

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

IN RE: D.O.T LITIGATION.

NEVADA WELLNESS CENTER,
LLC, A NEVADA DOMESTIC
LIMITED LIABILITY COMPANY;
NATURAL MEDICINE, LLC; ETW
MANAGEMENT GROUP, LLC;
GLOBAL HARMONY, LLC; JUST
QUALITY, LLC; LIBRA
WELLNESS CENTER, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; ROMBOUGH REAL
ESTATE, INC., D/B/A MOTHER
HERB; ZION GARDENS LLC;
RURAL REMEDIES LLC; AND
QUALCAN LLC,

Appellants,

vs.

INTEGRAL ASSOCIATES, LLC
D/B/A ESSENCE CANNABIS
DISPENSARIES, ESSENCE
TROPICANA, LLC, ESSENCE
HENDERSON, LLC,

Respondents.

Case No.: 86741

Electronically Filed
Jul 17 2023 04:17 PM
Elizabeth A. Brown
Clerk of Supreme Court

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

Dept.: XXXI

JOINT DOCKETING
STATEMENT CIVIL APPEALS

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.

JOINT 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. Attorneys filing this docketing statement:

Theodore Parker III, Esq.
Parker, Nelson & Associates, Chtd.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

(702) 868-8000

Client(s): Nevada Wellness Center, LLC (“NWC”)

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. 7th 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”)

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: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |

- ☐ Review of agency determination ■ Other disposition (specify):

In the instant Appeal, NWC is challenging the Order finding the Essence Entities to be a prevailing party vis a vis NWC and the award of costs to the Essence Entities. (See Notice of Entry of Order, filed May 4, 2023, a true and correct copy attached hereto as Exhibit “A”,)

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. NWC; 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. NWC 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. MM Development Company, Inc et al. v. Integral Associates, LLC d/b/a Essence Cannabis Dispensaries et al.; Case No.: 86739;

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.

NWC provides the above listed Appeals for completeness. However, NWC's
Appeal is of the Order attached as Exhibit "A".

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. 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;

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

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

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

5. 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;

6. 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;

7. Order Granting in Part and Denying in Part Settling Plaintiffs' Motion to Retax and Settle Essence's Costs; entered May 4, 2023 (See Exhibit "A");

8. 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;

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

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

11. 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;

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

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

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

15. 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;

16. 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;

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

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

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

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

21. 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;

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

23. 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. Prior to this date, NWC, along with Plaintiffs MM Development Company d/b/a Planet 13, LiveFree Wellness, LLC d/b/a The Dispensary, 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 request.

On August 8, 2022, MM Development Company, Inc. d/b/a Planet 13 and LiveFree Wellness, LLC d/b/a The Dispensary, Qualcan LLC, and Natural Medicine, LLC filed a joint Motion to Retax and Settle Costs. 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.

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 certain costs were reasonable, necessary, and incurred?

4. 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. 86739

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 4, 2023.

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 4, 2023.

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

May 30, 2023 (NWC);

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 NWC, the following parties filed Notices of Appeal on the following dates:

June 1, 2023 (Rural Remedies, LLC)

June 1, 2023 (ETW Plaintiffs)

June 2, 2023 (Qualcan LLC)

Natural Medicine filed a Notice of Appeal on May 31, 2023 and an Amended Notice of Appeal on 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 Order appealed from is a post-trial special order, granting in part and denying in part, the Settling Plaintiffs Motion to Retax (resulting in an award of costs to the Essence Entities).

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

(a) Parties:

(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:

NWC;

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

MM Development Company d/b/a Planet 13, and LiveFree Wellness, LLC d/b/a The Dispensary are not involved in the instant Appeal as they filed their own Appeal of the Order (along with other, related Orders) and have their own Case Number. 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, 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 Order entered on 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 Order appealed from is the granting in part and denying in part of a Motion to Retax following the Essence Entities seeking an award 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 a post trial award 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 Exhibit “A”. Additionally, please see various Complaints, attached hereto as Exhibit “B.”

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.

Nevada Wellness Center, LLC, et
al.

Name of appellant

Theodore Parker, III, Esq.

Name of counsel of record

July 17, 2023

Date

/s/ Theodore Parker III

Signature of counsel of record

Clark County, Nevada

State and county where signed

Other counsel joining this docketing statement:

Clarence E. Gamble, Esq.
RAMOS LAW, LLC
10190 Bannock Street, Suite 200
Northglenn, CO 80260
(303) 733-6353

Client(s): Rural Remedies, LLC (“Rural”)

CERTIFICATION

I declare under penalty of perjury that I have read and concur in the filing of this docketing statement.

Rural Remedies, LLC
Name of appellant

Clarence E. Gamble, Esq.
Name of counsel of record

July 17, 2023
Date

/s/ Clarence E. Gamble
Signature of counsel of record

Clark County, Nevada
State and county where signed

Other counsel joining this docketing statement:

Peter S. Christiansen, Esq.
Whitney J. Barrett, Esq.
CHRISTIANSEN TRIAL LAWYERS
710 S. 7th Street
Las Vegas, Nevada 89101
(702) 240-7979

Client(s): Qualcan LLC (“Qualcan”)

CERTIFICATION

I declare under penalty of perjury that I have read and concur in the filing of this docketing statement.

Qualcan, LLC

Name of appellant

Whitney J. Barrett, Esq.

Name of counsel of record

July 17, 2023

Date

/s/ Whitney J. Barrett

Signature of counsel of record

Clark County, Nevada

State and county where signed

Other counsel joining this docketing statement:

James A. Beckstrom, Esq.
BECKSTROM & BECKSTROM, LLP
400 S. 4th Street, Ste. 650
Las Vegas, Nevada 89101
(725) 300-0599

Client(s): ETW Management Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate Inc. d/b/a Mother Herb, and Zion Gardens LLC (collectively “ETW Plaintiffs”)

CERTIFICATION

I declare under penalty of perjury that I have read and concur in the filing of this docketing statement.

ETW Management Group LLC,
Global Harmony LLC, Just
Quality, LLC, Libra Wellness
Center, LLC, Rombough Real
Estate Inc. d/b/a Mother Herb, and
Zion Gardens LLC (collectively
“ETW Plaintiffs”)

Name of appellant

July 17, 2023

Date

Clark County, Nevada

State and county where signed

James A. Beckstrom, Esq.

Name of counsel of record

/s/ *James A. Beckstrom*

Signature of counsel of record

Other counsel joining this docketing statement:

Jeffery A. Bendavid, Esq.
BENDAVID LAW
7301 Peak Dr., Suite 150
Las Vegas, Nevada 89128
(702) 385-6114

Client(s): Natural Medicine, LLC

CERTIFICATION

I declare under penalty of perjury that I have read and concur in the filing of this docketing statement.

Natural Medicine, LLC
Name of appellant

Jeffery A. Bendavid, Esq.
Name of counsel of record

July 17, 2023
Date

/s/ Jeffery A. Bendavid
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 17th 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:

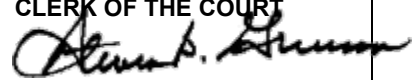
Eleissa C. Lavelle, Esq.
JAMS
7160 Rafael Rivera Way, Suite 400
Las Vegas, NV 89113
Settlement Judge

Dated this 17th day of July, 2023.

/s/ Eloisa Nuñez
An Employee of Parker, Nelson & Associates, Chtd.

EXHIBIT A

EXHIBIT A



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

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

Facsimile: 702.214.2101

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

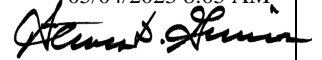
By: /s/ Jordan T. Smith
James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

*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

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

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

Facsimile: 702.214.2101

Attorneys for Integral Associates LLC

d/b/a Essence Cannabis Dispensaries,

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:¹

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.² 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.³ 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.

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

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

³ 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..⁴

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.⁵

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

⁴ 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.

⁵ 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)⁶ 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.⁷The 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”).⁸

16 16. During the Second Phase of the proceedings, the Settling Plaintiffs settled with
17 certain Defendants.⁹ 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

21 ⁶ 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 ⁷ 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 ⁸ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
preceded the First Phase.

⁹ 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, 2020.¹⁰ 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.¹¹ 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.¹²

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;

¹⁰ 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.*

¹¹ *Id.* at 29:3.

¹² 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.¹³

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*

¹³ *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

Will Kemp, Esq., (1205)
Nathanael R. Rulis, Esq., (11259)
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, NV 89169
Attorneys for MM Development Company
& LivFree Wellness, LLC

BENDAVID LAW

/s/ Circulated Competing Order
Forthcoming

Jeffery A. Bendavid, Esq. (6620)
Stephanie J. Smith, Esq. (11280)
7301 Peak Dr., Suite 150
Las Vegas, NV 89128
Attorneys for Natural Medicine L.L.C

CHRISTIENSEN TRIAL LAWYERS

/s/ Circulated Competing Order Forthcoming
Peter Christiansen, Esq.
Whitney Barrett, Esq.
710 S. 7th Street
Las Vegas, NV 89101
Attorneys for Qualcan LLC

**PARKER NELSON & ASSOCIATES,
CHTD.**

/s/ Circulated Competing Order Forthcoming

Theodore Parker, III, Esq. (4716)
Jennifer Delcarmen, Esq. (12727)
2460 Professional Ct., Suite 200
Las Vegas, NV 89128
Attorneys for Nevada Wellness Center

BECKSTROM & BECKSTROM, LLP

PISANELLI BICE PLLC

/s/ Circulated Competing Order
Forthcoming

James A. Beckstrom, Esq. (14032)
400 S. 4th Street, Suite 650
Las Vegas, NV 89101
Attorneys for ETW Plaintiffs

BY: /s/ Jordan T. Smith

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

Todd L. Bice, Esq. (Bar No. 4534)

Jordan T. Smith, Esq. (Bar No. 12097)

400 S. 7th Street, Suite 300

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](#)

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.](#)



3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169
(P) 702-385-6000 | (F) 702 385-6001 | n.rulis@kempjones.com
([profile](#)) ([vCard](#))

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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

14 Amy Reams

areams@naylorandbrasterlaw.com

15 John Naylor

jnaylor@naylorandbrasterlaw.com

16 Jennifer Braster

jbraster@naylorandbrasterlaw.com

17 Heather Motta

hmotta@mcllawfirm.com

18 Peter Christiansen

pete@christiansenlaw.com

19 Whitney Barrett

wbarrett@christiansenlaw.com

20 R. Todd Terry

tterry@christiansenlaw.com

21 Eloisa Nunez

enunez@pnalaw.net

22 Margaret McLetchie

maggie@nvlitigation.com

23 Teresa Stovak

teresa@nvlawyers.com

24 Eileen Conners

eileen@nvlawyers.com

25 Jonathan Crain

26 jcrain@christiansenlaw.com
27
28

1	Todd Bice	tlb@pisanellibice.com
2	Steven Scow	sscow@kskdlaw.com
3	David Koch	dkoch@kskdlaw.com
4	Debra Spinelli	dls@pisanellibice.com
5	Mariella Dumbrique	mdumbrique@blacklobello.law
6	MGA Docketing	docket@mgalaw.com
7	Sarah Harmon	sharmon@baileykennedy.com
8	Dennis Kennedy	dkennedy@baileykennedy.com
9	Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
10	Patricia Stoppard	p.stoppard@kempjones.com
11	Ali Augustine	a.augustine@kempjones.com
12	Nathanael Rulis	n.rulis@kempjones.com
13	Chandi Melton	chandi@christiansenlaw.com
14	David Pope	dpope@ag.nv.gov
15	Norma Richter	nrichter@jfnvlaw.com
16	Adam Fulton	afulton@jfnvlaw.com
17	Jared Jennings	jjennings@jfnvlaw.com
18	Andrea Eshenbaugh	andrea@kskdlaw.com
19	Theodore Parker III	tparker@pnalaw.net
20	Alicia Ashcraft	ashcrafta@ashcraftbarr.com
21	Daniel Scow	dscow@kskdlaw.com
22	Olivia Swibies	oswibies@nevadafirm.com
23	Richard Holley, Esq.	rholley@nevadafirm.com
24		
25		
26		
27		
28		

1	Joseph Gutierrez	jag@mgalaw.com
2	Jared Kahn	jkahn@jk-legalconsulting.com
3	David Koch	dkoch@kochscow.com
4	Steven Scow	sscow@kochscow.com
5	Leilani Gamboa	lgamboa@bendavidfirm.com
6	Mark Dzarnoski	mdzarnoski@clarkhill.com
7	Lawrence Semenza	ljs@skrlawyers.com
8	Steven Handelin	steve@handelinlaw.com
9	Richard Williamson	rich@nvlawyers.com
10	Kathleen McConnell	khmccconnell@frontiernet.net
11	Kenneth Ching	ken@argentumnv.com
12	Dan Reaser	dwheelen@fclaw.com
13	Lee Iglody	lee@iglody.com
14	Jennifer DelCarmen	jdelcarmen@pnalaw.net
15	Judah Zakalik	jz@pandalawfirm.com
16	Eric Hone	ehone@hone.law
17	Jamie Zimmerman	jzimmerman@hone.law
18	Marianne Sylva	msylva@lawhjc.com
19	Lisa Holding	lholding@lawhjc.com
20	Daniel Tetreault	dtetreault@lawhjc.com
21	James Pisanelli	lit@pisanellibice.com
22	Logan Willson	Logan@jfnvlaw.com
23	Jordan Smith	jts@pisanellibice.com
24		
25		
26		
27		
28		

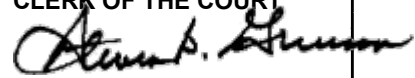
1	Anastasia Noe	anastasia@pandalawfirm.com
2	Craig Newby	cnewby@ag.nv.gov
3	Shannon Dinkel	sd@pisanellibice.com
4	Eservice Filing	eservice@thedplg.com
5	John Savage	jsavage@nevadafirm.com
6	Katherine MacElwain	kmacelwain@nevadafirm.com
7	Karen Morrow	kmorrow@hone.law
8	Dominic Gentile	dgentile@clarkhill.com
9	Tanya Bain	tbain@clarkhill.com
10	Gail May	Gail@ramoslaw.com
11	Jeffery Bendavid	jbendavid@bendavidfirm.com
12	Stephanie Smith	ssmith@bendavidfirm.com
13	Clarence Gamble	clarence@ramoslaw.com
14	Michelle Miller	michellemiller@millerlawinc.us
15	James Puzey	jpuzey@nevadafirm.com
16	Michael Ayers	mayers@nevadafirm.com
17	James Puzey	jpuzey@nevadafirm.com
18	Karen Stecker	kstecker@conantlawfirm.com
19	Brett Scolari	bscolari@trykecompanies.com
20	Paul Conant	pconant@conantlawfirm.com
21	Conant Law Firm	docket@conantlawfirm.com
22	D. Neal Tomlinson	neal@hyperionlegal.com
23	Michael Becker	Michael@702defense.com
24		
25		
26		
27		
28		

1	Rory Vohwinkel	rory@vohwinkellaw.com
2	Rick Hsu	rhsu@mcllawfirm.com
3	Clarence Gamble	Clarence@ramoslaw.com
4	Jeffrey Whitemore	chase@sandelawgroup.com
5	Ben Ross	ben@litigationservices.com
6	Depository LIT	Depository@litigationservices.com
7	Craig Slater	efile@luhlaw.com
8	Steven Jaffe	SJaffe@lawhjc.com
9	Alicia Vega	avega@litigationservices.com
10	James Beckstrom	jb@beckstromlaw.com
11	Suzanne Boggs	sb@beckstromlaw.com
12	Clarissa Reyes	creyes@clarkhill.com
13	Kelsey Fusco	kfusco@nevadafirm.com
14	Katherine Rodriguez	krodriguez@nevadafirm.com
15	April Allen	aallen@kskdllaw.com
16	James Beckstrom	JB@Beckstromlaw.com
17	Suzanne Boggs	SB@Beckstromlaw.com
18	Susan Matejko - Administrative Assistant	smatejko@nevadafirm.com
19	Candice Mata	lawclerk@hone.law
20	L. Christopher Rose	lcr@h2law.com
21	Sabrena Clinton	sclinton@ag.nv.gov
22	Kiel Ireland	kireland@ag.nv.gov
23	Karson Bright	kdb@h2law.com
24		
25		
26		
27		
28		

1	Vernon Nelson	vnelson@nelsonlawfirmnv.com
2	Sigal Chattah	Chattahlaw@gmail.com
3	Ben Lehavi	Ben@Benslaw.com
4	Amy Sugden	amy@sugdenlaw.com
5	Anthony Arger	anthony@nvlawyers.com
6	Rusty Graf	rgraf@blackwadhams.law
7	Brigid Higgins	bhiggins@blackwadhams.law
8	Diane Meeter	dmeeter@blackwadhams.law
9	Marsha Stallsworth	mstallsworth@blackwadhams.law
10	Nicolas Donath	Nick@nrdarelaw.com
11	Anedra Wylie	Anedra@Benslaw.com
12	Gregory Scott	gscott@lawhjc.com
13	Staci Ibarra	sibarra@pnalaw.net
14	Benjamin Gordon	bgordon@nblawnv.com
15	Noah Cicero	ncicero@lawhjc.com
16	Misty Janati	misty@jfnvlaw.com
17	James Beckstrom	James@Benslaw.com
18	Sunny Southworth	ssouthworth@ag.nv.gov
19	Amanda Laub	amanda@benslaw.com
20	Mary Pizzariello	MPizzariello@ag.nv.gov
21	Kelly McGee	kom@h2law.com
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25		
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27		
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EXHIBIT B

EXHIBIT B



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
Email: 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*

20
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.

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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.

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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 Gravitas 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.

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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 Pharmacy.

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.

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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.

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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
8 member for a medical marijuana establishment or a
marijuana establishment that has had its registration
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 PUPO 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

 231. While Jorge Pupo testified he doesn't know who removed compliance records from the
application and evaluation process, an email has been produced documenting Mr. Pupo's instruction
to employees of the Department of Taxation to remove violations committed by certain applicants
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:

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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

described above under color of state Law.

313. While acting under color of state law, Defendants' actions described above where the official policy and/or custom of Defendants to deprive Plaintiff and those similarly situated of their constitutional rights afforded to them under the Nevada and United States Constitution, specifically the 14th Amendment to the United States Constitution and Article 1, Section 8 of the Nevada Constitution. Specifically, Defendants through Defendant PUPO and his subordinates, directed the unconstitutional and illegal conduct in violation of the Nevada and United States Constitution. Moreover, Defendants had direct and actual knowledge of the violations and/or were deliberately indifferent to the constitutional violations that harmed Plaintiff.

314. The harm occasioned upon Plaintiff resulting from Defendants' illegal and unconstitutional conduct, in addition, resulted from inadequate supervision, training, and screening of agents/employees of the DOT.

315. As a direct and proximate result of Defendants' violations of Plaintiff's rights afforded to him under the Nevada and United States Constitution, Defendants are liable to Plaintiff for damages pursuant to 42 USC 1983. 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.

316. Moreover, pursuant 42 USC 1988, Plaintiff is entitled to its reasonable attorney's fees and costs.

NINTH CLAIM FOR RELIEF

(Unjust Enrichment)

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

317. Plaintiff applied for recreational marijuana licenses in accordance with NRS Chapter 453D and the regulations and rules promulgated by the DOT.

318. Plaintiff applied for these licenses because NRS Chapter 453’s mandate that did not allow the DOT to “pick and choose” winners and losers at their whim, but provided specific, mandatory criterion that the DOT was obligated to comply with in awarding the recreational marijuana licenses.

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 26th, day of March, 2020.

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

23 

24 THEODORE PARKER, III, ESQ.
25 Nevada Bar No. 4716
26 MAHOGANY TURFLEY, ESQ.
27 Nevada Bar No. 13974
28 2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

*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 26th, 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.

1 Clarence E. Gamble, Esq.
2 Nevada Bar No. 4268
3 RAMOS LAW
4 3000 Youngfield Street, Suite 200
5 Wheat Ridge, CO 80215
6 Phone: (303) 733-6353 Fax: (303) 856-5666
7 Clarence@ramoslaw.com

8 *Attorney for Defendant/Respondent*
9 *RURAL REMEDIES, LLC*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In Re: D.O.T. Litigation

13 Case No: A-19-787004-B
14 Consolidated with: A-785818
15 A-786357
16 A-786962
17 A-787035
18 A-787540
19 A-787726
20 A-801416

21 Department No. XI

22 **DEFENDANT RURAL REMEDIES,**
23 **LLC'S AMENDED COMPLAINT IN**
24 **INTERVENTION, PETITION FOR**
25 **JUDICIAL REVIEW OR WRIT OF**
26 **MANDAMUS**

27 Arbitration Exemption Claimed:

- 28
- 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
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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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GRAVITAS HENDERSON L.L.C., a Nevada limited liability company;
GRAVITAS NEVADA LTD., a Nevada limited liability company; GREEN
LEAF FARMS HOLDINGS LLC, a Nevada limited liability company;
GREEN LIFE PRODUCTIONS LLC, a Nevada limited liability company;
GREEN THERAPEUTICS LLC, a Nevada limited liability company;
GREENLEAF WELLNESS, INC., a Nevada corporation; GREENMART
OF NEVADA NLV, LLC, a Nevada limited liability company;
GREENPOINT NEVADA INC., a Nevada corporation; GREENSCAPE
PRODUCTIONS LLC, a Nevada limited liability company; GREENWAY
HEALTH COMMUNITY L.L.C., a Nevada limited liability company;
GREENWAY. MEDICAL LLC, a Nevada limited liability company; GTI
NEVADA, LLC, a Nevada limited liability company; H & K GROWERS
CORP., a Nevada corporation; HARVEST OF NEVADA LLC; a Nevada
limited liability company; HEALTHCARE OPTIONS FOR PATIENTS
ENTERPRISES, LLC, a Nevada limited liability company; HELIOS NV
LLC; a Nevada limited liability company; HELPING HANDS WELLNESS
CENTER, INC., a Nevada corporation; HERBAL CHOICE INC., a
Nevada corporation; HIGH SIERRA CULTIVATION LLC, a Nevada
limited liability company; HIGH SIERRA HOLISTICS LLC, a Nevada
limited liability company; INTERNATIONAL SERVICE AND
REBUILDING, INC., a domestic corporation; JUST QUALITY, LLC, a
Nevada limited liability company; KINDIBLES LLC, a Nevada limited

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.

- 18
19
20
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

suggestions and proposals for legislative, regulatory, and executive actions to be taken in implementing BQ2.

18. 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."

19. During the 2017 legislative session, Assembly Bill 422 transferred responsibility for the registration, licensing and regulation of marijuana establishments to the DOT.

20. 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").

21. The Regulations for licensing were to be "directly and demonstrably related to the operation of a marijuana establishment." NRS 453D.200(1)(b).

22. NRS 453D.200(1) provides, in part, "[t]he regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable."

23. The limitation of "unreasonably impracticable" in NRS 453D.200(1) applies to the Regulations adopted by the DOT, not the mandatory language of BQ2.

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.

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 (9th 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
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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 14th 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
20

21 97. The harm occasioned upon Plaintiff resulting from Defendants' illegal
22 and unconstitutional conduct, in addition, resulted from inadequate
23 supervision, training, and screening of agents/employees of the DOT.

24 98. As a direct and proximate result of Defendants' violations of Plaintiff's
25 rights afforded to him under the Nevada and United States Constitution,
26 Defendants are liable to Plaintiff for damages pursuant to 42 USC 1983.
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
24 114. Plaintiff paid to the DOT in excess of \$300,000 to apply for the
25 recreational marijuana licenses that as of the date of the filing of this
26 complaint, the DOT has not returned.
27

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**

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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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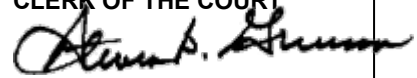
/s/ Gail L. May

37

CHRISTIENSEN LAW OFFICES

810 S. Casino Center Blvd, Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

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Steven D. Grierson
CLERK OF THE COURT



PETER S. CHRISTIANSEN, ESQ.

Nevada Bar No. 5254

pete@christiansenlaw.com

WHITNEY J. BARRETT, ESQ.

Nevada Bar No. 13662

wbarrett@christiansenlaw.com

CHRISTIENSEN LAW OFFICES

810 S. Casino Center Blvd., Suite 104

Las Vegas, Nevada 89101

Telephone: (702) 240-7979

Facsimile: (866) 412-6992

Attorneys for Qualcan, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE: D.O.T.

Case No.: A-19-787004-B

Dept. No.: XI

Consolidated with:

A-19-787035-C

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787540-W

A-19-787726-C

A-19-801416-B

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.

28

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

herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendant, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

21. DOES I through X and ROE BUSINESS ENTITIES I through X, are or may be, qualified holders of Medical Marijuana Establishment (“MME”) Certificates, who submitted an application to operate a recreational retail marijuana establishment to the DOT between September 7, 2018 and September 20, 2018, and are attempting to circumvent the Order Granting Preliminary Injunction of August 23, 2019 by Eighth Judicial District Court Judge Elizabeth Gonzalez, in Case No. A-19-786962-B, as well as abrogate the prior ranking by the DOT with regard to its issuance of conditional licenses.

II.

JURISDICTION AND VENUE

22. Jurisdiction is proper in this Court pursuant to NRS 4.370(1)(a), NRS 30, and because the acts and omissions complained of herein occurred and caused harm within Clark County, Nevada. Further, the amount in controversy exceeds \$15,000.00.

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

III.

GENERAL ALLEGATIONS

A. The Marijuana Legislation and Regulations

24. The Nevada Constitution, Article 19, Section 2 allows Nevada voters to amend Nevada’s Constitution or enact legislation through the initiative process and precludes amendment or modification of a voter-initiated law for three years.

25. In 2016, the initiative for the legalization of recreational marijuana was presented to Nevada voters by way of Ballot Question 2 (“BQ2”), known as the “Regulation and Taxation of Marijuana Act”, which proposed an amendment of the Nevada Revised Statutes as follows:

Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to purchase, cultivate, possess, or consume a certain amount of 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.

1 128. The DOT, in misinterpreting and incorrectly applying NRS 453D, NAC 453D and
2 the related Nevada laws and regulations, has exceeded its jurisdiction by issuing conditional
3 licenses to applicants that do not merit conditional licenses under NRS 453D, NAC 453D, and
4 R092-17.

5 129. Plaintiff is aggrieved by the decision of the DOT to deny Plaintiff's application
6 without proper notice, substantial evidence, or compliance with NRS 453D, NAC 453D, R092-
7 17, and other Nevada state laws or regulations.

8 130. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an
9 administrative appeal of the DOT's decision, and apart from injunctive relief, no plain, speedy,
10 and adequate remedy for the DOT's improper actions.

11 131. Accordingly, Plaintiff petitions this Court for judicial review of the record on
12 which the DOT's denial was based, including but not limited to

- 13 a. A determination that the decision lacked substantial evidence;
- 14 b. A determination that the denial is void ab initio for non-compliance with NRS
15 453D, NAC 453D, R092-17 and other Nevada state laws or regulations; and
- 16 c. Other relief consistent with those determinations.

17 132. Plaintiff has found it necessary to retain the legal services of Christiansen Law
18 Offices to bring this action, and Plaintiff is entitled to recover its reasonable attorneys' fees and
19 costs therefor.

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

22 133. Plaintiff repeats and re-alleges all prior paragraphs as though fully set forth herein.

23 134. When a governmental body fails to perform an act "that the law requires" or acts
24 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. NRS
25 34.160.

26 135. The DOT failed to perform various acts that the law requires including but not
27 limited to:

- 28 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.

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

161. 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.

162. 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.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For declaratory relief as set forth above;
2. For a preliminary and permanent injunction enjoining the enforcement of the denial;
3. For compensatory and special damages as set forth herein;
4. For punitive damages;
5. For attorneys' fees and costs of suit; and
6. For all other and further relief as the Court deems just and proper.

Dated this 11th day of February, 2020.

CHRISTIANSEN LAW OFFICES



PETER S. CHRISTIANSEN, ESQ.

Nevada Bar No. 5254

WHITNEY J. BARRETT, ESQ.

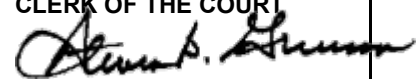
Nevada Bar No. 13662

Attorneys for Plaintiff Qualcan, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 11th 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



TAC
ADAM K. BULT, ESQ., Nevada Bar No. 9332
abult@bhfs.com
MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737
mfetaz@bhfs.com
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
tchance@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

ADAM R. FULTON, Esq., Nevada Bar No. 11572
afulton@jfnvlaw.com
JENNINGS & FULTON, LTD.
2580 Sorrel Street
Las Vegas, NV 89146
Telephone: 702.979.3565
Facsimile: 702.362.2060

Attorneys for Plaintiffs

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

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

13 **PARTIES**

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

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

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

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

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

28 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

- 1 consideration;
- 2 iii. Plaintiffs that submitted multiple Applications containing the same
- 3 substantive information and data for different localities received
- 4 widely different scores for certain Factors;
- 5 iv. The Plaintiffs received much higher scores for the unidentified data
- 6 and information when compared with the identified data and
- 7 information submitted;
- 8 v. The DOT placed improper weight upon other applications simply
- 9 because they were submitted by well-known and well-connected
- 10 persons; and
- 11 vi. The DOT improperly utilized Manpower temporary workers who
- 12 had little to no experience in retail marijuana licensure to review the
- 13 Applications and failed to provide those persons with a uniform
- 14 system of review to ensure consistency and impartiality in the
- 15 scoring process;
- 16 i. The DOT violated NRS 453D.210(6) because the Factor evaluation
- 17 procedure is not a competitive bidding process, as required by NRS
- 18 453D.210(6);
- 19 j. The DOT violated NAC 453D.272(5) because multiple retail marijuana
- 20 licenses were issued to the same entity or group of persons, including
- 21 certain of the Successful Applicants; and
- 22 k. The denial notices sent by the DOT failed to comply with NRS
- 23 453D.210(4)(b) because they do not give the specific substantive reasons
- 24 for the denial of Plaintiffs' Applications.
- 25 140. The DOT contends that:
- 26 a. The Factors are compliant with NRS 453D.210(6);
- 27 b. All applications it approved were complete and were done so in a valid
- 28 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 29th day of January, 2020.

12 BROWNSTEIN HYATT FARBER SCHRECK, LLP

13 /s/ Adam K. Bult

14 ADAM K. BULT, ESQ., Nevada Bar No. 9332

15 MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737

16 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

17 JENNINGS & FULTON, LTD.

18 ADAM R. FULTON, Esq., Nevada Bar No. 11572

19 *Attorneys for Plaintiffs*

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 29th day of January, 2020, to the following:

David R. Koch, Esq.
Steven B. Scow, Esq.
Brody R. Wight, Esq.
Daniel G. Scow, Esq.
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
dkoch@kochscow.com
sscow@kochscow.com

*Attorneys for Intervenor
Nevada Organic Remedies, LLC*

Philip M. Hymanson, Esq.
Henry Joseph Hymanson, Esq.
HYMANSON & HYMANSON
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
Phil@HymansonLawNV.com
Hank@HymansonLawNV.com

*Attorneys for Defendants Integral Associates
LLC d/b/a Essence Cannabis Dispensaries;
Essence Tropicana, LLC; Essence
Henderson, LLC; CPCM Holdings, LLC
d/b/a Thrive Cannabis Marketplace;
Commerce Park Medical, LLC; and
Cheyenne Medical, LLC*

Joseph A. Gutierrez, Esq.
Jason R. Maier, Esq.
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
jrm@mgalaw.com
jag@mgalaw.com

*Attorneys for Defendants Integral Associates
LLC d/b/a Essence Cannabis Dispensaries;
Essence Tropicana, LLC; Essence Henderson,
LLC; CPCM Holdings, LLC d/b/a Thrive
Cannabis Marketplace; Commerce Park
Medical, LLC; and Cheyenne Medical, LLC*

Aaron D. Ford, Esq.
David J. Pope, Esq.
Vivienne Rakowsky, Esq.
Robert E. Werbicky, Esq.
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
DPope@ag.nv.gov
VRakowsky@ag.nv.gov
RWerbicky@ag.nv.gov

*Attorneys for State of Nevada, Department of
Taxation*

/s/ Wendy Cosby
an employee of Brownstein Hyatt Farber Schreck, LLP

EXHIBIT 1



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>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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

Recreational Marijuana Establishment License Application

Recreational Retail Marijuana Store Only

Release Date: July 6, 2018

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

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

For additional information, please contact:

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

marijuana@tax.state.nv.us



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Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
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Fax: (702) 486-3377

APPLICANT INFORMATION

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

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



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Henderson, Nevada 89074
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1. TERMS AND DEFINITIONS

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

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



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



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



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



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Reno, Nevada 89502
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Governor
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Chair, Nevada Tax Commission
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Executive Director

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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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WILLIAM D. ANDERSON
Executive Director

STATE OF NEVADA DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
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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 OR Part II – Non-Identified Criteria Response



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Carson City, Nevada 89706-7937
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Reno, Nevada 89502
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Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
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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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Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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WILLIAM D. ANDERSON
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LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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6. APPLICATION EVALUATION AND AWARD PROCESS

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

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

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

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



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Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified format.</i>	20
Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: <ul style="list-style-type: none"> Building and construction plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. Review results of background check(s). Applicant has until the end of the 90-day application period to resolve background check information which may cause the application to be rejected. 	

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

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



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Governor
JAMES DEVOLLD
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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:
------------	-------------	-----

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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Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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

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

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
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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



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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



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APPLICANT INFORMATION

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

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



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

STATE OF NEVADA DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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

1. TERMS AND DEFINITIONS

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

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



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



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



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



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2. APPLICATION OVERVIEW

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

Assembly Bill 422 (AB422):

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

LCB File No. Regulation R092-17:

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

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

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

3. APPLICATION TIMELINE

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

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



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4. APPLICATION INSTRUCTIONS

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

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

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

5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

5.1. General Submission Requirements

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



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5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

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

5.2.1. Tab I – Title Page

The title page must include the following:

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

5.2.2. Tab II – Table of Contents

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

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

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

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

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

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

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

5.2.6. Tab VI – Identifier Legend (Attachment H)

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



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

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

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

5.2.8.2. The source of those liquid assets.

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

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

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

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

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

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

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

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

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

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



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

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

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

5.2.11. **Tab XI– Financial plan**

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

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

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

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

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

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

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

5.2.13. **Application Fee**

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

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

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

The NON-IDENTIFIED CRITERIA RESPONSE must include:

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



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

5.3.1. **Tab I – Title Page**

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

The title page must include the following:

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

5.3.2. **Tab II – Table of Contents**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

STATE OF NEVADA DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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

5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

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

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



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Las Vegas, Nevada 89101
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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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RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
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LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
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6. APPLICATION EVALUATION AND AWARD PROCESS

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

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

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

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



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RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
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Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
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Henderson, Nevada 89074
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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified format.</i>	20
Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: <ul style="list-style-type: none"> Building plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. Review results of background check(s). Applicant has until the end of the 90-day application period to resolve background check information which may cause the application to be rejected. 	

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

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



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Carson City, Nevada 89706-7937
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RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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Henderson, Nevada 89074
Phone: (702) 486-2300
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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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Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

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Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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Building L, Suite 235
Reno, Nevada 89502
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LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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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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Governor
JAMES DEVOLLD
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Executive Director

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1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
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Building L, Suite 235
Reno, Nevada 89502
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LAS VEGAS OFFICE
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Las Vegas, Nevada 89101
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HENDERSON OFFICE
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Henderson, Nevada 89074
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ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

GENERAL INFORMATION

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

APPLYING ENTITY INFORMATION

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

DESIGNEE INFORMATION

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

Last Name:	First Name:	MI:
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SUPPLEMENTAL REQUESTS

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



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1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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Reno, Nevada 89502
Phone: (775) 687-9999
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LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
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Henderson, Nevada 89074
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ATTACHMENT A (continued)

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

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

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



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ATTACHMENT A (continued)

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

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

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

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

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

Print Name

Title

Signature

Date Signed

Print Name

Title

Signature

Date Signed



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Carson City, Nevada 89706-7937
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Reno, Nevada 89502
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LAS VEGAS OFFICE
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Las Vegas, Nevada 89101
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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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Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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

ATTACHMENT 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>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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Phone: (775) 687-9999
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ATTACHMENT E
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

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

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

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

City:

County:

State:

Zip Code:

Legal Description of the Property:



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ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

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

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

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

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

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

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

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



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

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

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

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



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ATTACHMENT H IDENTIFIER LEGEND FORM

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

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



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ATTACHMENT I FACILITY JURISDICTION FORM

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

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

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

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



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ATTACHMENT J

FEDERAL LAWS AND AUTHORITIES

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

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

ENVIRONMENTAL:

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

ECONOMIC:

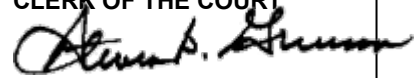
- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts,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

SOCIAL LEGISLATION:

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

MISCELLANEOUS AUTHORITY:

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



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.*

13
14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 In Re: D.O.T. Litigation

17 Consolidated Case No.: A-19-787004-B

18 **CONSOLIDATED WITH:**

19 A-18-785818-W
20 A-18-786357-W
21 A-19-786962-B
22 A-19-787035-C
23 A-19-787540-W
24 A-19-787726-C
25 A-19-801416-B

Dept. No. XI

DEFENDANT/RESPONDENT
NATURAL MEDICINE LLC'S
COMPLAINT IN INTERVENTION,
PETITION FOR JUDICIAL
REVIEW AND/OR WRITS OF
CERTIORARI, MANDAMUS, AND
PROHIBITION

BendavidLaw

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;
23
24
25

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;

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

4 (g) Requirements for record keeping by marijuana establishments;

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

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

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

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

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

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

16 The Department shall approve or deny applications for licenses pursuant to NRS
17 453D.210.

18 14. NRS 453D.200(6) mandates also that the DOT "conduct a background check of
19 each prospective owner, officer, and board member of a marijuana establishment license
20 applicant."

21 15. The provisions of the 2016 ballot initiative and NRS 453D which are presently in
22 effect, with the exception of NRS 453D.205 are identical.

23 16. NRS 453D.205 provides as follows:

24 1. When conducting a background check pursuant to subsection 6 of NRS
25 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

10 29. The factors set forth in NAC 453D.272(1) used to rank competing applications
11 and also to prevent "monopolistic practices" (collectively, the "Factors") are:
12

- 13 a. Whether the owners, officers or board members have experience operating
14 another kind of business that has given them experience which is applicable to
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
members of the proposed marijuana establishment;
- 25 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 win 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 **PLAINTIFF'S APPLICATION AND SUBSEQUENT PROCEEDINGS**

16 38. Plaintiff submitted applications to the DOT for conditional licenses for Recreational
17 Marijuana Establishments in order to own and operate recreational marijuana retail stores in
18 compliance with the specified, published requirements of DOT regulations together with the
19 required application fee in accordance with NRS 453D.210 for Las Vegas, North Las Vegas, and
20 Unincorporated Clark County.

21 39. Plaintiff's applications identified its prospective owners, members, and/or board
22 members for background check pursuant to the requirements of NRS 453D.200(6).
23
24
25

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 50. Further upon information and belief the DOT failed to implement regulations, procedures
16 and protocols that would have ensured a fair and impartial grading, consideration, and award of
17 recreational marijuana licenses within the State of Nevada.

18
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.

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 b. Preservation of public records and other evidence not subject to the Preservation
8 Order.
9

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

24 92. The DOT has issued conditional recreational marijuana dispensary licenses in excess of
25 its jurisdiction by, among other things: (1) eliminating key categories of information from the
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

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7. Any other relief that the court deems necessary and proper.

DATED this 7th day of February, 2020

BENDAVID LAW

/s/ Jeffery A. Bendavid, Esq.
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
STEPHANIE J. SMITH, ESQ.
Nevada Bar No. 11280
BENDAVID LAW
7301 Peak Dr., Suite 150
Las Vegas, NV 89128
Attorneys for Defendant, Natural Medicine L.L.C.