Polaris MMJ.

16          17.     Upon information and belief, Defendant PURE TONIC CONCENTRATES LLC  
17 is a Nevada limited liability company doing business under the fictitious names Green Heart  
18 and/or Pure Tonic.

19          18.     Upon information and belief, Defendant TRNVP098 LLC is a Nevada limited  
20 liability company doing business under the fictitious names Grassroots and/or Taproot Labs.

21          19.     Upon information and belief, Defendant WELLNESS CONNECTION OF  
22 NEVADA LLC is a Nevada limited liability company doing business under the fictitious name  
23 Cultivate Dispensary

24          20.     The true names of DOES I through X and ROE BUSINESS ENTITIES I through  
25 X, their citizenship and capacities, whether individual, corporate, associate, partnership or  
26 otherwise, are unknown to Plaintiff, who therefore alleges that each of the Defendants,  
27 designated as DOES I through X and ROE BUSINESS ENTITIES I through X, are, or may be,  
28 legally responsible for the events referred to in this action, and caused damages to Plaintiff, as



1 herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true  
2 names and capacities of such Defendant, when the same have been ascertained, and to join them  
3 in this action, together with the proper charges and allegations.

4 21. DOES I through X and ROE BUSINESS ENTITIES I through X, are or may be,  
5 qualified holders of Medical Marijuana Establishment (“MME”) Certificates, who submitted an  
6 application to operate a recreational retail marijuana establishment to the DOT between  
7 September 7, 2018 and September 20, 2018, and are attempting to circumvent the Order Granting  
8 Preliminary Injunction of August 23, 2019 by Eighth Judicial District Court Judge Elizabeth  
9 Gonzalez, in Case No. A-19-786962-B, as well as abrogate the prior ranking by the DOT with  
10 regard to its issuance of conditional licenses.

11 **II.**

12 **JURISDICTION AND VENUE**

13 22. Jurisdiction is proper in this Court pursuant to NRS 4.370(1)(a), NRS 30, and  
14 because the acts and omissions complained of herein occurred and caused harm within Clark  
15 County, Nevada. Further, the amount in controversy exceeds \$15,000.00.

16 23. Venue is proper in this Court pursuant to NRS 13.020(2)-(3).

17 **III.**

18 **GENERAL ALLEGATIONS**

19 **A. The Marijuana Legislation and Regulations**

20 24. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to amend  
21 Nevada’s Constitution or enact legislation through the initiative process and precludes  
22 amendment or modification of a voter-initiated law for three years.

23 25. In 2016, the initiative for the legalization of recreational marijuana was presented  
24 to Nevada voters by way of Ballot Question 2 (“BQ2”), known as the “Regulation and Taxation  
25 of Marijuana Act”, which proposed an amendment of the Nevada Revised Statutes as follows:

26 Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old  
27 or older, to purchase, cultivate, possess, or consume a certain amount of  
28 marijuana or concentrated marijuana, as well as manufacture, possess, use,  
transport, purchase, distribute, or sell marijuana paraphernalia; impose a 15

percent excise tax on wholesale sales of marijuana; require the regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and retailers; and provide for certain criminal penalties?

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

27. NRS 453D.020 (Findings and declarations) provides:

1. In the interest of public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.

2. The People of the State of Nevada find and declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and the enforcement of the regulations of this chapter.

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

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

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

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

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

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

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

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

28. NRS 453D.200 (Duties of Department relating to regulation and licensing of marijuana establishments; information about consumers) provides:

1. Not later than January 1, 2018, the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:

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

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

...

2. The Department ***shall*** approve or deny applications for licenses pursuant to NRS 453D.210. (emphasis added).

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

30. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing; conditions for approval of application; limitations on issuance of licenses to retail marijuana stores; competing applications), provides in pertinent part:

4. Upon receipt of a complete marijuana establishment license application, the Department ***shall, within 90 days:***

(a) ***Issue the appropriate license if the license application is approved.***

...

5. The Department ***shall approve a license application if:***

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to NRS 453D.230;

...

6. When competing applications are submitted for a proposed retail marijuana store within a single county, the Department ***shall use an impartial and numerically scored competitive bidding process*** to determine which application or applications among those competing will be approved. (emphasis added).

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

32. The Task Force recommended that “the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations.”

33. During the 2017 legislative session, Assembly Bill 422 transferred responsibility for the registration, licensing and regulation of marijuana establishments to the DOT.

34. On February 27, 2018, the DOT adopted regulations governing the issuance, suspension, or revocation of retail recreational marijuana licenses, which were codified in NAC 453D (the “Regulations”).

1           35.     The Regulations for licensing were to be “directly and demonstrably related to the  
2 operation of a marijuana establishment.” NRS 453D.200(1)(b).

3           36.     NRS 453D.200(1) provides, in part, “[t]he regulations must not prohibit the  
4 operation of marijuana establishments, either expressly or through regulations that make their  
5 operation unreasonably impracticable.”

6           37.     The limitation of “unreasonably impracticable” in NRS 453D.200(1) applies to the  
7 Regulations adopted by the DOT, not the mandatory language of BQ2.

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

13     **B.     The Licensing Applications**

14           39.     The DOT issued a notice for an application period wherein the DOT sought  
15 applications from qualified applicants to award sixty-four (64) recreational marijuana retail store  
16 licenses throughout various jurisdictions in Nevada.

17           40.     The DOT posted the license application on its website and released the application  
18 for recreational marijuana establishment licenses on July 6, 2018, which required disclosure of  
19 an actual physical address for each establishment.

20           41.     The DOT published a revised license application on July 30, 2018 eliminating the  
21 physical address requirement, which was not publicly available and was only disseminated to  
22 some but not all of the applicants via a DOT listserv.

23           42.     The application period for retail recreational marijuana licenses ran from  
24 September 7, 2018 through September 20, 2018.

25           43.     As of September 20, 2018, the DOT received a total of 462 applications.

26           44.     Where competing applications for licenses were submitted, the DOT was required  
27 to use “an impartial and numerically scored competitive bidding process” to determine successful  
28 license applicants. NRS 453D.210(6).

1           45. Under NAC 453D.272(1), when the DOT received more than one “complete”  
2 application in compliance with the Regulations and NRS 453D, the DOT was required to “rank  
3 the applications... in order from first to last based on the compliance with the provisions of [NAC  
4 453D] and [NRS 453D] and on the content of the applications relating to...” several enumerated  
5 factors.

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

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

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

47. The application published by the DOT described how applications were to be scored, dividing scoring criteria into identified criteria and non-identified criteria.

48. The application provided that “[a]pplications that have not demonstrated a sufficient response related to the criteria set forth above will not have *additional [unspecified, unpublished] criteria* considered in determining whether to issue a license *and will not move forward win the application process.*” (emphasis added).

49. NAC 453D.272(1) required the DOT to determine that an application is “complete and in compliance” with the provisions of NAC 453D in order to properly apply the licensing criteria set forth therein and the provisions of BQ2 and NRS 453D.

50. No later than December 5, 2018, the DOT was responsible for issuing conditional licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one of the allocated licenses in accordance with the impartial bidding process mandated by NRS 453D.210.

51. The DOT identified, hired, and trained eight individuals as temporary employees to grade the applications in accordance with the provisions of BQ2 and NRS 453D.

52. The DOT allocated licenses throughout the State of Nevada, as follows: ten (10) for unincorporated Clark County, ten (10) for Clark County-Las Vegas, six (6) for Clark County-Henderson, five (5) for Clark County-North Las Vegas, six (6) for Washoe County-Reno, one (1) for Washoe County-Sparks, one (1) for Nye County, two (2) for Carson City, two (2) for Douglas County, one (1) for Elko County, two (2) for Esmeralda County, two (2) for Eureka County, two (2) for Humboldt County, two (2) for Lander County, one (1) for Lincoln County, one (1) for Lyon County, two (2) for Mineral County, one (1) for Pershing County, two (2) for Storey County, and two (2) for White Pine County.

53. The foregoing licenses were awarded to Defendants CHEYENNE MEDICAL, LLC, CIRCLE S. FARMS, LLC, CLEAR RIVER, LLC, COMMERCE PARK MEDICAL L.L.C., DEEP ROOTS MEDICAL LLC, ESSENCE HENDERSON LLC, ESSENCE TROPICANA, LLC, EUREKA NEWGEN FARMS LLC, GREEN THERAPEUTICS, LLC,

1 GREENMART OF NEVADA, LLC, HELPING HANDS WELLNESS CENTER, INC., LONE  
2 MOUNTAIN PARTNERS LLC, NEVADA ORGANIC REMEDIES, LLC, POLARIS  
3 WELLNESS CENTER, L.L.C., PURE TONIC CONCENTRATES LLC, TRNVP098, and  
4 WELLNESS CONNECTION OF NEVADA, LLC (hereinafter “Defendant Applicants”).

5 54. Upon information and belief, Defendant Applicants failed to submit applications  
6 which were complete and compliant with the provisions of NRS 453D and NAC 453D; failed to  
7 disclose actual physical address for proposed retail recreational marijuana establishment; failed  
8 to disclose all officers, owners, and board members for the requisite background check; submitted  
9 more than one identical application in the same jurisdiction with the intent of receiving more than  
10 one conditional license in that jurisdiction; and/or took measures to artificially inflate their score  
11 in the grading process utilized by the DOT in ranking applicants.

12 **C. Plaintiff’s Applications**

13 55. Plaintiff submitted applications to the DOT for a conditional license to own and  
14 operate recreational marijuana retail stores in Nevada.

15 56. Plaintiff’s applications were in compliance with the specified, published  
16 requirements of DOT regulations, and were submitted together with the required application fee  
17 in accordance with NRS 453D.210.

18 57. Plaintiff’s applications identified each prospective owner, officer, and board  
19 member for background check pursuant to NRS 453D.200(6).

20 58. Plaintiff secured and identified in its applications a physical addresses for each and  
21 every proposed recreational marijuana establishment it intended to operate.

22 59. Plaintiff was informed by letter from the DOT that its applications to operate  
23 recreational marijuana retail stores were denied “because it did not achieve a score high enough  
24 to receive an available license.”

25 60. Pursuant to the DOT’s 2018 Retail Marijuana Store Application Scores and  
26 Rankings, as revised at 4pm on May 14, 2019, Plaintiff was ranked seventh (7) for Clark County  
27 – Henderson, eleventh (11) for Clark County – Las Vegas, ninth (9) for Clark County – North  
28

1 Las Vegas, thirteenth (13) for Clark County – Unincorporated, third (3) for Elko County, and  
2 eighth (8) for Washoe County - Reno. *See* Exhibit 1, attached hereto.

3 61. The DOT improperly issued conditional licenses to Defendant Applicants who,  
4 upon information and belief, did not identify each prospective owner, officer and board member,  
5 including: Helping Hands Wellness Center, Inc., Lone Mountain Partners, LLC, Nevada Organic  
6 Remedies, LLC, and Greenmart of Nevada NLV, LLC.

7 62. Upon information and belief, the DOT issued conditional licenses to Defendant  
8 Applicants who did not disclose in their application an actual physical address for proposed retail  
9 recreational marijuana establishment.

10 63. Upon information and belief, the DOT improperly issued more than one  
11 conditional license in the same jurisdiction to certain Defendant Applicants.

12 64. Upon information and belief, the DOT's denial of Plaintiff's license applications  
13 was not properly based upon actual implementation of the impartial and objective competitive  
14 bidding process mandated by NRS 453D.210, but based upon the arbitrary and capricious exercise  
15 of administrative partiality and favoritism.

16 65. Upon information and belief, the temporary employees hired by the DOT were  
17 inadequately and improperly trained regarding the scoring process, leading to an unfair scoring  
18 process.

19 66. Upon information and belief, the DOT issued conditional licenses to applicants  
20 who were known by the DOT to have violated the criminal laws of the State of Nevada by having  
21 sold marijuana to minors and nonetheless, at the behest of these applicants, their attorneys and/or  
22 agents made the supervisory Department of Taxation personnel in charge of the licensing process,  
23 and at said supervisory personnel's direction, had that information deliberately suppressed from  
24 law enforcement, removed from the administrative files and eliminated from the collection of  
25 information made available to and forming the base of knowledge of those scoring the  
26 Applications, an express component of which was to evaluate the prior compliance record of  
27 applicants who were already operating licensed retail recreational marijuana establishments.

28



1           67.     Upon information and belief, the DOT undertook no effort to determine whether  
2 applications were in fact “complete and in compliance” prior to issuing conditional licenses.

3           68.     By revising the application on July 30, 2018 and selectively eliminating the  
4 requirement to disclose an actual physical address for each proposed retail recreational marijuana  
5 establishment, the DOT limited the ability of the temporary employees to adequately assess  
6 graded criteria such as (i) prohibited proximity to schools and certain other public facilities, (ii)  
7 impact on the community, (iii) security, (iv) building plans and (v) other material considerations  
8 prescribed by the regulations.

9           69.     The DOT’s scoring process was impacted by its selective elimination of the  
10 requirement to disclose an actual physical address for each proposed retail recreational marijuana  
11 establishment, resulting in improper applicants being awarded conditional licenses.

12           70.     Upon information and belief, the DOT selectively discussed with applicants or  
13 their agents the modification of the application related to physical address information,

14           71.     Upon information and belief, the DOT undertook no effort to verify owners,  
15 officers or board members in evaluating whether an application was “complete and in  
16 compliance.”

17           72.     Upon information and belief, if an applicant’s disclosure in its application of its  
18 owners, officers, and board members did not match the DOT’s records, the DOT permitted the  
19 grading, and in some cases, awarded a conditional license.

20           73.     Upon information and belief, the DOT departed from the mandatory requirements  
21 of NRS 453D.200(6), which provides that “[t]he DOT shall conduct a background check of each  
22 prospective owner, officer, and board member of a marijuana establishment license application,”  
23 by adopting NAC 453D.255(1), which only required information on the application from persons  
24 “with an aggregate ownership interest of 5 percent or more in a marijuana establishment.”

25           74.     The DOT’s determination that only owners of a 5% or greater interest in the  
26 business were required to submit information on the application was an impermissible regulatory  
27 modification of BQ2 and violated Article 19, Section 3 of the Nevada Constitution.  
28

1           75.     The adoption of NAC 453D.255(1) as it applied to the marijuana establishment  
2 license application process was an unconstitutional modification of BQ2.

3           76.     The failure of the DOT to carry out the mandatory provisions of NRS  
4 453D.200(6), which required the DOT to conduct a background check of each prospective owner,  
5 officer, and board member of a marijuana establishment license applicant, is fatal to the  
6 application process and impedes an important public safety goal in BQ2.

7           77.     By adopting regulations in violation of BQ2's mandatory application  
8 requirements, the DOT violated Article 19, Section 2(3) of the Nevada Constitution.

9           78.     The DOT disregarded the voters' mandate in BQ2 when it decided the requirement  
10 that each prospective owner be subject to a background check was too difficult for implementation  
11 by industry. This decision was a violation of the Nevada Constitution, an abuse of discretion, and  
12 arbitrary and capricious.

13           79.     The DOT did not comply with BQ2 by requiring applicants to provide information  
14 for each prospective owner, officer and board member or verify ownership of applicants who  
15 applying for retail recreational marijuana licenses.

16           80.     The DOT's inclusion of the diversity category in the factors was implemented in  
17 a way that created a process which was partial and subject to manipulation by applicants.

18           81.     The DOT's scoring process was impacted by personal relationships in decisions  
19 related to the requirements of the application and the ownership structures of competing  
20 applicants.

21           82.     Due to the DOT's violations of BQ2, Plaintiff was improperly denied recreational  
22 marijuana licenses.

23           83.     Plaintiff is entitled to six (6) conditional licenses in the following jurisdictions:  
24 Clark County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark  
25 County – Unincorporated, Washoe County – Reno, and Elko County.

26     ///

27     ///

28     ///

IV.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**(Declaratory Relief)**

84. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

85. A justiciable controversy exists that warrants a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.

86. Plaintiff and Defendants have adverse and/or competing interests as the DOT, through its Marijuana Enforcement Division, has denied Plaintiff's applications in violation of Nevada law and State policy.

87. The DOT's refusal to issue Plaintiff conditional licenses affects Plaintiff's rights afforded by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

88. The DOT's improper ranking of other applicants for a recreational marijuana establishment license and the DOT's subsequent, improper issuance of conditional licenses to Defendant Applicants also affects the rights of Plaintiff afforded to it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

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

90. The DOT's actions and/or inactions failed to appropriately address the necessary considerations and intent of BQ2 and NRS 453D.210, designed to restrict monopolies.

91. On August 23, 2019, Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case No. A-19-786962-B, issued an Order Granting Preliminary Injunction enjoining the DOT "from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits."

1           92.     Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 2                 a.     The DOT improperly denied Plaintiff six (6) conditional licenses for the operation  
3                     for a recreational marijuana establishment in the following jurisdictions: Clark  
4                     County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas,  
5                     Clark County – Unincorporated, Washoe County – Reno, and Elko County;  
6                 b.     The denial of conditional licenses to Plaintiff is void *ab initio*;  
7                 c.     The DOT improperly issued conditional licenses to Defendant Applicants;  
8                 d.     The issuance of conditional licenses to Defendant Applicants is void *ab initio*;  
9                 e.     The DOT acted arbitrarily and capriciously or in contravention of a legal duty and  
10                    Plaintiff is therefore entitled to a writ of mandamus;  
11                 f.     Plaintiff is entitled to judicial review; and  
12                 g.     The DOT’s denial of Plaintiff’s applications lacked substantial evidence.

13           93.     Plaintiff also seeks a declaration from this Court that the DOT must revoke the  
14                   conditional licenses of Defendant Applicants who failed to comply with the provisions of NRS  
15                   453D, NAC 453D and R092-17.

16           94.     Plaintiff also seeks a declaration from this Court that the DOT must issue Plaintiff  
17                   six (6) conditional licenses for the operation of a recreational marijuana establishment in Clark  
18                   County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County  
19                   – Unincorporated, Washoe County – Reno, and Elko County, since Plaintiff’s score would have  
20                   ranked high enough to entitle it to a conditional license had the DOT properly applied the  
21                   provisions of NRS 453D, NAC 453D and R092-17.

22           95.     Plaintiff asserts and contends that a declaratory judgment is both necessary and  
23                   proper at this time for the Court to determine the respective rights, duties, responsibilities and  
24                   liabilities of the Plaintiff afforded to it by NRS 453D, NAC 453D, R092-17, and other Nevada  
25                   laws and regulations.

26           96.     Plaintiff has found it necessary to retain the legal services of Christiansen Law  
27                   Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys’ fees and  
28                   costs therefor.

**SECOND CLAIM FOR RELIEF**  
**(Request for Injunctive Relief)**

97. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

98. The DOT's flawed interpretation of the provisions of NRS 453D, NAC 453D, and R092-17 and issuance of conditional licenses to Defendant Applicants constitutes and causes continuing and irreparable harm to Plaintiff with no adequate remedy at law.

99. The DOT's refusal to issue conditional licenses to Plaintiff in accordance with the law constitutes and causes continuing and irreparable harm to Plaintiff with no adequate remedy at law.

100. The purpose of the DOT's refusal to issue conditional licenses to Plaintiff was and is to unreasonably interfere with Plaintiff's business and causing Plaintiff to suffer irreparable harm.

101. The DOT will suffer no harm by following the law with respect to issuing conditional licenses to Plaintiff in the following jurisdictions: Clark County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe County – Reno, and Elko County.

102. Plaintiff is entitled to an injunction precluding the DOT from conducting a final inspection of licenses held by Defendant Applicants.

103. Plaintiff is entitled to an injunction precluding the DOT from approving any negotiated settlements between 2018 applicants, including Defendant Applicants, that does not account for Plaintiff's rightful entitlement to six conditional licenses.

104. Plaintiff is likely to succeed on the merits of this litigation.

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

106. Therefore, Plaintiff is entitled to preliminary injunctive relief, and after a trial on the merits, permanent injunctive relief, ordering the DOT to issue conditional licenses to Plaintiff in accordance with NRS 453D, NAC453D and R092-17.

1           107. Plaintiff has found it necessary to retain the legal services of Christiansen Law  
2 Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and  
3 costs therefor.

4                                   **THIRD CLAIM FOR RELIEF**

5                           **(Intentional Interference With Prospective Economic Advantage)**

6           108. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

7           109. Plaintiff had, and has, prospective contractual relationships with third parties  
8 related to Plaintiff's operation of retail marijuana establishments in Nevada.

9           110. The DOT has knowledge of Plaintiff's prospective contractual relationships with  
10 third parties related to Plaintiff's operation of retail marijuana establishments in Nevada.

11           111. The DOT has, and intends to, cause harm to Plaintiff by preventing the contracts  
12 from going forward in its refusal to issue Plaintiff conditional licenses for its operation of retail  
13 marijuana establishments in the following jurisdictions: Clark County – Henderson, Clark County  
14 – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe County  
15 – Reno, and Elko County.

16           112. The DOT had, and has, no legal justification for refusing to issue conditional  
17 licenses to Plaintiff.

18           113. The DOT had, and has, improperly interfered with Plaintiff's prospective  
19 contractual relationships with third parties.

20           114. The DOT has no legal justification for preventing Plaintiff's contractual  
21 relationships from going forward.

22           115. As an actual and proximate result of the DOT's conduct, Plaintiff has been  
23 damaged in excess of \$15,000.00.

24           116. As an actual and proximate result of the DOT's conduct, Plaintiff has found it  
25 necessary to retain the legal services of Christiansen Law Offices to bring this action, and Plaintiff  
26 is entitled to recover its reasonable attorneys' fees and costs therefor.

27           117. The DOT should be enjoined from further interference with Plaintiff's prospective  
28 contractual relationships.

**FOURTH CLAIM FOR RELIEF**  
**(Intentional Interference With Contractual Relations)**

118. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

119. There exist valid contracts between Plaintiff and third parties related to Plaintiff's operation of retail marijuana establishments in Nevada.

120. The DOT knew of Plaintiff's contracts with third parties related to the Plaintiff's operation of retail marijuana establishments in Nevada.

121. The DOT and Applicant Defendants have committed intentional acts intended to disrupt Plaintiff's contracts with third parties related to Plaintiff's operation of retail marijuana establishments in Nevada

122. The DOT's actions in its refusal to issue Plaintiff conditional licenses for its operation of retail marijuana establishments in the following jurisdictions: Clark County – Henderson, Clark County – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe County – Reno, and Elko County caused an actual disruption of Plaintiff's contracts with third parties.

123. The Applicant Defendants' conduct complained of herein caused an actual disruption of Plaintiff's contracts with third parties, as Applicant Defendants were improperly awarded conditional licenses by the DOT.

124. As an actual and proximate result of the Defendants' conduct, Plaintiff has been damaged in excess of \$15,000.00.

125. As an actual and proximate result of the Defendants' conduct, Plaintiff has found it necessary to retain the legal services of Christiansen Law Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

126. The DOT should be enjoined from further interference with Plaintiff's contractual relationships and compelled to issue six conditional licenses to Plaintiff.

**FIFTH CLAIM FOR RELIEF**  
**(Petition for Judicial Review)**

127. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

128. The DOT, in misinterpreting and incorrectly applying NRS 453D, NAC 453D and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing conditional licenses to applicants that do not merit conditional licenses under NRS 453D, NAC 453D, and R092-17.

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

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

131. Accordingly, Plaintiff petitions this Court for judicial review of the record on which the DOT's denial was based, including but not limited to

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

132. Plaintiff has found it necessary to retain the legal services of Christiansen Law Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

**SIXTH CLAIM FOR RELIEF**  
**(Petition for Writ of Mandamus)**

133. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

134. When a governmental body fails to perform an act "that the law requires" or acts in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. NRS 34.160.

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

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



1           b. Arbitrarily and capriciously denying the applications for no legitimate reason.

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

4           a. The Board lacked substantial evidence to deny Plaintiff's applications; and

5           b. The Board denied Plaintiff's applications solely to approve other competing  
6 applicants without regard to the merit of Plaintiff's applications.

7           137. These violations of the DOT's legal duties were arbitrary and capricious actions  
8 that compel this Court to issue a Writ of Mandamus directing the DOT to approve Plaintiff's  
9 license applications and issue Plaintiff conditional licenses in Clark County – Henderson, Clark  
10 County – Las Vegas, Clark County – North Las Vegas, Clark County – Unincorporated, Washoe  
11 County – Reno, and Elko County.

12           138. As a result of the DOT's unlawful and arbitrary and capricious actions, Plaintiff  
13 has been forced to retain the legal services of Christiansen Law Offices to bring this action, and  
14 is therefore entitled to damages, costs in this suit, and an award of attorneys' fees pursuant to  
15 NRS 34.270.

16                                   **SEVENTH CLAIM FOR RELIEF**  
17                                   **(Violation of Procedural Due Process)**

18           139. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

19           140. NRS 598A offers certain prohibitions and corresponding protections meant to  
20 preserve and protect the free, open and competitive nature of our market system, and penalize  
21 anticompetitive practices to the full extent allowed by law.

22           141. NRS 598A.210, in providing a cause of action for injunctive relief and/or  
23 damages, represents a recognition under Nevada law and policy that a business's sales and the  
24 resulting value of its market share are a property interest entitled to protection by the courts.

25           142. Such a statutorily recognized "property interest" is within the meaning and subject  
26 to the due process protections of the Fourteenth Amendment to the Constitution of the United  
27 States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and may not be  
28 denied arbitrarily, capriciously, or based upon administrative partiality or favoritism, as when

1 present as in the instances complained of herein, none of those trigger any exemptions set out in  
2 NRS 598A.

3 143. While acting under color of state law, the DOT has effectively nullified and  
4 rendered illusory the legislative statutory entitlement which all Plaintiffs – and all applicants –  
5 have to an impartial numerically scored competitive bidding system for licensure of applicants  
6 who comply with and prevail competitively in accordance with the objective and impartial  
7 standards and procedures prescribed by the provisions of NRS 453D.

8 144. Pursuant to the implementation of the foregoing licensing process, the denial of  
9 Plaintiff's applications, when coupled with the issuing of conditional licenses to Defendants  
10 pursuant to a constitutionally invalid process has and will continue cause a diminution of  
11 Plaintiff's sales and market share values as a direct result of the conduct of the DOT issuing the  
12 conditional licenses to Defendants and the business operations conducted thereafter by the  
13 Defendants of that unconstitutional licensing process.

14 145. The procedures employed by the DOT in denying Plaintiff's applications have  
15 deprived Plaintiff of due process of law as guaranteed by the Nevada Constitution and the United  
16 States Constitution.

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

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

24 148. Plaintiff is also entitled to damages attributable to the above-identified due process  
25 violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

26 149. As the actions of the DOT have necessitated that Plaintiff retain the legal services  
27 of Christiansen Law Offices, and incur fees and costs to bring this action, Plaintiff is also entitled  
28 to an award of attorneys' fees and costs of suit.

**EIGHTH CLAIM FOR RELIEF**  
**(Violation of Substantive Due Process)**

150. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

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

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

153. Plaintiff is also entitled to damages attributable to the above-identified due process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

154. As the actions of the DOT have necessitated that Plaintiff retain the legal services of Christiansen Law Offices, and incur fees and costs to bring this action, Plaintiff is also entitled to an award of attorneys' fees and costs of suit.

**NINTH CLAIM FOR RELIEF**  
**(Equal Protection Violation)**

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

156. By improperly denying Plaintiff's applications for licensure under the provisions of NRS 453D.200 and NRS 453D.210, while improperly granting the applications of Defendants, under color of state law, the DOT has, without justification, disparately treated Plaintiff's applications absent rational basis, and has thereby violated Plaintiff's rights to equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

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

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

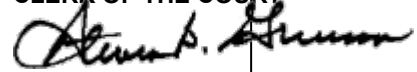
159. This classification and disparate treatment is unconstitutional because there is no rational relationship between the disparity of this treatment and any legitimate governmental purpose.



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 11<sup>th</sup> day of February, 2020 I caused the foregoing document entitled *Qualcan LLC's Second Amended Complaint* 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



Clarence E. Gamble, Esq.  
Nevada Bar No. 4268  
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Phone: (303) 733-6353 Fax: (303) 856-5666  
[Clarence@ramoslaw.com](mailto:Clarence@ramoslaw.com)

*Attorney for Defendant/Respondent*  
*RURAL REMEDIES, 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

Department No. XI

**DEFENDANT RURAL REMEDIES,  
LLC'S AMENDED COMPLAINT IN  
INTERVENTION, PETITION FOR  
JUDICIAL REVIEW OR WRIT OF  
MANDAMUS**

Arbitration Exemption Claimed:

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

1 Plaintiff, RURAL REMEDIES, LLC, a Nevada limited liability company, by  
2 and through its attorney of record, CLARENCE E. GAMBLE, ESQ., of RAMOS  
3 LAW, LLC, hereby complains and alleges against Defendant STATE OF  
4 NEVADA DEPARTMENT OF TAXATION; DOES I through X; and ROE  
5 BUSINESS ENTITIES I through X, in their official and personal capacities, as  
6 follows:  
7

### 8 **I. PARTIES**

- 9 1. Plaintiff RURAL REMEDIES, LLC, was and is a Nevada limited liability  
10 company and does business throughout the State of Nevada. Plaintiff  
11 RURAL REMEDIES, LLC's members and managers are of Latino descent  
12 and are a member of a protected class.  
13
- 14 2. Defendant STATE OF NEVADA DEPARTMENT OF TAXATION ("DOT") is  
15 an agency of the State of Nevada. DOT is responsible for licensing and  
16 regulating retail marijuana business in Nevada through its Marijuana  
17 Enforcement Division.  
18
- 19 3. Defendant JORGE PUPO, at all material times mentioned herein, was the  
20 Deputy Executive Director, Department of Taxation, Marijuana  
21 Enforcement Division and it was his responsibility to implement Nevada  
22 law in the award of recreational licenses as more fully described below.  
23
- 24 4. The following Defendants all applied for recreational marijuana licenses  
25 and are being named in accordance with the Nevada Administrative  
26 Procedure Act: D.H. FLAMINGO, INC., d/b/a THE APOTHECARY  
27

1 SHOPPE, a Nevada corporation; CLARK NATURAL MEDICINAL  
2 SOLUTIONS LLC, d/b/a NuVEDA, a Nevada limited liability company;  
3 NYE NATURAL MEDICINAL SOLUTIONS LLC, d/b/a. NUVEDA, a  
4 Nevada limited liability company; CLARK NMSD LLC, d/b/a NuVEDA,  
5 a Nevada limited liability company; INYO FINE CANNABIS  
6 DISPENSARY L.L.C., d/b/a INYO FINE CANNABIS DISPENSARY, a  
7 Nevada limited liability company; and. SURTERRA HOLDINGS. INC.,  
8 a Delaware corporation; STATE EX REL. DEPARTMENT OF TAXATION;  
9 STATE EX REL. NEVADA TAX COMMISSION; 3AP INC., a Nevada  
10 limited liability company; 5SEAT INVESTMENTS LLC, a Nevada limited  
11 liability company; ACRES DISPENSARY LLC, a Nevada limited liability  
12 company; ACRES MEDICAL LLC, a Nevada limited liability company;  
13 AGUA STREET LLC, a Nevada limited liability company; ALTERNATIVE  
14 MEDICINE ASSOCIATION LC, a Nevada limited liability company;  
15 BIONEVA INNOVATIONS OF CARSON CITY LLC, a Nevada limited  
16 liability company; BLOSSUM GROUP LLC, a Nevada limited liability  
17 company; BLUE COYOTE RANCH LLC, a Nevada limited liability  
18 company; CARSON CITY AGENCY SOLUTIONS L.L.C., a Nevada  
19 limited liability company; CHEYENNE MEDICAL, LLC, a Nevada  
20 limited liability company; CIRCLE S FARMS LLC, a Nevada limited  
21 liability company; CLEAR RIVER, LLC, a Nevada limited liability  
22 company; CN LICENSECO Inc., a Nevada corporation; COMMERCE



1 PARK MEDICAL L.L.C., a Nevada limited liability company;  
2 COMPASSIONATE TEAM OF LAS VEGAS LLC , a Nevada limited  
3 liability company; CWNEVADA, LLC, a Nevada limited liability  
4 company; D LUX LLC, a Nevada limited liability company; DEEP  
5 ROOTS MEDICAL LLC, a Nevada limited liability company;  
6 DIVERSIFIED MODALITIES MARKETING LTD., a Nevada limited  
7 liability company; DP HOLDINGS, INC., a Nevada corporation;  
8 ECONEVADA LLC, a Nevada limited liability company; ESSENCE  
9 HENDERSON, LLC, a Nevada limited liability company; ESSENCE  
10 TROPICANA, LLC, a Nevada limited liability company; ETW  
11 MANAGEMENT GROUP LLC, a Nevada limited liability company;  
12 EUPHORIA. WELLNESS LLC, a Nevada limited liability company;  
13 EUREKA NEWGEN FARMS LLC, a Nevada limited liability company;  
14 FIDELIS HOLDINGS, LLC., a Nevada limited liability company;  
15 FOREVER GREEN, LLC, a Nevada limited liability company;  
16 FRANKLIN BIOSCIENCE NV LLC, a Nevada limited liability company;  
17 FSWFL, LLC, a Nevada limited liability company; GB SCIENCES  
18 NEVADA LLC, a Nevada limited liability company; GBS NEVADA  
19 PARTNERS, LLC, a Nevada limited liability company; GFIVE  
20 CULTIVATION LLC, a Nevada limited liability company; GLOBAL  
21 HARMONY LLC, a Nevada limited liability company; GOOD  
22 CHEMISTRY NEVADA, LLC, a Nevada limited liability company;  
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1 GRAVITAS HENDERSON L.L.C., a Nevada limited liability company;  
2 GRAVITAS NEVADA LTD., a Nevada limited liability company; GREEN  
3 LEAF FARMS HOLDINGS LLC, a Nevada limited liability company;  
4 GREEN LIFE PRODUCTIONS LLC, a Nevada limited liability company;  
5 GREEN THERAPEUTICS LLC, a Nevada limited liability company;  
6 GREENLEAF WELLNESS, INC., a Nevada corporation; GREENMART  
7 OF NEVADA NLV, LLC, a Nevada limited liability company;  
8 GREENPOINT NEVADA INC., a Nevada corporation; GREENSCAPE  
9 PRODUCTIONS LLC, a Nevada limited liability company; GREENWAY  
10 HEALTH COMMUNITY L.L.C., a Nevada limited liability company;  
11 GREENWAY. MEDICAL LLC, a Nevada limited liability company; GTI  
12 NEVADA, LLC, a Nevada limited liability company; H & K GROWERS  
13 CORP., a Nevada corporation; HARVEST OF NEVADA LLC; a Nevada  
14 limited liability company; HEALTHCARE OPTIONS FOR PATIENTS  
15 ENTERPRISES, LLC, a Nevada limited liability company; HELIOS NV  
16 LLC; a Nevada limited liability company; HELPING HANDS WELLNESS  
17 CENTER, INC., a Nevada corporation; HERBAL CHOICE INC., a  
18 Nevada corporation; HIGH SIERRA CULTIVATION LLC, a Nevada  
19 limited liability company; HIGH SIERRA HOLISTICS LLC, a Nevada  
20 limited liability company; INTERNATIONAL SERVICE AND  
21 REBUILDING, INC., a domestic corporation; JUST QUALITY, LLC, a  
22 Nevada limited liability company; KINDIBLES LLC, a Nevada limited  
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1 liability company; LAS VEGAS WELLNESS AND COMPASSION LLC; a  
2 Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a  
3 Nevada limited liability company; LIVFREE WELLNESS LLC, a Nevada  
4 limited liability company; LNP, LLC, a Nevada limited liability  
5 company; LONE MOUNTAIN PARTNERS, LLC, a Nevada limited  
6 liability company; LUFF ENTERPRISES NV, INC., a Nevada  
7 corporation; LVMC C&P LLC, a Nevada limited liability company;  
8 MALANA LV L.L.C., a Nevada limited liability, company; MATRIX NV,  
9 LLC, a Nevada limited liability company; MEDIFARM IV, LLC, a Nevada  
10 limited liability company; MILLER FARMS, LLC, a Nevada limited  
11 liability company; MM DEVELOPMENT COMPANY, INC., a Nevada  
12 corporation; MM R & D, LLC, a Nevada limited liability company;  
13 MMNV2 HOLDINGS I, LLC, a Nevada limited liability company; MM OF  
14 VEGAS RETAIL, INC. a Nevada corporation; NATURAL MEDICINE  
15 L.L.C., a Nevada limited liability company; NCMM, LLC, a Nevada  
16 limited liability company; NEVADA BOTANICAL SCIENCE, INC., a  
17 Nevada corporation; NEVADA GROUP WELLNESS LLC, a Nevada  
18 limited liability company; NEVADA HOLISTIC MEDICINE LLC, a  
19 Nevada limited liability company; NEVADA MEDICAL GROUP LLC, a  
20 Nevada limited liability company; NEVADA ORGANIC REMEDIES LLC,  
21 a Nevada limited liability company; NEVADA WELLNESS CENTER  
22 LLC, a Nevada limited liability company; NEVADAPURE, LLC, a Nevada  
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1 limited liability company; NEVCANN LLC, a Nevada limited liability  
2 company; NLV WELLNESS LLC, a Nevada limited liability company;  
3 NLVG, LLC, a Nevada limited liability company; NULEAF INCLINE  
4 DISPENSARY LLC, a Nevada limited liability company; NV 3480  
5 PARTNERS LLC, a Nevada limited liability company; NV GREEN INC.,  
6 a Nevada corporation; NYE FARM TECH LTD., a Nevada limited  
7 liability company; PARADISE WELLNESS CENTER LLC, a Nevada  
8 limited liability company; PHENOFARM NV LLC, a Nevada limited  
9 liability company; PHYSIS ONE LLC, a Nevada limited liability  
10 company; POLARIS WELLNESS CENTER L.L.C., a Nevada limited  
11 liability company; PURE TONIC CONCENTRATES LLC, a Nevada  
12 limited liability company; QUALCAN L.L.C., a Nevada limited liability  
13 company; RED EARTH, LLC, a Nevada limited liability company;  
14 RELEAF CULTIVATION, LLC, a Nevada limited liability company, RG  
15 HIGHLAND ENTERPRISES INC., a Nevada corporation; ROMBOUGH  
16 REAL ESTATE INC., a Nevada corporation; RURAL REMEDIES LLC, a  
17 Nevada limited liability company; SERENITY WELLNESS CENTER  
18 LLC, a Nevada limited liability company; SILVER SAGE WELLNESS  
19 LLC, a Nevada limited liability company; SOLACE ENTERPRISES, LLP,  
20 a Nevada limited-liability limited partnership; SOUTHERN NEVADA  
21 GROWERS, LLC, a Nevada limited liability company; STRIVE  
22 WELLNESS OF NEVADA, LLC, a Nevada limited liability company;  
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1 SWEET GOLDY LLC, a Nevada limited liability company; TGIG, LLC, a  
2 Nevada limited liability company; THC NEVADA LLC, a Nevada limited  
3 liability company; THE HARVEST FOUNDATION LLC, a Nevada limited  
4 liability company; THOMPSON FARM ONE L.L.C., a Nevada limited  
5 liability company; TRNVP098 LLC, a Nevada limited liability company;  
6 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company;  
7 TRYKE COMPANIES SO NV, LLC, a Nevada limited liability company;  
8 TWELVE TWELVE LLC, a Nevada limited liability company; VEGAS  
9 VALLEY GROWERS LLC, a Nevada limited liability company;  
10 WAVESEER OF NEVADA, LLC, a Nevada limited liability company;  
11 WELLNESS & CAREGIVERS OF NEVADA NLV, LLC, a Nevada limited  
12 liability company; WELLNESS CONNECTION OF NEVADA, LLC, a  
13 Nevada limited liability company; WENDOVERA LLC, a Nevada limited  
14 liability company; WEST COAST DEVELOPMENT NEVADA, LLC, a  
15 Nevada limited liability company; WSCC, INC., a Nevada corporation;  
16 YMY VENTURES LLC, a Nevada limited liability company; ZION  
17 GARDENS LLC, a Nevada limited liability company.

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21  
22 5. The true names of DOES I and X and ROE BUSINESS ENTITIES I  
23 through X, their citizenship and capacities, where individual, corporate,  
24 associate, partnership or otherwise, are unknown to Plaintiff, who  
25 therefore alleges that each of the unknown DOE and ROE Defendants  
26 are legally responsible for the events referred in this action, and caused  
27  
28

1 damages to Plaintiff. Plaintiff will seek leave of this Court to amend the  
2 Complaint to insert the true names and capacities of these unknown  
3 Defendants when the same has been ascertained.  
4

## 5 **II. JURISDICTION AND VENUE**

- 6 6. Jurisdiction is proper in this Court pursuant to the Nevada  
7 Constitution, Article 6, Section 6, NEA 4.370(2), NRS 30, and because  
8 the acts and omissions complained of herein occurred and caused harm  
9 throughout the State of Nevada, specifically in Clark County, Nevada.  
10 Further, the amount in controversy exceeds \$15,000.00.  
11  
12 7. Venue is proper pursuant to NRS 13.020.

## 13 **III. GENERAL ALLEGATIONS**

### 14 **A. The Marijuana Legislation and Regulations**

- 15  
16 8. NRS Chapter 453D and NAC 453D are the statutory guidelines for  
17 legalized recreational marijuana in the State of Nevada. These statutes  
18 are incorporated herein by reference.  
19  
20 9. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to  
21 amend Nevada's Constitution or enact legislation through the initiative  
22 process and precludes amendment or modification of a voter-initiated  
23 law for three years.  
24  
25 10. In 2016, the initiative for the legalization of recreational marijuana was  
26 presented to Nevada voters by way of Ballot Question 2 ("BQ2"), known  
27  
28

1 as the "Regulation and Taxation of Marijuana Act", which proposed an  
2 amendment of the Nevada Revised Statutes as follows:

3 Shall the Nevada Revised Statutes be amended to allow a  
4 person, 21 years old or older, to purchase, cultivate, possess,  
5 or consume a certain amount of marijuana or concentrated  
6 marijuana, as well as manufacture, possess, use, transport,  
7 purchase, distribute, or sell marijuana paraphernalia; impose  
8 a 15 percent excise tax on wholesale sales of marijuana;  
9 require the regulation and licensing of marijuana cultivators,  
10 testing facilities, distributors, suppliers, and retailers; and  
11 provide for certain criminal penalties.

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

13 12. NRS 453D.020 (findings and declarations) provides:

- 14 1. In the interest of public health and public safety, and in order  
15 to better focus state and local law enforcement resources on  
16 crimes involving violence and personal property, the People  
17 of the State of Nevada find and declare that the use of  
18 marijuana should be legal for persons 21 years of age or older,  
19 and its cultivation and sale should be regulated similar to  
20 other legal businesses.
- 21 2. The People of the State of Nevada find and declare that the  
22 cultivation and sale of marijuana should be taken from the  
23 domain of criminals and be regulated under a controlled  
24 system, where businesses will be taxed and the revenue will  
25 be dedicated to public education and the enforcement of the  
26 regulations of this chapter.
- 27 3. The People of the State of Nevada proclaim that marijuana  
28 should be regulated in a manner similar to alcohol so that:
  - (a) Marijuana may only be purchased from a business that is  
licensed by the State of Nevada;
  - (b) Business owners are subject to a review by the State of  
Nevada to confirm that the business owners and the  
business location are suitable to produce or sell  
marijuana;

- (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly controlled through state licensing and regulation;
- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the State will be tested and labeled.

13. NRS 453D.200 (Duties of Department relating to regulation and licensing of marijuana establishments; information about consumers) provides:

1. Not later than January 1, 2018, the Department ***shall adopt all regulations*** necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:
  - (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;
  - (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
  - (c) Requirements for the security of marijuana establishments;
  - (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;
  - (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;
  - (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;
  - (g) Requirements for record keeping by marijuana establishments;
  - (h) Reasonable restrictions on signage, marketing, display, and advertising;



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

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

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

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

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

2. The Department ***shall approve or deny*** applications for licenses pursuant to NRS 453D.210. (emphasis added).

14. NRS 453D.200(6) ***mandates*** the DOT to "conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant."

15. NRS 453D.205 provides as follows:

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

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

1 Nevada Records of Criminal History for submission to the Federal  
2 Bureau of Investigation for its report.

3  
4 16. NRS 453D.210 (Acceptance of applications for licensing; priority in  
5 licensing; conditions for approval of application; limitations on issuance  
6 of licenses to retail marijuana stores; competing applications), provides  
7 in pertinent part:

8 4. Upon receipt of a ***complete marijuana establishment***  
9 ***license application***, the ***Department shall, within 90***  
10 ***days***:

11 (a) Issue the appropriate license if the license application  
is approved.

12 5. The Department ***shall approve*** a license application if:

13 (a) The prospective marijuana establishment has  
14 submitted an application in compliance with regulations  
15 adopted by the Department and the application fee  
16 required pursuant to [NRS 453D.230](#);

17 (b) The physical address where the proposed marijuana  
18 establishment will operate is owned by the applicant or  
19 the applicant has the written permission of the property  
20 owner to operate the proposed marijuana establishment  
21 on that property;

22 (c) The property is not located within:

23 (1) One thousand feet of a public or private school  
24 that provides formal education traditionally associated  
25 with preschool or kindergarten through grade 12 and that  
26 existed on the date on which the application for the  
27 proposed marijuana establishment was submitted to the  
28 Department;

(2) Three hundred feet of a community facility that  
existed on the date on which the application for the  
proposed marijuana establishment was submitted to the  
Department; or

(3) If the proposed marijuana establishment will be  
located in a county whose population is 100,000 or more,  
1,500 feet of an establishment that holds a nonrestricted  
gaming license described in subsection 1 or 2 of [NRS](#)  
[463.0177](#) and that existed on the date on which the

1 application for the proposed marijuana establishment  
2 was submitted to the Department;

3 (d) The proposed marijuana establishment is a proposed  
4 retail marijuana store and there are not more than:

5 (1) Eighty licenses already issued in a county with a  
6 population greater than 700,000;

7 (2) Twenty licenses already issued in a county with  
8 a population that is less than 700,000 but more than  
9 100,000;

10 (3) Four licenses already issued in a county with a  
11 population that is less than 100,000 but more than  
12 55,000;

13 (4) Two licenses already issued in a county with a  
14 population that is less than 55,000;

15 (5) Upon request of a county government, the  
16 Department may issue retail marijuana store licenses in  
17 that county in addition to the number otherwise allowed  
18 pursuant to this paragraph;

19 (e) The locality in which the proposed marijuana  
20 establishment will be located does not affirm to the  
21 Department that the proposed marijuana establishment  
22 will be in violation of zoning or land use rules adopted by  
23 the locality; and

24 (f) The persons who are proposed to be owners, officers,  
25 or board members of the proposed marijuana  
26 establishment:

27 (1) Have not been convicted of an excluded felony  
28 offense; and

(2) Have not served as an owner, officer, or board  
member for a medical marijuana establishment or a  
marijuana establishment that has had its registration  
certificate or license revoked.

6. When competing applications are submitted for a proposed  
retail marijuana store within a single county, the  
Department ***shall use an impartial and numerically  
scored competitive bidding process*** to determine which  
application or applications among those competing will be  
approved. (emphasis added).

17. On November 8, 2016, by Executive Order 2017-02, Governor Brian  
Sandoval established a Task Force composed of 19 members to offer

1 suggestions and proposals for legislative, regulatory, and executive  
2 actions to be taken in implementing BQ2.

3  
4 18. The Task Force recommended that "the qualifications for licensure of a  
5 marijuana establishment and the impartial numerically scored bidding  
6 process for retail marijuana stores be maintained as in the medical  
7 marijuana program except for a change in how local jurisdictions  
8 participate in selection of locations."

9  
10 19. During the 2017 legislative session, Assembly Bill 422 transferred  
11 responsibility for the registration, licensing and regulation of marijuana  
12 establishments to the DOT.

13 20. On February 27, 2018, the DOT adopted regulations governing the  
14 issuance, suspension, or revocation of retail recreational marijuana  
15 licenses, which were codified in NAC 453D (the "Regulations").

16  
17 21. The Regulations for licensing were to be "directly and demonstrably  
18 related to the operation of a marijuana establishment." NRS  
19 453D.200(1)(b).

20  
21 22. NRS 453D.200(1) provides, in part, "[t]he regulations must not prohibit  
22 the operation of marijuana establishments, either expressly or through  
23 regulations that make their operation unreasonably impracticable."

24 23. The limitation of "unreasonably impracticable" in NRS 453D.200(1)  
25 applies to the Regulations adopted by the DOT, not the mandatory  
26 language of BQ2.  
27

1 24. According to an August 16, 2018 letter from the DOT, pursuant to  
2 Section 80(3) of Adopted Regulation of the Department of Taxation, LCB  
3 File No. R092-17 ("R092-17"), the DOT was responsible for allocating the  
4 licenses of recreational marijuana stores "to jurisdictions within each  
5 county and to the unincorporated area of the county proportionally  
6 based on the population of each jurisdiction and of the unincorporated  
7 area of the county."  
8

9 **B. The Licensing Applications**  
10

11 25. The DOT issued a notice for an application period wherein the DOT  
12 sought applications from qualified applicants to award sixty-four (64)  
13 recreational marijuana retail store licenses throughout various  
14 jurisdictions in Nevada.  
15

16 26. The DOT posted the license application on its website and released the  
17 application for recreational marijuana establishment licenses on July 6,  
18 2018, which required disclosure of an actual physical address for each  
19 establishment.  
20

21 27. The DOT published a revised license application on July 30, 2018  
22 eliminating the physical address requirement, which was not publicly  
23 available and was only disseminated to some but not all of the applicants  
24 via a DOT listserv.  
25

26 28. The application period for retail recreational marijuana licenses ran from  
27 September 7, 2018 through September 20, 2018.  
28

- 1 29. As of September 20, 2018, the DOT received a total of 462 applications.
- 2 30. When competing applications for licenses were submitted, the DOT was
- 3 required to use "an impartial and numerically scored competitive bidding
- 4 process" to determine successful license applicants. NRS 453D.210(6).
- 5
- 6 31. Under NAC 453D.272(1), when the DOT received more than one
- 7 "**complete**" application ***in compliance with the Regulations and NRS***
- 8 ***453D***, the DOT was required to "rank the applications... in order from
- 9 first to last based on the compliance with the provisions of [NAC 453D]
- 10 and [NRS 453D] and on the content of the applications relating to..."
- 11 several enumerated factors.
- 12
- 13 32. The factors set forth in NAC 453D.272(1) used to rank competing
- 14 applications (collectively, the "Factors") are:
- 15
- 16 a. Whether the owners, officers or board members have
- 17 experience operating another kind of business that has given
- 18 them experience which is applicable to the operation of a
- 19 marijuana establishment;
- 20
- 21 b. The diversity of the owners, officers or board members of
- 22 the proposed marijuana establishment;
- 23
- 24 c. The educational achievements of the owners, officers or
- 25 board members of the proposed marijuana establishment;
- 26
- 27 d. The financial plan and resources of the applicant, both
- 28 liquid and illiquid;
- 29
- 30 e. Whether the applicant has an adequate integrated plan for
- 31 the care, quality and safekeeping of marijuana from seed to sale;
- 32
- 33 f. The amount of taxes paid and other beneficial financial
- 34 contributions, including, without limitation, civic or
- 35 philanthropic involvement with this State or its political

1 subdivisions, by the applicant or the owners, officers or board  
2 members of the proposed marijuana establishment;

3 g. Whether the owners, officers or board members of the  
4 proposed marijuana establishment have direct experience with  
5 the operation of a medical marijuana establishment or marijuana  
6 establishment in this State and have demonstrated a record of  
7 operating such an establishment in compliance with the laws and  
8 regulations of this State for an adequate period of time to  
9 demonstrate success;

10 h. The experience of key personnel that the applicant intends  
11 to employ in operating the type of marijuana establishment for  
12 which the applicant seeks a license; and

13 i. Any other criteria that the Department determines to  
14 be relevant.

15 33. NAC 453D.255, enacted by Defendant DOT in contravention of NRS  
16 Chapter 453D and implemented by Defendant PUPO and his  
17 subordinates, provides as follows:

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

23 2. If, in the judgment of the Department, the public interest  
24 will be served by requiring any owner with an ownership interest  
25 of less than 5 percent in a marijuana establishment to comply  
26 with any provisions of this chapter concerning owners of  
27 marijuana establishments, the Department will notify that owner  
28 and he or she must comply with those provisions.

34. Defendant DOT also enacted NAC 453D.258, NAC 453D.260, NAC  
453D.265, NAC 453D.268 and NAC 453D.272. These administrated

1 codes enforced by Defendant PUPPO and his subordinates established the  
2 procedures for recreational application process, fees to be charged for  
3 applying, fees to be charged for applying if the applicant holds a medical  
4 marijuana establishment registration certificate, and the ranking of  
5 applications if the Defendant D.O.T. received more than one application  
6 for a retail marijuana license.  
7

8 35. The application published by the DOT described how applications were  
9 to be scored, dividing scoring criteria into identified criteria and non-  
10 identified criteria.  
11

12 36. The application provided that "[**applications that have not**  
13 **demonstrated a sufficient response related to the criteria set forth**  
14 **above will not have additional [unspecified, unpublished] criteria**  
15 **considered in determining whether to issue a license and will not**  
16 **move forward win the application process.**" (emphasis added).  
17

18 37. NAC 453D.272(1) required the DOT to determine that an application is  
19 "complete and in compliance" with the provisions of NAC 453D in order  
20 to properly apply the licensing criteria set forth therein and the  
21 provisions of BQ2 and NRS 453D.  
22

23 38. No later than December 5, 2018, the DOT was responsible for issuing  
24 conditional licenses to those applicants who score and rank high enough  
25 in each jurisdiction to be awarded one of the allocated licenses in  
26  
27  
28



1 accordance with the impartial bidding process mandated by NRS  
2 453D.210.

3 39. The DOT identified, hired, and trained eight individuals as temporary  
4 employees to grade the applications in accordance with the provisions of  
5 BQ2 and NRS 453D.  
6

7 **C. Plaintiff's Application**

8 41. Plaintiff submitted applications to the DOT for a conditional licenses to  
9 own and operate recreational marijuana retail stores in compliance with  
10 the specified, published requirements of DOT regulations together with  
11 the required application fee in accordance with NRS 453D.210.  
12

13 42. Plaintiff's applications identified each prospective owner, officer, and  
14 board member for background check pursuant to NRS 453D.200(6).  
15

16 43. Plaintiff secured and identified in its application addresses for each and  
17 every proposed recreational marijuana establishment it intended to  
18 operate.  
19

20 44. Plaintiff was informed by letter from the DOT that its applications to  
21 operate recreational marijuana retail stores was denied "because it did  
22 not achieve a score high enough to receive an available license."  
23

24 45. On May 24, 2019, the Honorable Elizabeth Gonzales conducted an  
25 evidentiary hearing concerning a motion for preliminary injunction  
26 sought by a group of unsuccessful applicants for retail marijuana  
27 licenses in Nevada against Defendant D.O.T. The hearing concluded on  
28

1 August 16, 2019. Thereafter, Judge Gonzales issued her findings of fact,  
2 conclusions of law granting preliminary injunction. See Findings of Fact  
3 and Conclusions of Law Granting Preliminary Injunction, filed August 23,  
4 2019, Clark County District Court Case No. A-19-786962-B. Among her  
5 findings, Judge Gonzales found that the DOT undertook no effort to  
6 determine if the applications were in fact “complete and in compliance.”  
7 Id., par. 37.  
8

9  
10 46. Judge Gonzales also found that the DOT departed from the mandatory  
11 language of NRS 453D.200(6) requiring “a background check of each  
12 prospective owner, officer, and board member of a marijuana  
13 establishment license applicant” and made no attempt in the application  
14 process to verify that the applicant’s complied with the mandatory  
15 language of the BQ2 or even the impermissibly modified language.” Id.,  
16 par. 41.  
17

18 47. The DOT improperly issued conditional licenses to applicants who did  
19 not disclose in their application an actual physical address for proposed  
20 retail recreational marijuana establishment.  
21

22 48. Upon information and belief, the DOT’s denial of Plaintiff’s licenses  
23 applications was not properly based upon actual implementation of the  
24 impartial and objective bidding process mandated by NRS 453D.210, but  
25 was based upon arbitrary and capricious exercise of administrative  
26  
27  
28

1 partiality and favoritism that was the policy and routine of the DOT as  
2 promulgated by Defendant PUPO and others in the DOT hierarchy.

3  
4 49. Upon information and belief, the temporary employees hired by the DOT  
5 were inadequately and improperly trained regarding the scoring process,  
6 leading to an arbitrary scoring process in contravention of Nevada law.

7  
8 50. Upon information and belief, the DOT undertook no effort to determine  
9 whether applications were in fact “complete and in compliance.”

10  
11 51. By revising the application on July 30, 2018 and selectively eliminating  
12 the requirement to disclose an actual physical address for each proposed  
13 retail recreational marijuana establishment, the DOT limited the ability  
14 of the temporary employees to adequately assess graded criteria such as  
15 (i) prohibited proximity to schools and certain other public facilities, (ii)  
16 impact on the community, (iii) security, (iv) building plans and (v) other  
17 material considerations prescribed by the regulations.

18  
19 52. The DOT's scoring process was impacted by its selective elimination of  
20 the requirement to disclose an actual physical address for each proposed  
21 retail recreational marijuana establishment, resulting in incomplete  
22 applications being considered and awarding of conditional licenses.

23  
24 53. Upon information and belief, the DOT selectively discussed with  
25 applicants or their agents the modification of the application related to  
26 physical address information,  
27

- 1 54. Upon information and belief, the DOT undertook no effort to verify  
2 owners, officers or board members in evaluating whether an application  
3 was "complete and in compliance."  
4
- 5 55. Upon information and belief, if an applicant's disclosure in its application  
6 of its owners, officers, and board members did not match the DOT's  
7 records, the DOT permitted the grading, and in some cases, awarded a  
8 conditional license.  
9
- 10 56. Upon information and belief, the DOT departed from the mandatory  
11 requirements of NRS 453D.200(6), which provides that "[t]he DOT shall  
12 conduct a background check of each prospective owner, officer, and  
13 board member of a marijuana establishment license application," by  
14 adopting NAC 453D.255(1), which only required information on the  
15 application from persons "with an aggregate ownership interest of 5  
16 percent or more in a marijuana establishment."  
17
- 18 57. The DOT's determination that only owners of a 5% or greater interest in  
19 the business were required to submit information on the application was  
20 an impermissible regulatory modification of BQ2 and violated Article 19,  
21 Section 3 of the Nevada Constitution.  
22
- 23 58. The adoption of NAC 453D.255(1) as it applied to the marijuana  
24 establishment license application process was an unconstitutional  
25 modification of BQ2.  
26  
27  
28

- 1 59. The failure of the DOT to carry out the mandatory provisions of NRS  
2 53D.200(6), which required the DOT to conduct a background check of  
3 each prospective owner, officer, and board member of a marijuana  
4 establishment license applicant, is fatal to the application process and  
5 impedes an important public safety goal in BQ2.  
6
- 7 60. By adopting regulations in violation of BQ2's mandatory application  
8 requirements, the DOT violated Article 19, Section 2(3) of the Nevada  
9 Constitution.  
10
- 11 61. The DOT disregarded the voters' mandate in BQ2 when it decided the  
12 requirement that each prospective owner be subject to a background  
13 check was too difficult for implementation by industry. This decision was  
14 a violation of the Nevada Constitution, arbitrary and capricious.  
15
- 16 62. The DOT did not comply with BQ2 by requiring applicants to provide  
17 information for each prospective owner, officer and board member or  
18 verify ownership of applicants who applying for retail recreational  
19 marijuana licenses.  
20
- 21 63. The DOT's inclusion of the diversity category in the factors was  
22 implemented in a way that created a process which was subject to  
23 manipulation by applicants.  
24
- 25 64. The DOT's scoring process was impacted by personal relationships in  
26 decisions related to the requirements of the application and the  
27 ownership structures of competing applicants.  
28

1 65. Due to the DOT's violations of BQ2, Plaintiff was unconstitutionally  
2 denied recreational marijuana licenses.

3 66. The DOT's constitutional violations and refusal to issue conditional  
4 licenses to Plaintiff resulted in irreparable harm to Plaintiff.  
5

#### 6 **IV. CLAIMS FOR RELIEF**

##### 7 **FIRST CLAIM FOR RELIEF** 8 **(Declaratory Relief)**

9  
10 67. Plaintiff repeats and re-alleges all prior paragraphs as though fully set  
11 forth herein.

12 68. A justiciable controversy exists that warrants a declaratory judgment  
13 pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010  
14 to 30.160, inclusive.  
15

16 69. Plaintiff and Defendant have adverse and/or competing interests as the  
17 DOT, through its Marijuana Enforcement Division, has denied the  
18 application that violates Plaintiff's Constitutional Rights, Nevada law,  
19 and State policy.  
20

21 70. The DOT's refusal to issue Plaintiff a conditional license affects Plaintiff's  
22 rights afforded by NRS 453D, NAC 453D, R092-17, and other Nevada  
23 laws and regulations.

24 71. The DOT's improper ranking of other applicants for a recreational  
25 marijuana establishment license and the DOT's subsequent, improper  
26 issuance to each of a conditional license also affects the rights of Plaintiff  
27  
28

afforded to it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

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

73. The DOT's actions and/or inactions failed to appropriately address the necessary considerations and intent of BQ2 and NRS 453D.210, designed to restrict monopolies.

74. On August 23, 2019, Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case No. A-19-786962-B, issued an Order Granting Preliminary Injunction enjoining the DOT "from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits."

75. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

- a. The Department improperly denied Plaintiff conditional licenses for the operation for a recreational marijuana establishments;
- b. The denial of conditional licenses to Plaintiff is void ab initio;

- c. The procedures employed in the denial violated Plaintiff's procedural, substantive due process rights and equal protection rights under the Nevada and United States Constitutions and therefore, the denial is void and unenforceable;
- d. The denial violates Plaintiff's substantive due process rights and equal protection rights under the Nevada and United States Constitutions and, therefore, the denial is void and unenforceable;
- e. The denial is void for vagueness and therefore unenforceable;
- f. Defendant acted arbitrarily and capriciously or in contravention of a legal duty and Plaintiff is therefore entitled to a writ of mandamus;
- g. Plaintiff is entitled to judicial review; and
- h. The DOT's denial lacked substantial evidence.

76. Plaintiff also seeks a declaration from this Court that the DOT must revoke the conditional licenses of those applicants whose applications are not in compliance with Nevada law.

77. Plaintiff also seeks a declaration from this Court that the DOT must issue Plaintiff conditional licenses for the operation of a recreational marijuana establishments applied for.

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



1 79. Plaintiff is entitled to reasonable attorney's fees and costs.

2 **SECOND CLAIM FOR RELIEF**  
3 **(Permanent Injunction)**

4  
5 80. Plaintiff repeats and re-alleges all prior paragraphs as though fully set  
6 forth herein.

7 81. The DOT's refusal to issue conditional licenses in violation of the  
8 mandatory provisions of Nevada law set forth above causes and  
9 continues to cause Plaintiff irreparable harm with no adequate remedy  
10 at law.  
11

12 82. The purpose of the DOT's refusal was and is to unreasonably interfere  
13 with Plaintiff's business and is causing Plaintiff to suffer irreparable  
14 harm.  
15

16 83. The DOT will suffer no harm by following the law with respect to issuing  
17 conditional licenses.

18 84. The DOT has violated the mandatory provisions of NRS 453D, NAC 453D  
19 and RO292-17, and Plaintiff is likely to succeed on the merits of this  
20 litigation.  
21

22 85. The public interest favors Plaintiff because in the absence of injunctive  
23 relief, the consumers who would have benefitted will have less available  
24 options from which they can purchase recreational marijuana.  
25

26 86. Therefore, Plaintiff is entitled to a permanent injunction ordering the DOT  
27 to issue conditional licenses to Plaintiff in accordance with Nevada law.  
28

**THIRD CLAIM FOR RELIEF**  
**(Violation of 42 USC 1983 by Defendants Jorge Pupo and Department of Taxation)**

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

88. The Fourteenth Amendment to the United States Constitution provides that "no state [may] deprive any person of life, liberty, or property, without due process of law....nor shall any State...deny to any person within its jurisdictions the equal protection of the laws."

89. Plaintiff is a person within the meaning of the the United States Constitution guarantees of due process. Plaintiff's managers and members are also of Latino descent warranting strict scrutiny of Plaintiff's claim for a violation of 42 USC 1983.

91. Plaintiff and those similarly situated have a protected property interest in the recreational license application process deriving from the mandatory statutory language in NRS 453D, NAC453D and R092-17 as set forth above. See *Board of Regents v. Roth*, 408 U.S., 577 (1972) and *Goodisman v. Lytle*, 724 F.2d 818, 820 (9<sup>th</sup> Cir. 1984).

92. The arbitrary and illegal conduct of the DOT and Defendant JORGE PUPO have deprived Plaintiff of the guarantees afforded by the Nevada Constitution and the United States Constitution as set forth in paragraphs 83 and 84 above. Specifically, Defendant PUPO on behalf of

1 and at the behest of Defendant DOT committed the following arbitrary  
2 and illegal conduct:

- 3 • Defendant PUPO ignored NRS 453D.210's requirement that  
4 each recreational application must contain background  
5 checks on all owners.
- 6 • Defendant PUPO ignored NRS Chapter 453's requirement  
7 that each application must contain a physical address of the  
8 location of the proposed recreational establishment and  
9 directed his staff to score and rank those applications that  
10 did not include a physical address and further deducted  
11 points from applicants who did include a physical address.
- 12 • Although the law required the DOT to take into consideration  
13 applicants' compliance with Nevada law relative to operating  
14 a marijuana establishment, Defendant PUPO directed his  
15 staff not to consider compliance in the recreational  
16 marijuana applications.

17 93. Plaintiff was not given a meaningful opportunity to be heard at a  
18 consequential time which was fundamentally unfair and violated  
19 procedural and substantive due process as afforded by the Nevada and  
20 United States Constitution.

21 94. Plaintiff's injury as described above by the failure of the DOT and  
22 Defendant PUPO to follow the mandate of Nevada law explicitly set forth  
23  
24  
25  
26  
27  
28

1 above is a result of Defendants' official policy and/or custom to deprive  
2 Plaintiff and those similarly situated of the rights and entitlements  
3 afforded to them under the Nevada and United States Constitution.  
4

5 95. Defendants the DOT and PUPO conducted illegal and unconstitutional  
6 actions described above under color of state Law.

7 96. While acting under color of state law, Defendants' actions described  
8 above where the official policy and/or custom of Defendants to deprive  
9 Plaintiff and those similarly situated of their constitutional rights  
10 afforded to them under the Nevada and United States Constitution,  
11 specifically the 14<sup>th</sup> Amendment to the United States Constitution and  
12 Article 1, Section 8 of the Nevada Constitution. Specifically, Defendants  
13 through Defendant PUPO and his subordinates, directed the  
14 unconstitutional and illegal conduct in violation of the Nevada and  
15 United States Constitution. Moreover, Defendants had direct and actual  
16 knowledge of the violations and/or were deliberately indifferent to the  
17 constitutional violations that harmed Plaintiff.  
18

19 97. The harm occasioned upon Plaintiff resulting from Defendants' illegal  
20 and unconstitutional conduct, in addition, resulted from inadequate  
21 supervision, training, and screening of agents/employees of the DOT.  
22

23 98. As a direct and proximate result of Defendants' violations of Plaintiff's  
24 rights afforded to him under the Nevada and United States Constitution,  
25 Defendants are liable to Plaintiff for damages pursuant to 42 USC 1983.  
26  
27  
28

Moreover, because Defendant PUPO's conduct was reckless and/or showed callous indifference to the federally protected rights of Plaintiff, punitive damages should be awarded.

99. Moreover, pursuant 42 USC 1988, Plaintiff is entitled to its reasonable attorney's fees and costs.

**FOURTH CLAIM FOR RELIEF  
(Petition for Judicial Review)**

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

101. The DOT, in failing to comply with the mandatory directive in issuing recreational licenses as set for under Nevada law more fully described above, has exceeded its jurisdiction by issuing conditional licenses to applicants that do not merit them.

102. Plaintiff is aggrieved by the decision of the DOT to deny Plaintiffs' application without proper notice, substantial evidence, or in compliance with Nevada law more fully described above.

103. Nevada law does not allow for an administrative appeal of the DOT's decision, and apart from injunction relief, no plain, speedy and adequate remedy for the DOT's violations.

104. Accordingly, Plaintiff petitions this Court for judicial review of the record on which the DOT's denial was based, including but not limited to

a. A determination that the decision lacked substantial evidence;

1           b. A determination that the denial is void ab initio for non-compliance  
2           with NRS 453D, NAC 453D, R092-17 and other Nevada state laws  
3           or regulations; and

4  
5           c. Other relief consistent with those determinations.

6 105. Plaintiff has found it necessary to retain the legal services of Ramos  
7 Law, LLC to bring this action, and Plaintiff is entitled to recover its  
8 reasonable attorneys' fees and costs therefor.

9  
10                           **FIFTH CLAIM FOR RELIEF**  
11                           **(Petition for Writ of Mandamus)**

12 106. Plaintiff repeats and re-alleges all prior paragraphs as though fully set  
13 forth herein.

14 107. When a governmental body fails to perform an act "that the law requires"  
15 or acts in an arbitrary or capricious manner, a writ of mandamus shall  
16 issue to correct the action. NRS 34.160.

17 108. The DOT failed to perform acts that the law requires including, but not  
18 limited to:

- 19  
20           a. Providing proper pre-hearing notice of the denial;  
21           b. Arbitrarily, capriciously and illegally denying Plaintiffs' applications  
22           for recreational licenses for no legitimate reasons.

23  
24 109. The DOT acted arbitrarily, capriciously and illegally in the denial by  
25 performing or failing to perform the acts enumerated above and because,  
26 *inter alia*:

- 27           a. Lack of substantial evidence to deny the application; and  
28

1           b. The denial was made solely to approve other competing applications  
2           without regard to Nevada law as more specifically described above.  
3  
4 110. These violations of the DOT's legal duties were arbitrary and capricious  
5           actions  
6           that compel this Court to issue a Writ of Mandamus directing the  
7           department to approve Plaintiffs' license applications and issue Plaintiff  
8           conditional licenses.

9  
10                   **SIXTH CLAIM FOR RELIEF PLED IN THE ALTERNATIVE**  
11                   **(Unjust Enrichment)**

12 111.       Plaintiff repeats and re-alleges all prior paragraphs as though fully  
13           set forth herein.

14 112.       Plaintiff applied for recreational marijuana licenses in accordance  
15           with NRS Chapter 453D and the regulations and rules promulgated by  
16           the DOT.

17 113.       Plaintiff applied for these licenses because NRS Chapter 453's  
18           mandate that did not allow the DOT to "pick and choose" winners and  
19           losers at their whim, but provided specific, mandatory criterion that the  
20           DOT was obligated to comply with in awarding the recreational  
21           marijuana licenses.  
22

23 114.       Plaintiff paid to the DOT in excess of \$300,000 to apply for the  
24           recreational marijuana licenses that as of the date of the filing of this  
25           complaint, the DOT has not returned.  
26  
27  
28

1 115. In the event that this Court finds that Plaintiff is not entitled to the relief  
2 requested in the first through fifth claims for relief, under the  
3 circumstances as alleged in this Complaint, it would be unjust for the  
4 DOT to retain the benefit of Plaintiff's expenditures to apply for the  
5 recreational marijuana licenses.  
6

7 116. As a direct and proximate result of the DOT being unjustly  
8 enriched, Plaintiff has incurred damages in excess of \$15,000.00.  
9

#### 10 **V. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

- 12 1. For declaratory relief set forth above;
- 13 2. For a preliminary and permanent injunction enjoining the enforcement  
14 of the denial;
- 15 3. For judicial review of the record and history on which the denial was  
16 based;
- 17 4. For issuance of a writ of mandamus;
- 18 5. For compensatory, special, consequential and punitive damages in  
19 excess of \$15,000 on those causes of action that damages are available.  
20
- 21 6. For attorney's fees and costs of suit; and
- 22 7. For all other and further relief as the Court deems proper and just.  
23

#### 24 **VI. JURY DEMAND**

25  
26  
27  
28



1 Comes now Plaintiff RURAL REMEDIES, LLC and pursuant to NRCP 38,  
2 demands a jury trial on all the issues so triable above, including Plaintiff's  
3 cause of action for violation of 42 USC 1983.  
4

5 DATED this 26th day of March, 2020.

6 RAMOS LAW  
7

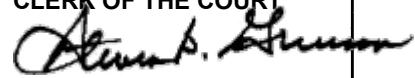
8 /s/ Clarence Gamble  
9 Clarence Gamble, Esq.  
10 Nevada Bar No. 4268  
11 3000 Youngfield Street, Suite 200  
12 Wheat Ridge, CO 80215

13 Attorney for Plaintiff Rural Remedies, LLC  
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/s/ Gail L. May

37



1 **ACOM**  
THEODORE PARKER, III, ESQ.  
2 Nevada Bar No. 4716  
MAHOGANY TURFLEY, ESQ.  
3 Nevada Bar No. 13974  
**PARKER, NELSON & ASSOCIATES, CHTD.**  
4 2460 Professional Court, Suite 200  
Las Vegas, Nevada 89128  
5 Telephone: (702) 868-8000  
Facsimile: (702) 868-8001  
6 Email: [tparker@pnalaw.net](mailto:tparker@pnalaw.net)  
Email: [mturfley@pnalaw.net](mailto:mturfley@pnalaw.net)

7 *Attorneys for Plaintiff,*  
8 *Nevada Wellness Center, LLC*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 In Re: D.O.T. Litigation,

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

**Consolidated with:**

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

**Dept. No.: XI**

Arbitration Exemption Claimed:

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

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21 **SECOND AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW**  
22 **OR WRIT OF MANDAMUS**

23 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "Plaintiff"), by  
24 and through its attorneys of record, THEODORE PARKER, III, ESQ. and MAHOGANY TURFLEY,  
25 ESQ. of the law firm of PARKER, NELSON & ASSOCIATES, CHTD., and hereby complains against  
26 Defendants, STATE OF NEVADA, DEPARTMENT OF TAXATION; JORGE PUPO; and DOES  
27 I through X and ROE CORPORATIONS I through X, and petitions this Court for Writ of Mandamus  
28 as follows:

///

I.

**PARTIES & JURISDICTION**

1. Plaintiff, NEVADA WELLNESS CENTER, LLC, is a Nevada Limited Liability Company duly licensed under the laws of the State of Nevada.

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

3. Defendant JORGE PUPO, at all material times mentioned herein, was the Deputy Executive Director, Department of Taxation, Marijuana Enforcement Division and it was his responsibility to implement Nevada law in the award of recreational licenses as more fully described below.

4. The following Defendants all applied for recreational marijuana licenses and are being named in accordance with the Nevada Administration Procedure Act.

**A. Defendants Who Received Conditional Recreational Retail Marijuana Establishment Licenses**

5. Upon information and belief, Defendant Cheyenne Medical, LLC is a Nevada limited liability company doing business under the fictitious firm names Thrive Cannabis Marketplace, Thrive, and/or Cheyenne Medical.

6. Upon information and belief, Defendant Circle S Farms, LLC is a Nevada limited liability company doing business under the fictitious firm names Canna Straz, and/or Circle S.

7. Upon information and belief, Defendant Clear River, LLC is a Nevada limited liability company doing business under the fictitious firm names United States Marijuana Company, United States Medical Marijuana, Nevada Medical Marijuana, Clear River Wellness, Clear River Infused, Nevada Made Marijuana, Greenwolf Nevada, Farm Direct Weed, Atomicrockz, and/or Giddystick.

8. Upon information and belief, Defendant Commerce Park Medical L.L.C. is a Nevada limited liability company doing business under the fictitious firm names Thrive Cannabis Marketplace, LivFree Las Vegas, and/or Commerce Park Medical.

///

- 1           9.       Upon information and belief, Defendant Deep Roots Medical LLC is a Nevada limited  
2 liability company doing business under the fictitious firm name Deep Roots Harvest.
- 3           10.      Upon information and belief, Defendant Essence Henderson, LLC is a Nevada limited  
4 liability company doing business under the fictitious firm name Essence Cannabis Dispensary. Upon  
5 information and belief, Defendant Essence Tropicana, LLC is a Nevada limited liability company  
6 doing business under the fictitious firm name Essence.
- 7           11.      Upon information and belief, Defendant Eureka NewGen Farms LLC is a Nevada  
8 limited liability company doing business under the fictitious firm name Eureka NewGen Farms.
- 9           12.      Upon information and belief, Defendant Green Therapeutics LLC is a  
10 Nevada limited liability company doing business under the fictitious firm name Provisions.
- 11          13.      Upon information and belief, Defendant Greenmart of Nevada NLV, LLC is a Nevada  
12 limited liability company doing business under the fictitious firm name Health for Life.
- 13          14.      Upon information and belief, Defendant Helping Hands Wellness Center, Inc. is a  
14 Nevada corporation doing business under the fictitious firm names Cannacare, Green Heaven Nursery,  
15 and/or Helping Hands Wellness Center.
- 16          15.      Upon information and belief, Defendant Lone Mountain Partners, LLC is a Nevada  
17 limited liability company doing business under the fictitious firm names Zenleaf, Siena, Encore  
18 Cannabis, Bentleys Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.
- 19          16.      Upon information and belief, Defendant Nevada Organic Remedies LLC is a Nevada  
20 limited liability company doing business under the fictitious firm names The Source and/or The Source  
21 Dispensary.
- 22          17.      Upon information and belief, Defendant Polaris Wellness Center L.L.C. is a Nevada  
23 limited liability company doing business under the fictitious firm names Polaris MMJ.
- 24          18.      Upon information and belief, Defendant Pure Tonic Concentrates LLC is a Nevada  
25 limited liability company doing business under the fictitious firm names Green Heart and/or Pure  
26 Tonic.
- 27          19.      Upon information and belief, Defendant TRNVP098 LLC is a Nevada limited liability  
28 company doing business under the fictitious firm names Grassroots and/or Taproot Labs.

1           20.     Upon information and belief, Defendant Wellness Connection of Nevada, LLC is a  
2 Nevada limited liability company doing business under the fictitious firm name Cultivate Dispensary.

3           21.     On information and belief, DOES 1-100 are each Nevada individuals and residents or  
4 Nevada entities whose identities are unknown.

5           22.     Upon information and belief, the Defendants/Respondents identified in Paragraphs 4-20  
6 were granted conditional recreational dispensary licenses by the Department on or after December 5,  
7 2018 (the "Successful Applicants").

8 **B.     Defendants Who Were Denied Conditional Recreational Dispensary Licenses**

9           23.     Upon information and belief, Defendant D.H. Flamingo, Inc., d/b/a The Apothecary  
10 Shoppe is a Nevada corporation.

11          24.     Upon information and belief, Defendant Clark Natural Medicinal Solutions LLC, d/b/a  
12 NuVeda; Nye Natural Medicinal Solutions LLC d/b/a NuVeda; and Clark NMSD LLC, d/b/a NuVeda  
13 are each a Nevada limited liability company.

14          25.     Upon information and belief, Defendant Inyo Fine Cannabis Dispensary L.L.C., d/b/a  
15 Inyo Fine Cannabis Dispensary ("Inyo") is a Nevada limited liability company.

16          26.     Upon information and belief, Defendant 3AP Inc. is a Nevada corporation doing  
17 business under the fictitious firm names Nature's Chemistry, Sierra Well, and/or Nevada Cannabis.

18          27.     Upon information and belief, Defendant 5Seat Investments LLC is a Nevada limited  
19 liability company doing business under the fictitious firm name Kanna.

20          28.     Upon information and belief, Defendant Acres Dispensary LLC is a Nevada limited  
21 liability company doing business under the fictitious firm name Acres Dispensary.

22          29.     Upon information and belief, Defendant Acres Medical LLC is a Nevada limited  
23 liability company doing business under the fictitious firm name Acres Cannabis.

24          30.     Upon information and belief, Defendant Agua Street LLC is a Nevada limited liability  
25 company doing business under the fictitious firm names Curaleaf and/or Agua Research & Wellness  
26 Center.

27 ///

28 ///

1           31.    Upon information and belief, Defendant Alternative Medicine Association, LC is a  
2 Nevada limited liability company doing business under the fictitious firm name AMA MFG, AMA  
3 Production, and/or AMA Cultivation.

4           32.    Upon information and belief, Defendant Bioneva Innovations of Carson City LLC is  
5 a Nevada limited liability company doing business under the fictitious firm name BioNeva.

6           33.    Upon information and belief, Defendant/Respondent Blossum Group LLC is a Nevada  
7 limited liability company doing business under the fictitious firm name Healing Herb.

8           34.    Upon information and belief, Defendant/Respondent Blue Coyote Ranch LLC is a  
9 Nevada limited liability company doing business under the fictitious firm name Blue Coyote Ranch.

10          35.    Upon information and belief, Defendant/Respondent Carson City Agency Solutions  
11 L.L.C. is a Nevada limited liability company doing business under the fictitious firm name CC Agency  
12 Solutions.

13          36.    Upon information and belief, Defendant CN Licenseco I, Inc. is a Nevada corporation  
14 doing business under the fictitious firm names CanaNevada and/or Flower One.

15          37.    Upon information and belief, Defendant Compassionate Team Of Las Vegas LLC is  
16 a Nevada limited liability company;

17          38.    Upon information and belief, Defendant CWNevada, LLC is a Nevada limited liability  
18 company doing business under the fictitious firm name Canopi.

19          39.    Upon information and belief, Defendant D Lux LLC is a Nevada limited liability  
20 company doing business under the fictitious firm name D Lux.

21          40.    Upon information and belief, Defendant Diversified Modalities Marketing Ltd. is a  
22 Nevada limited liability company doing business under the fictitious firm names Galaxy Growers  
23 and/or Diversified Modalities Marketing.

24          41.    Upon information and belief, Defendant DP Holdings, Inc. is a Nevada corporation  
25 doing business under the fictitious firm name Compassionate Team of Las Vegas.

26          42.    Upon information and belief, Defendant EcoNevada, LLC is a Nevada limited liability  
27 company doing business under the fictitious firm name Marapharm.

28    ///

1           43.     Upon information and belief, Defendant ETW Management Group LLC is a Nevada  
2 limited liability company doing business under the fictitious firm name Gassers.

3           44.     Upon information and belief, Defendant Euphoria Wellness LLC is a Nevada limited  
4 liability company doing business under the fictitious firm names Euphoria Wellness, Even Cannabis,  
5 Euphoria Marijuana, and/or Summa Cannabis.

6           45.     Upon information and belief, Defendant Fidelis Holdings, LLC. is a Nevada limited  
7 liability company doing business under the fictitious firm name Pisos.

8           46.     Upon information and belief, Defendant Forever Green, LLC is a Nevada limited  
9 liability company doing business under the fictitious firm name Forever Green.

10          47.     Upon information and belief, Defendant Franklin Bioscience NV LLC is a Nevada  
11 limited liability company doing business under the fictitious firm names Lucky Edibles, Altus, and/or  
12 Beyond Hello.

13          48.     Upon information and belief, Defendant FSWFL, LLC is a Nevada limited liability  
14 company doing business under the fictitious firm name Green Harvest.

15          49.     Upon information and belief, Defendant GB Sciences Nevada LLC is a Nevada limited  
16 liability company doing business under the fictitious firm name GB Science.

17          50.     Upon information and belief, Defendant GBS Nevada Partners LLC is a Nevada limited  
18 liability company doing business under the fictitious firm name ShowGrow.

19          51.     Upon information and belief, Defendant GFive Cultivation LLC is a Nevada limited  
20 liability company doing business under the fictitious firm names G5 and/or GFiveCultivation.

21          52.     Upon information and belief, Defendant Global Harmony LLC is a Nevada limited  
22 liability company doing business under the fictitious firm names as Top Notch Health Center, Top  
23 Notch, The Health Center, Tetra Research, The Health Center, and/or Top Notch.

24          53.     Upon information and belief, Defendant Good Chemistry Nevada, LLC is a Nevada  
25 limited liability company doing business under the fictitious firm name Good Chemistry.

26          54.     Upon information and belief, Defendant Gravitas Henderson L.L.C. is a Nevada limited  
27 liability company doing business under the fictitious firm name Better Buds.

28     ///



1           55.     Upon information and belief, Defendant Gravitass Nevada Ltd. is a Nevada limited  
2 liability company doing business under the fictitious firm names The Apothecarium Las Vegas, The  
3 Apothecarium Nevada, and/or the Apothecarium Henderson.

4           56.     Upon information and belief, Defendant Green Leaf Farms Holdings LLC is a Nevada  
5 limited liability company doing business under the fictitious firm name Players Network.

6           57.     Upon information and belief, Defendant Green Life Productions LLC is a Nevada  
7 limited liability company doing business under the fictitious firm name Green Life Productions.

8           58.     Upon information and belief, Defendant Greenleaf Wellness, Inc. is a Nevada  
9 corporation doing business under the fictitious firm name Greenleaf Wellness.

10          59.     Upon information and belief, Defendant Greenpoint Nevada Inc. is a Nevada  
11 corporation doing business under the fictitious firm name Chalice Farms.

12          60.     Upon information and belief, Defendant Greenscape Productions LLC is a Nevada  
13 limited liability company doing business under the fictitious firm name Herbal Wellness Center.

14          61.     Upon information and belief, Defendant Greenway Health Community L.L.C. is a  
15 Nevada limited liability company doing business under the fictitious firm name Greenway Health  
16 Community LLC.

17          62.     Upon information and belief, Defendant Greenway Medical LLC is a Nevada limited  
18 liability company doing business under the fictitious firm names GWM and/or Greenway Las Vegas.

19          63.     Upon information and belief, Defendant GTI Nevada, LLC is a Nevada limited liability  
20 company doing business under the fictitious firm name Rise.

21          64.     Upon information and belief, Defendant H&K Growers Corp. is a Nevada corporation  
22 doing business under the fictitious firm name H&K Growers.

23          65.     Upon information and belief, Defendant Harvest of Nevada LLC is a Nevada limited  
24 liability company doing business under the fictitious firm name Harvest.

25          66.     Upon information and belief, Defendant Healthcare Options for Patients Enterprises,  
26 LLC is a Nevada limited liability company doing business under the fictitious firm names Shango  
27 and/or Hope.

28     ///

1           67.     Upon information and belief, Defendant Helios NV LLC is a Nevada limited liability  
2 company doing business under the fictitious firm names Hydrovize, Helios NV and/or Helios Nevada.

3           68.     Upon information and belief, Defendant Herbal Choice Inc. is a Nevada corporation  
4 doing business under the fictitious firm name Herbal Choice.

5           69.     Upon information and belief, Defendant is a High Sierra Cultivation LLC is a Nevada  
6 limited liability company doing business under the fictitious firm name High Sierra.

7           70.     Upon information and belief, Defendant High Sierra Holistics, LLC is a Nevada limited  
8 liability company doing business under the fictitious firm names HSH, and/or High Sierra Holistics.

9           71.     Upon information and belief, Defendant International Service and Rebuilding, Inc. is  
10 a Nevada corporation doing business under the fictitious firm name VooDoo.

11          72.     Upon information and belief, Defendant Just Quality, LLC is a Nevada limited liability  
12 company doing business under the fictitious firm name Panacea Cannabis.

13          73.     Upon information and belief, Defendant Kindibles LLC is a Nevada limited liability  
14 company doing business under the fictitious firm name Area 51.

15          74.     Upon information and belief, Defendant Las Vegas Wellness and Compassion LLC is  
16 a Nevada limited liability company doing business under the fictitious firm name Pegasus Nevada.

17          75.     Upon information and belief, Defendant Libra Wellness Center, LLC is a Nevada  
18 limited liability company doing business under the fictitious firm name Libra Wellness.

19          76.     Upon information and belief, Defendant Livfree Wellness LLC is a Nevada limited  
20 liability company doing business under the fictitious firm name The Dispensary.

21          77.     Upon information and belief, Defendant LNP, LLC is a Nevada limited liability  
22 company doing business under the fictitious firm names LPN and/or Lynch Natural Products, LLC.

23          78.     Upon information and belief, Defendant Luff Enterprises NV, Inc. is a Nevada  
24 corporation doing business under the fictitious firm name Sweet Cannabis.

25          79.     Upon information and belief, Defendant LVMC C&P, LLC is a Nevada limited liability  
26 company doing business under the fictitious firm name CannaCopia.

27          80.     Upon information and belief, Defendant Malana LV L.L.C. is a Nevada limited liability  
28 company doing business under the fictitious firm name Malana LV.

1           81.     Upon information and belief, Defendant Matrix NV, LLC is a Nevada limited liability  
2 company doing business under the fictitious firm name Matrix NV.

3           82.     Upon information and belief, Defendant Medifarm IV, LLC is a Nevada limited liability  
4 company doing business under the fictitious firm name Blum Reno.

5           83.     Upon information and belief, Defendant Miller Farms LLC is a Nevada limited liability  
6 company doing business under the fictitious firm name Lucid.

7           84.     Upon information and belief, Defendant MM Development Company, Inc. is a Nevada  
8 corporation doing business under the fictitious firm names Planet 13 and/or Medizin.

9           85.     Upon information and belief, Defendant MM R&D LLC is a Nevada limited liability  
10 company doing business under the fictitious firm names Sunshine Cannabis and/or the Green Cross  
11 Farmacy.

12          86.     Upon information and belief, Defendant MMNV2 Holdings I, LLC is a Nevada limited  
13 liability company doing business under the fictitious firm name Medmen.

14          87.     Upon information and belief, Defendant MMOF Las Vegas Retail, Inc. is a Nevada  
15 corporation doing business under the fictitious firm names Panacea, MedMen, MedMen Las Vegas,  
16 Medmen the Airport, and/or MedMen Paradise.

17          88.     Upon information and belief, Defendant Natural Medicine L.L.C. is a Nevada limited  
18 liability company doing business under the fictitious firm name Natural Medicine No. 1.

19          89.     Upon information and belief, Defendant NCMM, LLC is a Nevada limited liability  
20 company doing business under the fictitious firm name NCMM.

21          90.     Upon information and belief, Defendant Nevada Botanical Science, Inc. is a Nevada  
22 corporation doing business under the fictitious firm name Vigor Dispensaries.

23          91.     Upon information and belief, Defendant Nevada Group Wellness LLC is a Nevada  
24 limited liability company doing business under the fictitious firm names Prime and/or NGW.

25          92.     Upon information and belief, Defendant Nevada Holistic Medicine LLC is a Nevada  
26 limited liability company doing business under the fictitious firm names MMJ America and/or Nevada  
27 Holistic Medicine.

28     ///

1           93.     Upon information and belief, Defendant Nevada Medical Group LLC is a Nevada  
2 limited liability company doing business under the fictitious firm names The Clubhouse Dispensary,  
3 Bam-Body, and/or Mind and King Cannabis.

4           94.     Upon information and belief, Defendant NevadaPure, LLC is a Nevada limited liability  
5 company doing business under the fictitious firm names Shango Las Vegas and/or Shango.

6           95.     Defendant Nevcan, LLC is a Nevada limited liability company doing business under  
7 the fictitious firm name Nev Cann.

8           96.     Defendant NLV Wellness LLC is a Nevada limited liability company doing business  
9 under the fictitious firm name ETHCX.

10          97.     Defendant NLVG, LLC is a Nevada limited liability company doing business under the  
11 fictitious firm name Desert Bloom Wellness Center.

12          98.     Defendant Nuleaf Incline Dispensary LLC is a Nevada limited liability company doing  
13 business under the fictitious firm name Nuleaf.

14          99.     Defendant NV 3480 Partners LLC is a Nevada limited liability company doing business  
15 under the fictitious firm name Evergreen Organix.

16          100.    Defendant NV Green Inc. is a Nevada corporation doing business under the fictitious  
17 firm name NV Green.

18          101.    Defendant Nye Farm Tech Ltd. is a Nevada limited liability company doing business  
19 under the fictitious firm name URBN Leaf.

20          102.    Defendant Paradise Wellness Center LLC is a Nevada limited liability company doing  
21 business under the fictitious firm name Las Vegas Releaf.

22          103.    Defendant Phenofarm NV LLC is a Nevada limited liability company doing business  
23 under the fictitious firm name Marapharm Las Vegas.

24          104.    Defendant Physis One LLC is a Nevada limited liability company doing business under  
25 the fictitious firm names Physis One and/or LV Fortress.

26          105.    Defendant Qualcan, L.L.C. is a Nevada limited liability company doing business under  
27 the fictitious firm name Qualcan.

28          ///

1           106. Defendant Red Earth, LLC is a Nevada limited liability company doing business under  
2 the fictitious firm name Red Earth

3           107. Defendant Releaf Cultivation, LLC is a Nevada limited liability company doing  
4 business under the fictitious firm name Releaf Cultivation.

5           108. Defendant RG Highland Enterprises Inc. is a Nevada corporation doing business under  
6 the fictitious firm name Tweedleaf.

7           109. Defendant Rombough Real Estate Inc. is a Nevada corporation doing business under  
8 the fictitious firm name Mother Herb.

9           110. Defendant Rural Remedies LLC is a Nevada limited liability company doing business  
10 under the fictitious firm name Doc's Apothecary.

11           111. Defendant Serenity Wellness Center LLC is a Nevada limited liability company doing  
12 business under the fictitious firm names Oasis Cannabis and/or Oasis Cannabis Dispensary.

13           112. Defendant Silver Sage Wellness LLC is a Nevada limited liability company.

14           113. Defendant Solace Enterprises, LLP is a Nevada limited liability limited partnership  
15 doing business under the fictitious firm names Thallo, Aether Gardens, @Hith LP and/or Aether  
16 Extracts.

17           114. Defendant Southern Nevada Growers, LLC is a Nevada limited liability company doing  
18 business under the fictitious firm name Bowtie Cannabis.

19           115. Defendant Strive Wellness of Nevada, LLC is a Nevada limited liability company doing  
20 business under the fictitious firm name Strive.

21           116. Defendant Sweet Goldy LLC is a Nevada limited liability company.

22           117. Defendant TGIG, LLC is a Nevada limited liability company doing business under the  
23 fictitious firm names The Grove, The Grove Wellness Center, Vert Infusibles and/or Vert Edibles.

24           118. Defendant THC Nevada LLC is a Nevada limited liability company doing business  
25 under the fictitious firm names Canna Vibe, FloraVega, and/or Welleaf.

26           119. Defendant The Harvest Foundation LLC is a Nevada limited liability company doing  
27 business under the fictitious firm name Harvest Foundation.

28 ///

1           120. Defendant Thompson Farm One L.L.C. is a Nevada limited liability company doing  
2 business under the fictitious firm names Green Zon, Gold Leaf, and/or Thompson Farm.

3           121. Defendant Tryke Companies Reno, LLC is a Nevada limited liability company doing  
4 business under the fictitious firm name Reef.

5           122. Defendant Tryke Companies SONV, LLC is a Nevada limited liability company doing  
6 business under the fictitious firm name Reef Dispensaries.

7           123. Defendant Twelve Twelve LLC is a Nevada limited liability company doing business  
8 under the fictitious firm names 12/12 Dispensary and/or Twelve Twelve.

9           124. Defendant Vegas Valley Growers LLC is a Nevada limited liability company doing  
10 business under the fictitious firm name Kiff Premium Cannabis.

11           125. Defendant Waveseer of Nevada, LLC is a Nevada limited liability company doing  
12 business under the fictitious firm name Jenny's Dispensary.

13           126. Defendant Wellness & Caregivers of Nevada NLV, LLC is a Nevada limited liability  
14 company doing business under the fictitious firm names MMD Las Vegas and/or Las Vegas Cannabis.

15           127. Defendant Wendovera LLC is a Nevada limited liability company doing business under  
16 the fictitious firm name Wendovera.

17           128. Defendant West Coast Development Nevada, LLC is a Nevada limited liability  
18 company doing business under the fictitious firm name Sweet Goldy.

19           129. Defendant WSCC, Inc. is a Nevada corporation doing business under the fictitious firm  
20 name Sierra Well.

21           130. Defendant YMY Ventures, LLC is a Nevada limited liability company doing business  
22 under the fictitious firm names Stem and/or Cannavore.

23           131. Defendant Zion Gardens LLC is a Nevada limited liability company doing business  
24 under the fictitious firm name Zion Garden.

25           132. On information and belief, ROES 1-100 are each Nevada individuals and residents or  
26 Nevada entities whose identities are unknown.

27           133. On information and belief, the Defendants/Respondents identified in Paragraphs 22-  
28 132 are natural persons or entities who are qualified holders of Medical Marijuana Establishment

1 ("MME") Certificates, who submitted an application to operate a recreational retail marijuana  
2 establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September  
3 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the "Denied  
4 Applicants").

5 134. The true names and capacities, whether individual, corporate, association or otherwise  
6 of the Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive, are  
7 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is  
8 informed and believes, and thereupon alleges, that each of the Defendants designated herein as DOES  
9 and/or ROE CORPORATIONS is responsible in some manner for the events and happenings herein  
10 referred to, and in some manner caused the injuries and damages to Plaintiff alleged herein. Plaintiff  
11 will ask leave of the Court to amend this Complaint to insert the true names and capacities of said  
12 Defendants DOES I through X and/or ROE CORPORATIONS I through X, inclusive when the same  
13 have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such  
14 Defendants in this action.

## 15 II.

### 16 JURISDICTION AND VENUE

17 135. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6,  
18 Section 6, NEA 4.370(2), NRS 30, and because the acts and omissions complained of herein occurred  
19 and caused harm throughout the State of Nevada, specifically in Clark County, Nevada. Further, the  
20 amount in controversy exceeds \$15,000.00.

21 136. Venue is proper pursuant to NRS 13.020.

## 22 III.

### 23 GENERAL ALLEGATIONS

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

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

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

9           140. The application period for licenses opened on September 7, 2018 and closed on  
10 September 20, 2018.

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

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



1 marijuana establishment or marijuana establishment in this State.

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

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

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

12 145. At that time, Plaintiff received a score of 198.62 and was ranked as the highest  
13 applicant for a medical marijuana dispensary in Las Vegas, Nevada and received a score of 193.62 and  
14 was ranked seventh highest applicant for a medical marijuana dispensary in the City of Henderson,  
15 Nevada.

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

18 147. The only major difference between the factors assessed for the 2015 rankings and the  
19 2018 rankings was the addition of diversity of race, ethnicity, or gender of applicants (owners, officers,  
20 board members) to the existing merit criteria.

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

24 149. On or about December 5, 2018, despite its prior exceptional rankings, Plaintiff was  
25 informed by the Department that all of its applications to operate recreational marijuana retail stores  
26 were denied.

27 150. Plaintiff is informed and believes that the Department improperly granted "conditional"  
28 licenses to applicants that were ranked substantially lower than Plaintiff on the 2015 rankings.

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

4           152. Plaintiff timely filed an Appeal and Petition for Reconsideration with the State of  
5 Nevada Department of Taxation on January 4, 2019.

6           153. Plaintiff is scheduled to meet with the Department of Taxation on January 17, 2019.

7           154. On January 10, 2019 the State of Nevada Department of Taxation notified Plaintiff that  
8 there is no allowance for an appeal and that it would take no further action based on Plaintiff's Notice  
9 of Appeal. See Exhibit 1.

10          155. Plaintiff not being satisfied with the results of its Appeal and Petition for  
11 Reconsideration, has exhausted its administrative remedies.

12          156. Plaintiff therefore files the present Complaint in order to pursue its legal rights and  
13 remedies.

14 **A.   The Marijuana Legislation and Regulations**

15          157. NRS Chapter 453D and NAC 453D are the statutory guidelines for legalized  
16 recreational marijuana in the State of Nevada. These statutes are incorporated herein by reference.

17          158. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to amend  
18 Nevada's Constitution or enact legislation through the initiative process and precludes amendment or  
19 modification of a voter-initiated law for three years.

20          159. In 2016, the initiative for the legalization of recreational marijuana was presented to  
21 Nevada voters by way of Ballot Question 2 ("BQ2"), known as the "Regulation and Taxation of  
22 Marijuana Act", which proposed an amendment of the Nevada Revised Statutes as follows:

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

28          160. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.

1 161. NRS 453D.020 (findings and declarations) provides:

2 1. In the interest of public health and public safety, and in order to  
3 better focus state and local law enforcement resources on crimes  
4 involving violence and personal property, the People of the State of  
5 Nevada find and declare that the use of marijuana should be legal for  
6 persons 21 years of age or older, and its cultivation and sale should be  
7 regulated similar to other legal businesses.

8 2. The People of the State of Nevada find and declare that the  
9 cultivation and sale of marijuana should be taken from the domain of  
10 criminals and be regulated under a controlled system, where businesses  
11 will be taxed and the revenue will be dedicated to public education and  
12 the enforcement of the regulations of this chapter.

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

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

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

20 (c) Cultivating, manufacturing, testing, transporting and selling  
21 marijuana will be strictly controlled through state licensing and  
22 regulation;

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

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

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

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

18 162. NRS 453D.200 (Duties of Department relating to regulation and licensing of marijuana  
19 establishments; information about consumers) provides:

20 1. Not later than January 1, 2018, the Department ***shall adopt all***  
21 ***regulations*** necessary or convenient to carry out the provisions of this  
22 chapter. The regulations must not prohibit the operation of marijuana  
23 establishments, either expressly or through regulations that make their  
24 operation unreasonably impracticable. The regulations shall include:

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

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

(c) Requirements for the security of marijuana establishments;

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

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

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

5 (g) Requirements for record keeping by marijuana  
6 establishments;

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

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

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

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

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

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

18 2. The Department *shall approve or deny* applications for licenses  
pursuant to NRS 453D.210. (emphasis added).

19 163. NRS 453D.200(6) *mandates* the DOT to "conduct a background check of each  
20 prospective owner, officer, and board member of a marijuana establishment license applicant."

21 164. NRS 453D.205 provides as follows:

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

26 2. When determining the criminal history of a person pursuant to  
27 paragraph (c) of subsection 1 of NRS 453D.300, a marijuana  
establishment may require the person to submit to the Department a  
28 complete set of fingerprints and written permission authorizing the  
Department to forward the fingerprints to the Central Repository for

1 Nevada Records of Criminal History for submission to the Federal  
2 Bureau of Investigation for its report.

3 165. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;  
4 conditions for approval of application; limitations on issuance of licenses to retail marijuana stores;  
5 competing applications), provides in pertinent part:

6 4. Upon receipt of a *complete marijuana establishment license*  
7 *application*, the *Department shall, within 90 days*:

8 (a) Issue the appropriate license if the license application is  
9 approved.

10 5. The Department *shall approve* a license application if:

11 (a) The prospective marijuana establishment has submitted an  
12 application in compliance with regulations adopted by the  
13 Department and the application fee required pursuant to NRS  
14 453D.230;

15 (b) The physical address where the proposed marijuana  
16 establishment will operate is owned by the applicant or the  
17 applicant has the written permission of the property owner to  
18 operate the proposed marijuana establishment on that property;

19 (c) The property is not located within:

20 (1) One thousand feet of a public or private school that  
21 provides formal education traditionally associated with  
22 preschool or kindergarten through grade 12 and that  
23 existed on the date on which the application for the  
24 proposed marijuana establishment was submitted to the  
25 Department;

26 (2) Three hundred feet of a community facility that  
27 existed on the date on which the application for the  
28 proposed marijuana establishment was submitted to the  
Department; or

(3) If the proposed marijuana establishment will be  
located in a county whose population is 100,000 or  
more, 1,500 feet of an establishment that holds a  
nonrestricted gaming license described in subsection 1  
or 2 of NRS 463.0177 and that existed on the date on  
which the application for the proposed marijuana  
establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail  
marijuana store and there are not more than:

(1) Eighty licenses already issued in a county with a  
population greater than 700,000;

(2) Twenty licenses already issued in a county with a  
population that is less than 700,000 but more than  
100,000;

(3) Four licenses already issued in a county with a  
population that is less than 100,000 but more than  
55,000;

(4) Two licenses already issued in a county with a  
population that is less than 55,000;

(5) Upon request of a county government, the

1 Department may issue retail marijuana store licenses in  
2 that county in addition to the number otherwise allowed  
pursuant to this paragraph;

3 (e) The locality in which the proposed marijuana establishment  
4 will be located does not affirm to the Department that the  
proposed marijuana establishment will be in violation of zoning  
or land use rules adopted by the locality; and

5 (f) The persons who are proposed to be owners, officers, or  
board members of the proposed marijuana establishment:

6 (1) Have not been convicted of an excluded felony  
offense; and

7 (2) Have not served as an owner, officer, or board  
member for a medical marijuana establishment or a  
marijuana establishment that has had its registration  
8 certificate or license revoked.

9 6. When competing applications are submitted for a proposed retail  
10 marijuana store within a single county, the Department *shall use an*  
11 *impartial and numerically scored competitive bidding process* to  
determine which application or applications among those competing  
will be approved. (emphasis added).

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

15 167. The Task Force recommended that "the qualifications for licensure of a marijuana  
16 establishment and the impartial numerically scored bidding process for retail marijuana stores be  
17 maintained as in the medical marijuana program except for a change in how local jurisdictions  
18 participate in selection of locations."

19 168. During the 2017 legislative session, Assembly Bill 422 transferred responsibility for  
20 the registration, licensing and regulation of marijuana establishments to the DOT.

21 169. On February 27, 2018, the DOT adopted regulations governing the issuance,  
22 suspension, or revocation of retail recreational marijuana licenses, which were codified in NAC 453D  
23 (the "Regulations").

24 170. The Regulations for licensing were to be "directly and demonstrably related to the  
25 operation of a marijuana establishment." NRS 453D.200(1)(b).

26 171. NRS 453D.200(1) provides, in part, "[t]he regulations must not prohibit the operation  
27 of marijuana establishments, either expressly or through regulations that make their operation  
28 unreasonably impracticable."

1           172. The limitation of "unreasonably impracticable" in NRS 453D.200(1) applies to the  
2 Regulations adopted by the DOT, not the mandatory language of BQ2.

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

8 **B.     The Licenses Applications**

9           174. The DOT issued a notice for an application period wherein the DOT sought applications  
10 from qualified applicants to award sixty-four (64) recreational marijuana retail store licenses  
11 throughout various jurisdictions in Nevada.

12          175. The DOT posted the license application on its website and released the application for  
13 recreational marijuana establishment licenses on July 6, 2018, which required disclosure of an actual  
14 physical address for each establishment.

15          176. The DOT published a revised license application on July 30, 2018 eliminating the  
16 physical address requirement, which was not publicly available and was only disseminated to some  
17 but not all of the applicants via a DOT listserv.

18          177. The application period for retail recreational marijuana licenses ran from September  
19 7, 2018 through September 20, 2018.

20          178. As of September 20, 2018, the DOT received a total of 462 applications.

21          179. When competing applications for licenses were submitted, the DOT was required to  
22 use "an impartial and numerically scored competitive bidding process" to determine successful license  
23 applicants. NRS 453D.210(6).

24          180. Under NAC 453D.272(1), when the DOT received more than one "*complete*"  
25 application *in compliance with the Regulations and NRS 453D*, the DOT was required to "rank the  
26 applications... in order from first to last based on the compliance with the provisions of [NAC 453D]  
27 and [NRS 453D] and on the content of the applications relating to..." several enumerated factors.

28 ///

1           181. The factors set forth in NAC 453D.272(1) used to rank competing applications  
2 (collectively, the "Factors") are:

3           a. Whether the owners, officers or board members have  
4 experience operating another kind of business that has given them  
5 experience which is applicable to the operation of a marijuana  
6 establishment;

7           b. The diversity of the owners, officers or board members of the  
8 proposed marijuana establishment;

9           c. The educational achievements of the owners, officers or  
10 board members of the proposed marijuana establishment;

11           d. The financial plan and resources of the applicant, both liquid  
12 and illiquid;

13           e. Whether the applicant has an adequate integrated plan for the  
14 care, quality and safekeeping of marijuana from seed to sale;

15           f. The amount of taxes paid and other beneficial financial  
16 contributions, including, without limitation, civic or philanthropic  
17 involvement with this State or its political subdivisions, by the  
18 applicant or the owners, officers or board members of the proposed  
19 marijuana establishment;

20           g. Whether the owners, officers or board members of the  
21 proposed marijuana establishment have direct experience with the  
22 operation of a medical marijuana establishment or marijuana  
23 establishment in this State and have demonstrated a record of operating  
24 such an establishment in compliance with the laws and regulations of  
25 this State for an adequate period of time to demonstrate success;

26           h. The experience of key personnel that the applicant intends to  
27 employ in operating the type of marijuana establishment for which the  
28 applicant seeks a license; and

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

182. NAC 453D.255, enacted by Defendant DOT in contravention of NRS Chapter 453D  
and implemented by Defendant PUPO and his subordinates, provides as follows:

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

2. If, in the judgment of the Department, the public interest will be  
served by requiring any owner with an ownership interest of less than  
5 percent in a marijuana establishment to comply with any provisions  
of this chapter concerning owners of marijuana establishments, the



1 Department will notify that owner and he or she must comply with  
2 those provisions.

3 183. Defendant DOT also enacted NAC 453D.258, NAC 453D.260, NAC 453D.265, NAC  
4 453D.268 and NAC 453D.272. These administrated codes enforced by Defendant PUPO and his  
5 subordinates established the procedures for recreational application process, fees to be charged for  
6 applying, fees to be charged for applying if the applicant holds a medical marijuana establishment  
7 registration certificate, and the ranking of applications if the Defendant D.O.T. received more than one  
8 application for a retail marijuana license.

9 184. The application published by the DOT described how applications were to be scored,  
10 dividing scoring criteria into identified criteria and non-identified criteria.

11 185. The application provided that "*applications that have not demonstrated a sufficient*  
12 *response related to the criteria set forth above will not have additional [unspecified, unpublished]*  
13 *criteria considered in determining whether to issue a license and will not move forward win the*  
14 *application process.*" (emphasis added).

15 186. NAC 453D.272(1) required the DOT to determine that an application is "complete and  
16 in compliance" with the provisions of NAC 453D in order to properly apply the licensing criteria set  
17 forth therein and the provisions of BQ2 and NRS 453D.

18 187. No later than December 5, 2018, the DOT was responsible for issuing conditional  
19 licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one  
20 of the allocated licenses in accordance with the impartial bidding process mandated by NRS 453D.210.

21 188. The DOT identified, hired, and trained eight individuals as temporary employees to  
22 grade the applications in accordance with the provisions of BQ2 and NRS 453D.

23 189. The DOT allocated throughout the state of Nevada.

24 190. Plaintiff submitted applications to the DOT for a conditional licenses to own and  
25 operate recreational marijuana retail stores in compliance with the specified, published requirements  
26 of DOT regulations together with the required application fee in accordance with NRS 453D.210.

27 191. Plaintiff's applications identified each prospective owner, officer, and board member  
28 for background check pursuant to NRS 453D.200(6).

1           192. Plaintiff secured and identified in its application addresses for each and every proposed  
2 recreational marijuana establishment it intended to operate.

3           193. Plaintiff was informed by letter from the DOT that its applications to operate  
4 recreational marijuana retail stores was denied "because it did not achieve a score high enough to  
5 receive an available license."

6           194. On May 24, 2019, the Honorable Elizabeth Gonzales conducted an evidentiary hearing  
7 concerning a motion for preliminary injunction sought by a group of unsuccessful applicants for retail  
8 marijuana licenses in Nevada against Defendant D.O.T. The hearing concluded on August 16, 2019.  
9 Thereafter, Judge Gonzales issued her findings of fact, conclusions of law granting preliminary  
10 injunction. See Findings of Fact and Conclusions of Law Granting Preliminary Injunction, filed  
11 August 23, 2019, Clark County District Court Case No. A-19-786962-B. Among her findings, Judge  
12 Gonzales found that the DOT undertook no effort to determine if the applications were in fact  
13 "complete and in compliance." Id., par. 37.

14           195. Judge Gonzales also found that the DOT departed from the mandatory language of NRS  
15 453D.200(6) requiring "a background check of each prospective owner, officer, and board member  
16 of a marijuana establishment license applicant" and made no attempt in the application process to  
17 verify that the applicant's complied with the mandatory language of the BQ2 or even the impermissibly  
18 modified language." Id., par. 41.

19           196. The DOT improperly issued conditional licenses to applicants who did not disclose in  
20 their application an actual physical address for proposed retail recreational marijuana establishment.

21           197. Upon information and belief, the DOT's denial of Plaintiff's licenses applications was  
22 not properly based upon actual implementation of the impartial and objective bidding process  
23 mandated by NRS 453D.210, but was based upon arbitrary and capricious exercise of administrative  
24 partiality and favoritism that was the policy and routine of the DOT as promulgated by Defendant  
25 PUPPO and others in the DOT hierarchy.

26           198. Upon information and belief, the temporary employees hired by the DOT were  
27 inadequately and improperly trained regarding the scoring process, leading to an arbitrary scoring  
28 process in contravention of Nevada law.

1        199. Upon information and belief, the DOT undertook no effort to determine whether  
2 applications were in fact "complete and in compliance."

3        200. By revising the application on July 30, 2018 and selectively eliminating the requirement  
4 to disclose an actual physical address for each proposed retail recreational marijuana establishment,  
5 the DOT limited the ability of the temporary employees to adequately assess graded criteria such as  
6 (i) prohibited proximity to schools and certain other public facilities, (ii) impact on the community,  
7 (iii) security, (iv) building plans and (v) other material considerations prescribed by the regulations.

8        201. The DOT's scoring process was impacted by its selective elimination of the requirement  
9 to disclose an actual physical address for each proposed retail recreational marijuana establishment,  
10 resulting in incomplete applications being considered and awarding of conditional licenses.

11       202. Upon information and belief, the DOT selectively discussed with applicants or their  
12 agents the modification of the application related to physical address information.

13       203. Upon information and belief, the DOT undertook no effort to verify owners, officers  
14 or board members in evaluating whether an application was "complete and in compliance."

15       204. Upon information and belief, if an applicant's disclosure in its application of its owners,  
16 officers, and board members did not match the DOT's records, the DOT permitted the grading, and in  
17 some cases, awarded a conditional license.

18       205. Upon information and belief, the DOT departed from the mandatory requirements of  
19 NRS 453D.200(6), which provides that "[t]he DOT shall conduct a background check of each  
20 prospective owner, officer, and board member of a marijuana establishment license application," by  
21 adopting NAC 453D.255(1), which only required information on the application from persons "with  
22 an aggregate ownership interest of 5 percent or more in a marijuana establishment."

23       206. The DOT's determination that only owners of a 5% or greater interest in the business  
24 were required to submit information on the application was an impermissible regulatory modification  
25 of BQ2 and violated Article 19, Section 3 of the Nevada Constitution.

26       207. The adoption of NAC 453D.255(1) as it applied to the marijuana establishment license  
27 application process was an unconstitutional modification of BQ2.

28 ///

1        208. The failure of the DOT to carry out the mandatory provisions of NRS 53D.200(6),  
2 which required the DOT to conduct a background check of each prospective owner, officer, and board  
3 member of a marijuana establishment license applicant, is fatal to the application process and impedes  
4 an important public safety goal in BQ2.

5        209. By adopting regulations in violation of BQ2's mandatory application requirements, the  
6 DOT violated Article 19, Section 2(3) of the Nevada Constitution.

7        210. The DOT disregarded the voters' mandate in BQ2 when it decided the requirement that  
8 each prospective owner be subject to a background check was too difficult for implementation by  
9 industry. This decision was a violation of the Nevada Constitution, arbitrary and capricious.

10       211. The DOT did not comply with BQ2 by requiring applicants to provide information for  
11 each prospective owner, officer and board member or verify ownership of applicants who applying for  
12 retail recreational marijuana licenses.

13       212. The DOT's inclusion of the diversity category in the factors was implemented in a way  
14 that created a process which was subject to manipulation by applicants.

15       213. The DOT's scoring process was impacted by personal relationships in decisions related  
16 to the requirements of the application and the ownership structures of competing applicants.

17       214. Due to the DOT's violations of BQ2, Plaintiff was unconstitutionally denied  
18 recreational marijuana licenses.

19       215. The DOT's constitutional violations and refusal to issue conditional licenses to Plaintiff  
20 resulted in irreparable harm to Plaintiff.

21 **C. Jorge Pupo's Conduct Precludes Qualified Immunity**

22 **1. Jorge Pupo Knew the Requirements of Ballot Question 2, NRS 453D and NAC**  
23 **453D.**

24       216. Jorge Pupo testified that he knew that the Nevada Constitution mandates that  
25 statutory measures enacted by the citizens of the State of Nevada, cannot be amended by the  
26 legislature for a period of three (3) years.

26       217. Jorge Pupo testified as follows:

27       Q And you're aware that the Nevada Constitution mandates that if a statutory  
28 measure is enacted by the people, that statutory measure can't be amended by  
the legislature for a period of three years; is that right?

1 A Yes.

2 Q And you're aware that it can't be amended by anyone else for a period  
3 of three years, correct?

4 A Yes.

5 Q Was that a yes?

6 A Yes. June 19, 2019, Vol I-P19:L9-18

7 218. Jorge Pupo testified that the regulations adopted by the DOT required the evaluation  
8 of the applicant's compliance history in operating marijuana establishments.

9 219. Jorge Pupo testified that NRS 453D.210(4)(f)(2) required compliance records to be  
10 part of the application and evaluation process.

11 220. Jorge Pupo testified that the regulations require a proposed physical address on the  
12 application.

13 221. Jorge Pupo testified that he knew that pursuant to Ballot Question Number 2 that the  
14 location of marijuana establishments was an important factor.

15 222. Jorge Pupo testified that despite location being important to the state of Nevada and  
16 mandated by the initiative it was removed from the scoring in the 2018 application process.

17 **2. Jorge Pupo's Role and Responsibilities as Deputy Director of Department of  
18 Taxation Marijuana Enforcement Division**

19 223. Jorge Pupo' testified that his duties and responsibilities as the Deputy Director of the  
20 Department of Taxation Marijuana Enforcement Division were as follows:

- 21 1. Oversight of the Marijuana Enforcement Division program as a whole, the  
22 medical and recreational side;
- 23 2. Administration of the Marijuana Enforcement Division;
- 24 3. Administration of the recreational marijuana application process;
- 25 4. Final review and approval of the 2018 recreational marijuana application;
- 26 5. Determination of the criteria used to evaluate the 2018 recreational marijuana  
27 licensure process; and
- 28 6. Ensuring conditional recreational marijuana licenses were not awarded to  
licensees with poor compliance records.

1           224. Jorge Pupo testified as follows:

2           Q     And can you describe your duties and responsibilities as the Deputy  
3           A     So I have, basically, oversight of the program as a whole, the medical

4                     and recreational side. I also have other duties regarding other excise  
5                     taxes, cigarettes, other tobacco products, live entertainment tax, other  
6                     excise taxes. But generally, oversight of the Marijuana Enforcement  
7                     Division is my primary responsibility. P9:L2-9

8           Q     And you're the person that's ultimately responsible for the enforcement  
9                     and the administration of the Marijuana Enforcement Division; is that  
10                    correct?

11           A     Yes. P12:L18-21

12           225. Jorge Pupo testified that he knew his role at the DOT was to follow the initiative in  
13 terms of creating regulations and the 2018 recreational marijuana application.

14           226. Notwithstanding his administrative responsibility relative to the marijuana application  
15 process, Mr. Pupo allowed for 4 of the 6 graders of the recreational marijuana application to be  
16 unqualified based upon the minimum educational requirements.

17           **3. Jorge Pupo Knew What the Ballot Question 2, NRS 453D and NAC 453D**  
18           **Required to be in the Recreational Marijuana Application.**

19           227. Jorge Pupo testified the 2018 recreational marijuana license application required a  
20 proposed physical address.

21           228. Jorge Pupo testified that applications without a physical location were incomplete.

22           229. Jorge Pupo testified that part of the criteria evaluated in the 2018 recreational marijuana  
23 license process should have included a history of compliance with regulations.

24           230. Jorge Pupo testified as follows:

25           Q     Yeah. That provision that explains to you how you're going to rank the  
26                     applications. It says, You'll rank the applications from first to last based  
27                     on compliance with the provisions of this chapter --

28           A     Yes. P102:L17-21

29           231. While Jorge Pupo testified he doesn't know who removed compliance records from the  
30 application and evaluation process, an email has been produced documenting Mr. Pupo's instruction  
31 to employees of the Department of Taxation to remove violations committed by certain applicants  
32 from the investigation logs of the Department of Taxation.

1           232.   Jorge Pupo testified that applications that did not identify all the owners were  
2 incomplete.

3           233.   Jorge Pupo testified that as of September 9, 2018 the DOT could not provide guidance  
4 to individual applicants beyond what was included in the instructions.

5                   **IV.    Jorge Pupo's Conduct Despite is Knowledge of the Requirements of Ballot**  
6                   **Question 2, NRS 453D and NAC 453D.**

7           234.   Despite knowing that Ballot Question 2, NRS 453D and NAC453D placed significant  
8 importance on physical location for proposed recreational marijuana establishments, Jorge Pupo  
9 testified that location was not a part of the scoring criterion in the 2018 recreational marijuana  
10 licensure process.

11          235.   A grader selected by the DOT testified under oath that applicants, who followed the  
12 application by providing physical addresses, were deducted two points for each physical address  
13 identified.

14          236.   Jorge Pupo was aware of the anti-monopoly provisions of NRS 453D.272 as well as  
15 the application which states in bold text: "No Applicant may be awarded more than one (1) license in  
16 a jurisdiction/locality unless there are less applicants than licenses allowed in the jurisdiction."  
17 Despite having this knowledge Jorge Pupo awarded more than one conditional license to the same  
18 owners in the same jurisdiction.

19          237.   Despite Jorge Pupo knowing that it would be unfair to allow certain applicants to get  
20 information from the DOT while others were denied answers, he spoke with and met with certain  
21 applicants and their representatives providing inside information.

22          238.   Jorge Pupo testified that if certain applicants are provided with information while  
23 others are not, that potentially those who received the information or answers to their questions would  
24 have an advantage over those who were not answered.

25          239.   Jorge Pupo knew Ballot Question 2 and NRS 435D required prospective owners,  
26 officers, and board members of a marijuana establishment license applicant to be background checked.  
27 In violation of Ballot Question 2, and NRS 453D, Jorge Pupo granted conditional licenses to  
28 applicants that did not identify all prospective owners, officers, and board members and as a

1 consequence not background checked.

2       **V.     Jorge Pupo's, in Clear Dereliction of his Position, gave Applicants and Their**  
3       **Consultants a Material Advantage by Providing Inside Information not**  
4       **Available to Other Applicants**

5       240.     Amanda Connor, according to testimony of several witnesses including Mr. Pupo,  
6       represented several applicants in the 2018 Recreational Marijuana Application Process. Jorge Pupo  
7       testified that Amanda Connor contacted him several times on his personal cellular telephone and asked  
8       questions about the application. He provided her with responses to her questions. Some of these  
9       questions were regarding whether physical addresses were required on the applications and whether  
10      physical location would be evaluated as part of the scoring criteria.

11      241.         Jorge Pupo testified as follows:

12                   June 20, 2019 Vol 1

13           Q       Okay. So Amanda Connor was able to call your personal cell phone and  
14                   ask questions about the application. Did you give her responses to those  
15                   questions?

16           A       She really only kept bugging me and annoying me about one question.

17           Q       Okay. What question was that?

18           A       Physical location. Physical address.

19           Q       What was the question that Amanda Connor asked you with respect to  
20                   physical address?

21           A       It was something to the effect of is physical address required or do they  
22                   need a physical address if it's not scored. P55L11-21

23           Q       -- she nevertheless still had a question about how physical --  
24                   post-physical location was going to be evaluated as part of my scoring  
25                   criteria, correct?

26           A       Right. I mean, she -- she said she just want to confirm, because her  
27                   clients were asking.

28           Q       Okay. And she sent you an email, I think you were starting to --

          A       I believe I received an email.

          Q       Okay. When was that?

          A       Oh, I don't know.

          Q       Prior to the application being released is what you told us yesterday, I  
                  believe; is that correct?

          A       Prior to the application? Yeah, I believe so.

          Q       First and you said she pestered you. What was the next communication  
                  that you had with her?

          A       Oh, I don't know.



1 Q She asked that question via email and what did you tell her?  
2 A That location wasn't scored. That, you know, they've basically -- they  
3 just put -- they need to put an address because the application requires  
4 an address.

5 Q Okay. And you thought that answer was pretty clear?  
6 A I thought so. P57L23-P58L20  
7 June 20, 2019 Vol II.

8 Q All right. So if an applicant did not provide all of the owners, would  
9 you agree with me, as well, that those applicants failed to provide a  
10 complete application as required?  
11 A Yes. P22L21-25

12 August 13, 2019 Vol I  
13 Q Now, above that is says, and this again the same day from Amanda  
14 Connor, it says that, "A person who has a lease or owns the property,  
15 they might get more points simply for having the property secured"  
16 correct? You see that?  
17 A Yes.

18 Q All right. And your response is, "No, Location is not scored then." You  
19 were emphatic at that point?  
20 A Yes. P68L23-69L16

21 242. Pupo testified that he informed Amanda Connor that the application required a physical  
22 address and yet awarded conditional licenses to applicants who provided proposed floor plans as  
23 opposed to proposed physical addresses.

24 243. Jorge Pupo testified that he went to dinner, lunch and drinks with applicants and their  
25 representatives. As an example, he went to lunch with Amanda Connor at the Barcelona at the Artisan  
26 on July 27, 2018. Mrs. Connor brought the owner of an applicant with her on July 27, 2018 to the  
27 Barcelona at the Artisan.

28 244. Jorge Pupo testified that Amanda Connor represented several entities that provided  
identical addresses on their applications. These addresses were to UPS locations and a Mailing and  
More locations. These were not proposed physical addresses. One applicant testified that these UPS  
addresses were used by his company and were never meant to be the location where the dispensary  
would be opened.

245. Jorge Pupo testified that Amanda Connor represented two entities that were given two  
licenses in Unincorporated Clark County, despite the anti-monopoly regulation and the express

1 language in the application prohibiting the same.

2       246. Jorge Pupo testified that his conversations with Amanda Connor could have resulted  
3 in her clients having gained an advantage in the application process.

4       247. On several occasions Jorge Pupo met with an owner of Integral Associates LLC.  
5 Integral Associates LLC owns one hundred percent (100%) of the Essence Entities (Essence Tropicana  
6 and Essence Henderson.) Integral Associates LLC received eight conditional licenses.

7       248. Between June and December 2018, the owner of Integral Associates LLC met with  
8 Jorge Pupo outside of the DOT office for four dinners and one meeting for coffee. In addition to these  
9 in-person meetings, Integral's owner communicated with Mr. Pupo via text and through verbal  
10 communications. These meetings included discussions between Integral's owner and Mr. Pupo that  
11 indicated that Integral was entering into a Letter of Intent ("LOI") agreeing to be purchased by another  
12 company. This meeting took on September 20, 2018, the very same day Integral submitted its  
13 recreational marijuana applications in the names of the Essence Entities. Integral signed the LOI on  
14 September 21, 2018. The prospective owners were not identified in Essence Entities' applications for  
15 recreational marijuana licenses.

16       249. Despite numerous violations of NRS Chapter 453D and NAC 453D in multiple sales  
17 to individuals under the age of 21 by certain applicants, Mr. Pupo failed to impose a single fine against  
18 these particular applicants who were awarded conditional recreational marijuana licenses. Two of these  
19 applicants who had multiple sales to individual under the age of 21 were represented by Amanda  
20 Connor. These entities were conditionally awarded 15 recreational marijuana licenses.

21       250. Despite numerous violations by conditionally awarded applicants, Mr. Pupo, without  
22 the authority of the Tax Commission, removed compliance from the application process.

23       251. Deonne Contine, former Director of the Department of Taxation, testified that the law  
24 required the DOT to take into account the history of regulatory compliance of applicants. Past  
25 deficiencies should have been taken into account.

26       252. Jorge Pupo removed regulatory compliance and past deficiencies from consideration  
27 during the application and grading process.

28       253. Damon Hernandez testified that in 2018, he reported to Jorge Pupo on

1 investigations. Mr. Hernandez testified that he became aware that a certain entity had sold marijuana  
2 to minors three times in close succession. Mr. Hernandez recommended a 30 day suspension.

3 254. Jorge Pupo decided not to follow the recommendation and instead allowed the license  
4 holder to self correct, with no punishment for the serious infractions. Again, these license holders  
5 were awarded several conditional recreational marijuana licenses.

6 IV.

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **(Declaratory Relief)**

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

11 256. A justiciable controversy exists that warrants a declaratory judgment pursuant to  
12 Nevada's Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.

13 257. Plaintiff and the Defendants have adverse and/or competing interests as the Department,  
14 through its Marijuana Enforcement Division, has denied the applications submitted by Plaintiff and  
15 has violated Plaintiff's Constitutional Rights, Nevada law, and State policy.

16 258. The Department's refusal to issue Plaintiff a "conditional" license affects Plaintiff's  
17 rights afforded it by NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

18 259. Further, the Department's improper ranking of the other applicants for a recreational  
19 marijuana establishment license and the Department's subsequent, improper issuance to each of a  
20 "conditional" license also affects the rights of Plaintiff afforded it by NRS 453D, NAC 453D, R09217,  
21 and other Nevada laws and regulations.

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

26 261. The Department's actions and/or inactions failed to appropriately address the necessary  
27 considerations and intent of NRS 453D.210, designed to restrict monopolies.

28 262. Accordingly, Plaintiff seeks a declaration from this Court that, inter alia:

- 1           a.     That the Department improperly denied Plaintiff four (4) "conditional" licenses  
2                     for the operation of a recreational marijuana establishment in the following  
3                     jurisdictions: unincorporated Clark County, Nevada; Las Vegas, Nevada; North  
4                     Las Vegas, Nevada; and Reno, Nevada.
- 5           b.     The denial of a "conditional" license to Plaintiff is void *ab initio*;
- 6           c.     The procedures employed in the denial violated Plaintiff's procedural due  
7                     process rights and equal protection rights under the Nevada and United States  
8                     Constitutions and, therefore, the denial is void and unenforceable;
- 9           d.     The denial violates Plaintiff's substantive due process rights and equal  
10                  protection rights under the Nevada and United States Constitutions and,  
11                  therefore, the denial is void and unenforceable;
- 12          e.     The denial is void for vagueness and therefore unenforceable;
- 13          f.     Defendant acted arbitrarily and capriciously or in contravention of a legal duty  
14                  and Plaintiff is therefore entitled to a writ of mandamus;
- 15          g.     Plaintiff is entitled to judicial review; and
- 16          h.     The Department's denial lacked substantial evidence.

17         263.    Plaintiff also seeks a declaration from this Court that the Department must issue  
18 Plaintiff four (4) "conditional" licenses for the operation of a recreational marijuana establishment in  
19 unincorporated Clark County, Nevada; Las Vegas, Nevada; North Las Vegas, Nevada; and Reno,  
20 Nevada, since Plaintiff's score issued by the Department would have ranked high enough to entitle it  
21 to "conditional" licenses had the Department properly applied the provisions of NRS 453D, NAC  
22 Chapter 453D, and R092-17.

23         264.    Plaintiff asserts and contends that a declaratory judgment is both necessary and proper  
24 at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of  
25 the Plaintiff afforded it by NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and  
26 regulations.

27         ///

28         ///

265. Plaintiff has found it necessary to retain the legal services of Parker, Nelson & Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

## **SECOND CLAIM FOR RELIEF**

**(Injunctive Relief)**

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

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

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

269. The Department will suffer no harm by following the law with respect to issuing "conditional" licenses.

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

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

272. Therefore, Plaintiff is entitled to preliminary injunctive relief, and after a trial on the merits, permanent injunctive relief, ordering the Department to issue "conditional" licenses to Plaintiff in accordance with NRS 453D, NAC 453D, and R092-17.

273. Plaintiff has retained the legal services of Parker, Nelson & Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and costs therefor.

### **THIRD CLAIM FOR RELIEF**

**(Violation of Procedural Due Process)**

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

275. The procedures employed by the Department in denying Plaintiff's applications have deprived Plaintiff of due process of law as guaranteed by the Nevada Constitution and the United

1 States Constitution.

2 276. The process in which denial was considered, noticed to the public, and passed failed  
3 to provide Plaintiff a meaningful opportunity to be heard at a consequential time and was  
4 fundamentally unfair and violated the due process requirements of the Nevada and United States  
5 Constitutions.

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

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

10 279. As the action of the Department necessitated that Plaintiff retain the legal services of  
11 Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also  
12 entitled to attorneys' fees and costs of suit.

13 280. Plaintiff has found it necessary to bring this action, and Plaintiff is entitled to recover  
14 its reasonable attorneys' fees and costs therefor.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Violation of Substantive Due Process)**

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

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

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

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

24 285. As the action of the Department necessitated that Plaintiff retain the legal services of  
25 Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also  
26 entitled to attorneys' fees and costs of suit.

27 ///

28 ///

1 **FIFTH CLAIM FOR RELIEF**

2 **(Equal Protection Violation)**

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

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

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

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

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

12 291. As the action of the Department necessitated that Plaintiff retain the legal services of  
13 Parker, Nelson & Associates, Chtd., and incur fees and costs to bring this action, Plaintiff is also  
14 entitled to attorneys' fees and costs of suit.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Petition for Judicial Review)**

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

18 293. The Department, in misinterpreting and incorrectly applying NRS 453D, NAC 453D  
19 and the related Nevada laws and regulations, has exceeded its jurisdiction by issuing "conditional"  
20 licenses to applicants that do not merit "conditional" licenses under NRS 453D, NAC 453D, and  
21 R092-17.

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

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

28 296. Accordingly, Plaintiff petitions this Court for judicial review of the record on which

1 the Department's denial was based, including but not limited to:

- 2 a. A determination that the decision lacked substantial evidence;
- 3 b. A determination that the denial is void ab initio for non-compliance with NRS
- 4 453D, NAC 453D, R092-17, and other Nevada state laws or regulations; and
- 5 c. Other relief consistent with those determinations.

6 297. Plaintiff has found it necessary to retain the legal services of Parker, Nelson &  
7 Associates, Chtd. to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees  
8 and costs therefor.

9 **SEVENTH CLAIM FOR RELIEF**

10 **(Petition for Writ of Mandamus)**

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

12 299. When a governmental body fails to perform an act "that the law requires" or acts in an  
13 arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev. Rev. Stat.  
14 § 34.160.

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

- 17 a. Providing proper pre-hearing notice of the denial; and
- 18 b. Arbitrarily and capriciously denying the application for no legitimate reason.

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

- 21 a. The Board lacked substantial evidence to deny the application; and
- 22 b. The Board denied the application solely to approve other competing applicants
- 23 without regard to the merit of Plaintiff's application.

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

27 303. As a result of the Defendants' unlawful and arbitrary and capricious actions, Plaintiff  
28 has been forced to retain legal services of Parker, Nelson & Associates, Chtd. to prosecute this action,



1 and is therefore also entitled to its damages, costs in this suit, and an award of attorneys' fees pursuant  
2 to NRS 34.270.

### 3 **EIGHTH CLAIM FOR RELIEF**

#### 4 **(Violation of 42 USC 1983 by Defendants Jorge Pupo and Department of Taxation)**

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

6 305. The Fourteenth Amendment to the United States Constitution provides that "no state  
7 [may] deprive any person of life, liberty, or property, without due process of law....nor shall any  
8 State...deny to any person within its jurisdictions the equal protection of the laws."

9 306. Article 1, Section 8 of the Nevada Constitution provides that "[n]o person shall be  
10 deprived of life, liberty, or property, without due process of law."

11 307. Plaintiff is a person within the meaning of the Nevada Constitution and the United  
12 States Constitution guarantees of due process. Plaintiff's managers and members are also of African  
13 American descent warranting strict scrutiny of Plaintiff's claim for a violation of 42 USC 1983.

14 308. Plaintiff and those similarly situated have a protected property interest in the  
15 recreational license application process deriving from the mandatory statutory language couched in  
16 NRS 453D, NAC453D and R092-17 as set forth above. See *Board of Regents v. Roth*, 408 U.S., 577  
17 (1972) and *Goodisman v. Lyle*, 724 F.2d 818, 820 (9th Cir. 1984).

18 309. The arbitrary and illegal conduct of the DOT and Defendant JORGE PUPO have  
19 deprived Plaintiff of the guarantees afforded by the Nevada Constitution and the United States  
20 Constitution as set forth in paragraphs 266 and 267 above.

21 310. Plaintiff was not given a meaningful opportunity to be heard at a consequential time  
22 which was fundamentally unfair and violated procedural and substantive due process as afforded by  
23 the Nevada and United States Constitution.

24 311. Plaintiff's injury as described above by the failure of the DOT and Defendant PUPO  
25 to follow the mandate of Nevada law explicitly set forth above is a result of Defendants' official policy  
26 and/or custom to deprive Plaintiff and those similarly situated of the rights and entitlements afforded  
27 to them under the Nevada and United States Constitution.

28 312. Defendants the DOT and PUPO conducted illegal and unconstitutional actions

1 described above under color of state Law.

2       313. While acting under color of state law, Defendants' actions described above where the  
3 official policy and/or custom of Defendants to deprive Plaintiff and those similarly situated of their  
4 constitutional rights afforded to them under the Nevada and United States Constitution, specifically  
5 the 14th Amendment to the United States Constitution and Article 1, Section 8 of the Nevada  
6 Constitution. Specifically, Defendants through Defendant PUPO and his subordinates, directed the  
7 unconstitutional and illegal conduct in violation of the Nevada and United States Constitution.  
8 Moreover, Defendants had direct and actual knowledge of the violations and/or were deliberately  
9 indifferent to the constitutional violations that harmed Plaintiff.

10       314. The harm occasioned upon Plaintiff resulting from Defendants' illegal and  
11 unconstitutional conduct, in addition, resulted from inadequate supervision, training, and screening  
12 of agents/employees of the DOT.

13       315. As a direct and proximate result of Defendants' violations of Plaintiff's rights afforded  
14 to him under the Nevada and United States Constitution, Defendants are liable to Plaintiff for damages  
15 pursuant to 42 USC 1983. Moreover, because Defendant PUPO's conduct was reckless and/or showed  
16 callous indifference to the federally protected rights of Plaintiff, punitive damages should be awarded.

17       316. Moreover, pursuant 42 USC 1988, Plaintiff is entitled to its reasonable attorney's fees  
18 and costs.

19                                   **NINTH CLAIM FOR RELIEF**

20                                   **(Unjust Enrichment)**

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

22       317. Plaintiff applied for recreational marijuana licenses in accordance with NRS Chapter  
23 453D and the regulations and rules promulgated by the DOT.

24       318. Plaintiff applied for these licenses because NRS Chapter 453's mandate that did not  
25 allow the DOT to "pick and choose" winners and losers at their whim, but provided specific,  
26 mandatory criterion that the DOT was obligated to comply with in awarding the recreational marijuana  
27 licenses.

28       319. Plaintiff paid to the DOT in excess of \$15,000 to apply for the recreational marijuana

1 licenses that as of the date of the filing of this complaint, the DOT has not returned.

2 320. In the event that this Court finds that Plaintiff is not entitled to the relief requested in  
3 the first through fifth claims for relief, under the circumstances as alleged in this Complaint, it would  
4 be unjust for the DOT to retain the benefit of Plaintiff's expenditures to apply for the recreational  
5 marijuana licenses.

6 321. As a direct and proximate result of the DOT being unjustly enriched, Plaintiff has  
7 incurred damages in excess of \$15,000.00.

8 **V.**

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff prays for judgment as follows:

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

18 **VI.**

19 **JURY DEMAND**

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

21 DATED this 26<sup>th</sup>, day of March, 2020.

22 **PARKER, NELSON & ASSOCIATES, CHTD.**

23 

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*Attorneys for Plaintiff,  
Nevada Wellness Center, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 26<sup>th</sup>, day of March 2020, I served a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW OR WRIT OF MANDAMUS** on all parties currently on the electronic service list as set forth below:

- ☐ By placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

  
An employee of PARKER, NELSON & ASSOCIATES, CHTD.