

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF:
D.O.T. LITIGATION

CLARK NATURAL
MEDICINAL SOLUTIONS
LLC; NYE NATURAL
MEDICINAL SOLUTIONS
LLC; CLARK NMSD, LLC;
INYO FINE CANNABIS
DISPENSARY LLC; AND
RURAL REMEDIES, LLC,
Appellants/Cross-Respondents,

v.

CLEAR RIVER LLC

Respondent,

Supreme Court Case No. 86771

District Court Case No. A787004

Electronically Filed
Jul 20 2023 08:57 AM

Elizabeth A. Brown
Clerk of Supreme Court

**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.

1. Judicial District Eighth Department XXXI

County Clark Judge Joanna S. Kishner

District Ct. Case No. A-19-787004-B consolidated with A-785818, A-786357, A-786962, A-787035, A-787540, A-787726, A-801416

2. Attorney filing this docketing statement:

Attorney Craig D. Slater Telephone (702) 367-8899

Firm LUH & ASSOCIATES

Address 8987 W. Flamingo Road
Suite 100
Las Vegas, Nevada 89147

Client(s) Clark Natural Medicinal Solutions LLC, Nye Natural Medicinal Solutions, LLC, Clark NMSD LLC, and Inyo Fine Cannabis Dispensary L.L.C

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. Attorney(s) representing respondents(s):

Attorneys Rusty Graf, Bridig M. Higgins

Telephone (702) 869-8801

Firm BLACK & WADHAMS

Address 400 South Fourth Street, Suite 300
Las Vegas, NV 89101

Client(s) Clear River LLC

3. Nature of disposition below (check all that apply):

- | | |
|--------------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input 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 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 |
| <input checked="" type="checkbox"/> Review of Agency Determination | <input type="checkbox"/> Other disposition (specify): _____ |

4. Does this appeal raise issues concerning any of the following?

- ☐ Child
☐ Custody
 Venue
☐ Termination of parental rights

5. 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: *In The Matter of D.O.T. Litigation*, Supreme Court Case Nos. 86151 and 86276.

6. 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:

None

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

Appellants applied to the Nevada Department of Taxation (“DOT”) for retail recreational cannabis dispensary licenses, and each was denied licensure. Appellants and multiple other entities who were likewise denied licensure filed lawsuits against the DOT. These lawsuits claimed, among other things, that the scoring and licensing procedure employed by the DOT violated provisions of the Nevada Revised Statutes, violated their Federal and State constitutional rights, and was implemented in an arbitrary and capricious manner. Later,

numerous successful applicants who claimed that their interests would be affected by the litigation were granted the right to intervene as defendants along with the DOT. The various lawsuits were consolidated in the Eighth Judicial District Court, Department 11, Judge Gonzalez under case number A-19-787004-B.

The District Court divided the trial into three phases. Phase 1 addressed claims/petitions for Judicial Review. Phase 2 addressed the Plaintiffs' constitutional claims such as whether the Plaintiffs' rights to Equal Protection and Due Process were violated, as well as claims for declaratory relief, a permanent injunction and claims of harm as a result of various business torts alleged to have been committed. Judge Gonzalez presented her Findings of Fact and Conclusions of Law and Permanent Injunction on September 3, 2020 (Phase 2). The permanent injunction barred the State of Nevada from conducting final inspections (a licensing requirement) of the various entities that had/have conditional licenses and which applicants did not properly identify their entire ownership and directorship pursuant to NRS 453D.200(6). The Court also found that much of the licensing process was not fair, but that the Plaintiffs potential damages were too speculative. On September 16, Judge Gonzalez issued her Findings of Fact and Conclusions of law regarding the Judicial Review phase (Phase 1) of the trial wherein she denied all relief being sought.

On August 4, 2022, the District Court entered an order certifying as final the Orders on PHASE 1 and PHASE 2 pursuant to NRCP 54(b). With said certification, the parties' time frames for filing Memorandums of Costs relative to PHASE 1 and PHASE 2 was triggered. Multiple parties filed Memorandums of Costs seeking an award of costs as "prevailing parties." All such Memorandums were timely challenged by the filing of one or more Motions to Retax.

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

Appellants only asserted claims for judicial review in the underlying litigation. Those claims were consolidated with all the other claims of similarly situated parties who were denied recreational cannabis dispensary licenses. Phase 1 of the underlying proceedings resolved the claims asserted by Respondents. Respondents did not participate in Phase 2 (the bench trial) as they had not asserted any constitutional claims. The district court entered orders awarding costs to the prevailing parties in Phase 2 against Appellants despite the fact that Appellants were not parties to Phase 2. With respect to Phase 1, costs are not awardable to the prevailing party in an action for judicial review.

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: The original appeal in this matter is entitled, *In The Matter of D.O.T. Litigation*, Supreme Court Case No. 86151. The second appeal bears the same name, Supreme Court Case No. 86276

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:

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:

Under NRAP 17(a)(9), the appeal of this case should be retained by the Supreme Court since the appeal originates from the business court (Dept. XXI of the Eighth Judicial District).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A – the

claims asserted by Appellants (Phase 1 - judicial review claims) were decided by the

district court without a trial. _____

Was it a bench or jury 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 1) May 19, 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 19, 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)

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 2(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_____

c. Date written notice of entry of order resolving tolling motion was served_____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed June 12, 2023

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

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

NRAP4(a)(1)

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 NRS233B.15

☐ NRS 703.37

☐ NRAP
3A(b)(2)

☐ NRAP
3A(b)(3)

☒ Other
(specify)
NRAP3A(b)(8)

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

The order appealed from denied motions to retax after entry of judgment, which was appealable under NRAP 3A(b)(1).

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

a. Parties:

Plaintiffs: D.H. FLAMINGO, INC; CLARK NATURAL MEDICINAL SOLUTIONS LLC NYE NATURAL MEDICINAL SOLUTIONS LLC, CLARK NMSD LLC, INYO FINE CANNABIS DISPENSARY L.L.C and SURTERRA HOLDINGS, INC.,

Defendants: STATE EX REL. DEPARTMENT OF TAXATION; STATE EX REL. NEVADA TAX COMMISSION; 3AP INC.; 5SEAT INVESTMENTS LLC; ACRES DISPENSARY LLC; ACRES MEDICAL LLC; AGUA STREET LLC; ALTERNATIVE MEDICINE ASSOCIATION LLC; BIONEVA INNOVATIONS OF CARSON CITY LLC; BLOSSUM GROUP LLC; BLUE COYOTE RANCH LLC; CARSON CITY AGENCY SOLUTIONS L.L.C.; CHEYENNE MEDICAL, LLC; CIRCLE S FARMS LLC; CLEAR RIVER, LLC; CN LICENSECO I, Inc.; COMMERCE PARK MEDICAL L.L.C.; COMPASSIONATE TEAM OF LAS VEGAS LLC; CWNEVADA, LLC; D LUX LLC; DEEP ROOTS MEDICAL LLC; DIVERSIFIED MODALITIES MARKETING LTD.; DP HOLDINGS, INC.; ECONEVADA LLC; ESSENCE HENDERSON, LLC; ESSENCE TROPICANA, LLC; ETW MANAGEMENT GROUP LLC; EUPHORIA WELLNESS LLC; EUREKA NEWGEN FARMS LLC; FIDELIS HOLDINGS, LLC; FOREVER GREEN, LLC; FRANKLIN BIOSCIENCE NV LLC; FSWFL, LLC; GB SCIENCES NEVADA LLC; GBS NEVADA PARTNERS, LLC; GFIVE CULTIVATION LLC; GLOBAL HARMONY LLC; GOOD CHEMISTRY NEVADA, LLC; GRAVITAS HENDERSON L.L.C.; GRAVITAS NEVADA LTD.; GREEN LEAF FARMS HOLDINGS LLC; GREEN LIFE PRODUCTIONS LLC; GREEN THERAPEUTICS LLC; GREENLEAF WELLNESS, INC.; GREENMART OF NEVADA NLV, LLC; GREENPOINT NEVADA INC.; GREENSCAPE PRODUCTIONS LLC; GREENWAY HEALTH COMMUNITY L.L.C.; GREENWAY MEDICAL LLC; GTI NEVADA, LLC; H & K GROWERS CORP.; HARVEST OF NEVADA LLC; HEALTHCARE OPTIONS FOR PATIENTS ENTERPRISES, LLC; HELIOS NV LLC; HELPING HANDS WELLNESS CENTER, INC.; HERBAL CHOICE INC.; HIGH SIERRA CULTIVATION LLC; HIGH SIERRA HOLISTICS LLC; INTERNATIONAL SERVICE AND REBUILDING, INC.; JUST QUALITY, LLC; KINDIBLES LLC, a Nevada limited liability company; LAS VEGAS WELLNESS AND COMPASSION LLC; LIBRA WELLNESS CENTER, LLC; LIVFREE WELLNESS LLC; LNP, LLC; LONE MOUNTAIN PARTNERS, LLC; LUFF ENTERPRISES NV, INC.; LVMC C&P LLC; MALANA LV L.L.C.; MATRIX NV, LLC; MEDIFARM IV, LLC; MILLER FARMS, LLC; MM DEVELOPMENT COMPANY, INC.; MM R & D, LLC; MMNV2 HOLDINGS I,

LLC; MMOF VEGAS RETAIL, INC.; NATURAL MEDICINE L.L.C.; NCMM, LLC; NEVADA BOTANICAL SCIENCE, INC.; NEVADA GROUP WELLNESS LLC; NEVADA HOLISTIC MEDICINE LLC; NEVADA MEDICAL GROUP LLC; NEVADA ORGANIC REMEDIES LLC; NEVADA WELLNESS CENTER LLC; NEVADAPURE, LLC; NEVCANN LLC; NLV WELLNESS LLC; NLVG, LLC; NULEAF INCLINE DISPENSARY LLC; NV 3480 PARTNERS LLC; NV GREEN INC.; NYE FARM TECH LTD.; PARADISE WELLNESS CENTER LLC; PHENOFARM NV LLC; PHYSIS ONE LLC; POLARIS WELLNESS CENTER L.L.C.; PURE TONIC CONCENTRATES LLC; QUALCAN L.L.C.; RED EARTH, LLC; RELEAF CULTIVATION, LLC; RG HIGHLAND ENTERPRISES INC.; ROMBOUGH REAL ESTATE INC.; RURAL REMEDIES LLC; SERENITY WELLNESS CENTER LLC; SILVER SAGE WELLNESS LLC; SOLACE ENTERPRISES, LLLP; SOUTHERN NEVADA GROWERS, LLC; STRIVE WELLNESS OF NEVADA, LLC; SWEET GOLDY LLC; TGIG, LLC; THC NEVADA LLC; THE HARVEST FOUNDATION LLC; THOMPSON FARM ONE L.L.C.; TRNVP098 LLC; TRYKE COMPANIES RENO, LLC; TRYKE COMPANIES SO NV, LLC; TWELVE TWELVE LLC; VEGAS VALLEY GROWERS LLC; WAVESEER OF NEVADA, LLC; WELLNESS & CAREGIVERS OF NEVADA NLV, LLC; WELLNESS CONNECTION OF NEVADA, LLC; WENDOVERA LLC; WEST COAST DEVELOPMENT NEVADA, LLC; WSCC, INC.; YMY VENTURES LLC; ZION GARDENS LLC

- 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 district court action involved approximately eight cases that were consolidated. Per the district court's order, all parties that applied for recreational cannabis dispensary licenses were deemed necessary/indispensable parties to the underlying litigation. All applicants, including applicants that were awarded and denied licenses, were named as parties to the underlying litigation. Many of the parties were named and served but failed to appear or otherwise participate.

This appeal only concerns awards of costs that were awarded against Appellants. Some parties to the litigation did not seek an award of costs and other parties did not seek an award of costs against Appellants.

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.

Appellants asserted the following claims: 1) Petition for Judicial Review; 2) Petition for Writ of Certiorari; 3) Petition for Writ of Mandamus; and 4) Petition for Writ of Prohibition. No counter-claims, cross-claims, or third-party claims were asserted.

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:

The orders appealed herein only address the claims for costs from three parties: 1) Wellness Connection; 2) Nevada Organic Remedies; and 3) Deep Roots Harvest. After the filing of this appeal, other parties to the underlying action filed similar orders awarding costs against Appellants. Moreover, there is at least one party that has not yet submitted an order regarding is application for costs against Appellants.

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

 x Yes

 No

b. 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?

 x Yes

 No

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)):

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

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.

Clark Natural Medicinal Solutions LLC

Nye Natural Medicinal Solutions LLC

Clark NMSD, LLC

Inyo Fine Cannabis Dispensary LLC

Name of appellants

July 19, 2023

Date

Craig D. Slater, Esq.

Name of counsel of record



Signature of counsel of record

Clark County State of Nevada

State and County where signed

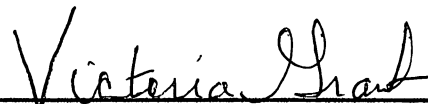
CERTIFICATE OF SERVICE

I certify that on the 20th day of July, 2023, I served a copy of this completed docketing statement upon all counsel of record:

X By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.

Rusty Graf, Esq. Brigid Higgins, Esq. BLACK & WADHAMS PLLC 10777 W. Twain Ave., Suite 300 Las Vegas, Nevada 89135	
-------------------------------------------------------------------------------------------------------------------------------	--

Dated this 20th day of July, 2023.

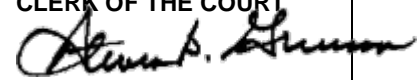


Signature

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	D.H. Flamingo, Inc., et al. First Amended Complaint	106
2	Notice of Entry of Order Denying in Part and Granting in Part The TGIG Plaintiffs' Motion to Retax And Settle Costs, and Awarding Costs to Clear River, LLC	22

EXHIBIT 1



FAC

DENNIS L. KENNEDY
Nevada Bar No. 1462

JOSHUA M. DICKEY
Nevada Bar No. 6621

SARAH E. HARMON
Nevada Bar No. 8106

KELLY B. STOUT
Nevada Bar No. 12105

BAILEY❖KENNEDY

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

JDickey@BaileyKennedy.com

SHarmon@BaileyKennedy.com

KStout@BaileyKennedy.com

Attorneys for Plaintiffs/Petitioners

D.H. FLAMINGO, INC., d/b/a THE
APOTHECARY SHOPPE; CLARK NATURAL
MEDICINAL SOLUTIONS LLC, d/b/a
NuVEDA; NYE NATURAL MEDICINAL
SOLUTIONS LLC, d/b/a NuVEDA; CLARK
NMSD LLC, d/b/a NuVEDA; and INYO FINE
CANNABIS DISPENSARY L.L.C., d/b/a INYO
FINE CANNABIS DISPENSARY;

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No. A-19-787035-C

Dept. No. VI

**FIRST AMENDED COMPLAINT AND
PETITION FOR JUDICIAL REVIEW
AND/OR WRITS OF CERTIORARI,
MANDAMUS, AND PROHIBITION**

Exempt from Arbitration NAR 3(A), 5

- Action Seeking Judicial Review of Administrative Decisions
- Action for Declaratory Relief
- Action Presenting a Significant

Plaintiffs/Petitioners,

vs.

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

Issue of Public Policy

- **Action Seeking Equitable or Extraordinary Relief**

1 HOLDINGS, LLC., a Nevada limited liability
2 company; FOREVER GREEN, LLC, a Nevada
3 limited liability company; FRANKLIN
4 BIOSCIENCE NV LLC, a Nevada limited
5 liability company; FSWFL, LLC, a Nevada
6 limited liability company; GB SCIENCES
7 NEVADA LLC, a Nevada limited liability
8 company; GBS NEVADA PARTNERS, LLC, a
9 Nevada limited liability company; GFIVE
10 CULTIVATION LLC, a Nevada limited liability
11 company; GLOBAL HARMONY LLC, a
12 Nevada limited liability company; GOOD
13 CHEMISTRY NEVADA, LLC, a Nevada limited
14 liability company; GRAVITAS HENDERSON
15 L.L.C., a Nevada limited liability company;
16 GRAVITAS NEVADA LTD., a Nevada limited
17 liability company; GREEN LEAF FARMS
18 HOLDINGS LLC, a Nevada limited liability
19 company; GREEN LIFE PRODUCTIONS LLC,
20 a Nevada limited liability company; GREEN
21 THERAPEUTICS LLC, a Nevada limited
22 liability company; GREENLEAF WELLNESS,
23 INC., a Nevada corporation; GREENMART OF
24 NEVADA NLV, LLC, a Nevada limited liability
25 company; GREENPOINT NEVADA INC., a
26 Nevada corporation; GREENSCAPE
27 PRODUCTIONS LLC, a Nevada limited liability
28 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

1 LLC, a Nevada limited liability company; LAS
2 VEGAS WELLNESS AND COMPASSION
3 LLC; a Nevada limited liability company;
4 LIBRA WELLNESS CENTER, LLC, a Nevada
5 limited liability company; LIVFREE
6 WELLNESS LLC, a Nevada limited liability
7 company; LNP, LLC, a Nevada limited liability
8 company; LONE MOUNTAIN PARTNERS,
9 LLC, a Nevada limited liability company; LUFF
10 ENTERPRISES NV, INC., a Nevada
11 corporation; LVMC C&P LLC, a Nevada limited
12 liability company; MALANA LV L.L.C., a
13 Nevada limited liability company; MATRIX NV,
14 LLC, a Nevada limited liability company;
15 MEDIFARM IV, LLC, a Nevada limited liability
16 company; MILLER FARMS, LLC, a Nevada
17 limited liability company; MM
18 DEVELOPMENT COMPANY, INC., a Nevada
19 corporation; MM R & D, LLC, a Nevada limited
20 liability company; MMNV2 HOLDINGS I, LLC,
21 a Nevada limited liability company; MMOF
22 VEGAS RETAIL, INC. a Nevada corporation;
23 NATURAL MEDICINE L.L.C., a Nevada
24 limited liability company; NCMM, LLC, a
25 Nevada limited liability company; NEVADA
26 BOTANICAL SCIENCE, INC., a Nevada
27 corporation; NEVADA GROUP WELLNESS
28 LLC, a Nevada limited liability company;
NEVADA HOLISTIC MEDICINE LLC, a
Nevada limited liability company; NEVADA
MEDICAL GROUP LLC, a Nevada limited
liability company; NEVADA ORGANIC
REMEDIES LLC, a Nevada limited liability
company; NEVADA WELLNESS CENTER
LLC, a Nevada limited liability company;
NEVADAPURE, LLC, a Nevada limited liability
company; NEVCANN LLC, a Nevada limited
liability company; NLV WELLNESS LLC, a
Nevada limited liability company; NLVG, LLC,
a Nevada limited liability company; NULEAF
INCLINE DISPENSARY LLC, a Nevada limited
liability company; NV 3480 PARTNERS LLC, a
Nevada limited liability company; NV GREEN
INC., a Nevada corporation; NYE FARM TECH
LTD., a Nevada limited liability company;
PARADISE WELLNESS CENTER LLC, a
Nevada limited liability company;
PHENOFARM NV LLC, a Nevada limited

1 liability company; PHYSIS ONE LLC, a Nevada
2 limited liability company; POLARIS
3 WELLNESS CENTER L.L.C., a Nevada limited
4 liability company; PURE TONIC
5 CONCENTRATES LLC, a Nevada limited
6 liability company; QUALCAN L.L.C., a Nevada
7 limited liability company; RED EARTH, LLC, a
8 Nevada limited liability company; RELEAF
9 CULTIVATION, LLC, a Nevada limited liability
10 company, RG HIGHLAND ENTERPRISES
11 INC., a Nevada corporation; ROMBOUGH
12 REAL ESTATE INC., a Nevada corporation;
13 RURAL REMEDIES LLC, a Nevada limited
14 liability company; SERENITY WELLNESS
15 CENTER LLC, a Nevada limited liability
16 company; SILVER SAGE WELLNESS LLC, a
17 Nevada limited liability company; SOLACE
18 ENTERPRISES, LLLP, a Nevada limited-
19 liability limited partnership; SOUTHERN
20 NEVADA GROWERS, LLC, a Nevada limited
21 liability company; STRIVE WELLNESS OF
22 NEVADA, LLC, a Nevada limited liability
23 company; SWEET GOLDY LLC, a Nevada
24 limited liability company; TGIG, LLC, a Nevada
25 limited liability company; THC NEVADA LLC,
26 a Nevada limited liability company; THE
27 HARVEST FOUNDATION LLC, a Nevada
28 limited liability company; THOMPSON FARM
ONE L.L.C., a Nevada limited liability company;
TRNVP098 LLC, a Nevada limited liability
company; TRYKE COMPANIES RENO, LLC, a
Nevada limited liability company; TRYKE
COMPANIES SO NV, LLC, a Nevada limited
liability company; TWELVE TWELVE LLC, a
Nevada limited liability company; VEGAS
VALLEY GROWERS LLC, a Nevada limited
liability company; WAVESEER OF NEVADA,
LLC, a Nevada limited liability company;
WELLNESS & CAREGIVERS OF NEVADA
NLV, LLC, a Nevada limited liability company;
WELLNESS CONNECTION OF NEVADA,
LLC, a Nevada limited liability company;
WENDOVERA LLC, a Nevada limited liability
company; WEST COAST DEVELOPMENT
NEVADA, LLC, a Nevada limited liability
company; WSCC, INC., a Nevada corporation;
YMY VENTURES LLC, a Nevada limited
liability company; ZION GARDENS LLC, a

Nevada limited liability company; DOES 1-100;
and Roes 1-100.

Defendants/Respondents.

**FIRST AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW AND/OR
WRITS OF CERTIORARI, MANDAMUS, AND PROHIBITION**

Plaintiffs/Petitioners D.H. Flamingo, Inc. d/b/a The Apothecary Shoppe; Clark Natural Medicinal Solutions LLC d/b/a NuVeda; Nye Natural Medicinal Solutions LLC d/b/a NuVeda; Clark NMSD LLC d/b/a NuVeda; and Inyo Fine Cannabis Dispensary L.L.C. d/b/a Inyo Fine Cannabis Dispensary (collectively “Plaintiffs/Petitioners”) complain against defendants/respondents, and each of them, as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to Nev. Const. art. 6, § 6, NRS 233B.130, NRS 34.020, NRS 34.160, and NRS 34.330.

2. Venue is proper in that the aggrieved parties are businesses whose principal places of business are located in Clark County, Nevada, and/or the causes of action arose in Clark County, Nevada.

II. THE PARTIES

3. 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.

A. Plaintiffs/Petitioners

4. Plaintiff/Petitioner D.H. Flamingo, Inc., d/b/a The Apothecary Shoppe (“DH Flamingo”) is a Nevada corporation.

5. Plaintiffs/Petitioners Clark Natural Medicinal Solutions LLC, d/b/a NuVeda; Nye Natural Medicinal Solutions LLC d/b/a NuVeda; and Clark NMSD LLC, d/b/a NuVeda (collectively, “NuVeda”) are each a Nevada limited liability company.

6. Plaintiff/Petitioner Inyo Fine Cannabis Dispensary L.L.C., d/b/a Inyo Fine Cannabis Dispensary (“Inyo”) is a Nevada limited liability company.

B. Defendants/Respondents

7. Defendant/Respondent State of Nevada, Department of Taxation (the “Department”) is an agency of the State of Nevada.

8. Defendant/Respondent Nevada Tax Commission (the “Commission”) is the head of the Department.

1. Defendants Who Received Conditional Recreational Retail Marijuana Establishment Licenses.

9. Upon information and belief, Defendant/Respondent Cheyenne Medical, LLC is a Nevada limited liability company doing business under the fictitious firm names Thrive Cannabis Marketplace, Thrive, and/or Cheyenne Medical.

10. Upon information and belief, Defendant/Respondent Circle S Farms, LLC is a Nevada limited liability company doing business under the fictitious firm names Canna Straz, and/or Circle S.

11. Upon information and belief, Defendant/Respondent Clear River, LLC is a Nevada limited liability company doing business under the fictitious firm names United States Marijuana Company, Unites States Medical Marijuana, Nevada Medical Marijuana, Clear River Wellness, Clear River Infused, Nevada Made Marijuana, Greenwolf Nevada, Farm Direct Weed, Atomicrockz, and/or Giddystick.

12. Upon information and belief, Defendant/Respondent 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.

13. Upon information and belief, Defendant/Respondent Deep Roots Medical LLC is a Nevada limited liability company doing business under the fictitious firm name Deep Roots Harvest.

14. Upon information and belief, Defendant/Respondent Essence Henderson, LLC is a Nevada limited liability company doing business under the fictitious firm name Essence Cannabis Dispensary.

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1 15. Upon information and belief, Defendant/Respondent Essence Tropicana, LLC is a
2 Nevada limited liability company doing business under the fictitious firm name Essence.

3 16. Upon information and belief, Defendant/Respondent Eureka NewGen Farms LLC is
4 a Nevada limited liability company doing business under the fictitious firm name Eureka NewGen
5 Farms.

6 17. Upon information and belief, Defendant/Respondent Green Therapeutics LLC is a
7 Nevada limited liability company doing business under the fictitious firm name Provisions.

8 18. Upon information and belief, Defendant/Respondent Greenmart of Nevada NLV,
9 LLC is a Nevada limited liability company doing business under the fictitious firm name Health for
10 Life.

11 19. Upon information and belief, Defendant/Respondent Helping Hands Wellness
12 Center, Inc. is a Nevada corporation doing business under the fictitious firm names Cannacare,
13 Green Heaven Nursery, and/or Helping Hands Wellness Center.

14 20. Upon information and belief, Defendant/Respondent Lone Mountain Partners, LLC
15 is a Nevada limited liability company doing business under the fictitious firm names Zenleaf, Siena,
16 Encore Cannabis, Bentleys Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

17 21. Upon information and belief, Defendant/Respondent Nevada Organic Remedies
18 LLC is a Nevada limited liability company doing business under the fictitious firm names The
19 Source and/or The Source Dispensary.

20 22. Upon information and belief, Defendant/Respondent Polaris Wellness Center L.L.C.
21 is a Nevada limited liability company doing business under the fictitious firm names Polaris MMJ.

22 23. Upon information and belief, Defendant/Respondent Pure Tonic Concentrates LLC
23 is a Nevada limited liability company doing business under the fictitious firm names Green Heart
24 and/or Pure Tonic.

25 24. Upon information and belief, Defendant/Respondent TRNVP098 LLC is a Nevada
26 limited liability company doing business under the fictitious firm names Grassroots and/or Taproot
27 Labs.

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1 25. Upon information and belief, Defendant/Respondent Wellness Connection of
2 Nevada, LLC is a Nevada limited liability company doing business under the fictitious firm name
3 Cultivate Dispensary.

4 26. On information and belief, DOES 1-100 are each Nevada individuals and residents
5 or Nevada entities whose identities are unknown.

6 27. Upon information and belief, the Defendants/Respondents identified in Paragraphs
7 9-26 were granted conditional recreational dispensary licenses by the Department on or after
8 December 5, 2018 (the “Successful Applicants”).

9 **2. Defendants Who Were Denied Conditional Recreational Dispensary**
10 **Licenses**

11 28. Upon information and belief, Defendant/Respondent 3AP Inc. is a Nevada
12 corporation doing business under the fictitious firm names Nature's Chemistry, Sierra Well, and/or
13 Nevada Cannabis.

14 29. Upon information and belief, Defendant/Respondent 5Seat Investments LLC is a
15 Nevada limited liability company doing business under the fictitious firm name Kanna.

16 30. Upon information and belief, Defendant/Respondent Acres Dispensary LLC is a
17 Nevada limited liability company doing business under the fictitious firm name Acres Dispensary.

18 31. Upon information and belief, Defendant/Respondent Acres Medical LLC is a
19 Nevada limited liability company doing business under the fictitious firm name Acres Cannabis.

20 32. Upon information and belief, Defendant/Respondent Agua Street LLC is a Nevada
21 limited liability company doing business under the fictitious firm names Curaleaf and/or Agua
22 Research & Wellness Center.

23 33. Upon information and belief, Defendant/Respondent Alternative Medicine
24 Association, LC is a Nevada limited liability company doing business under the fictitious firm
25 name AMA MFG, AMA Production, and/or AMA Cultivation.

26 34. Upon information and belief, Defendant/Respondent Bioneva Innovations of Carson
27 City LLC is a Nevada limited liability company doing business under the fictitious firm name
28 BioNeva.

1 35. Upon information and belief, Defendant/Respondent Blossum Group LLC is a
2 Nevada limited liability company doing business under the fictitious firm name Healing Herb.

3 36. Upon information and belief, Defendant/Respondent Blue Coyote Ranch LLC is a
4 Nevada limited liability company doing business under the fictitious firm name Blue Coyote Ranch.

5 37. Upon information and belief, Defendant/Respondent Carson City Agency Solutions
6 L.L.C. is a Nevada limited liability company doing business under the fictitious firm name CC
7 Agency Solutions.

8 38. Upon information and belief, Defendant/Respondent CN Licenseco I, Inc. is a
9 Nevada corporation doing business under the fictitious firm names CanaNevada and/or Flower One.

10 39. Upon information and belief, Defendant/Respondent Compassionate Team Of Las
11 Vegas LLC is a Nevada limited liability company;

12 40. Upon information and belief, Defendant/Respondent CWNevada, LLC is a Nevada
13 limited liability company doing business under the fictitious firm name Canopi.

14 41. Upon information and belief, Defendant/Respondent D Lux LLC is a Nevada limited
15 liability company doing business under the fictitious firm name D Lux.

16 42. Upon information and belief, Defendant/Respondent Diversified Modalities
17 Marketing Ltd. is a Nevada limited liability company doing business under the fictitious firm names
18 Galaxy Growers and/or Diversified Modalities Marketing.

19 43. Upon information and belief, Defendant/Respondent DP Holdings, Inc. is a Nevada
20 corporation doing business under the fictitious firm name Compassionate Team of Las Vegas.

21 44. Upon information and belief, Defendant/Respondent EcoNevada, LLC is a Nevada
22 limited liability company doing business under the fictitious firm name Marapharm.

23 45. Upon information and belief, Defendant/Respondent ETW Management Group LLC
24 is a Nevada limited liability company doing business under the fictitious firm name Gassers.

25 46. Upon information and belief, Defendant/Respondent Euphoria Wellness LLC is a
26 Nevada limited liability company doing business under the fictitious firm names Euphoria
27 Wellness, Even Cannabis, Euphoria Marijuana, and/or Summa Cannabis.

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1 47. Upon information and belief, Defendant/Respondent Fidelis Holdings, LLC. is a
2 Nevada limited liability company doing business under the fictitious firm name Pisos.

3 48. Upon information and belief, Defendant/Respondent Forever Green, LLC is a
4 Nevada limited liability company doing business under the fictitious firm name Forever Green.

5 49. Upon information and belief, Defendant/Respondent Franklin Bioscience NV LLC is
6 a Nevada limited liability company doing business under the fictitious firm names Lucky Edibles,
7 Altus, and/or Beyond Hello.

8 50. Upon information and belief, Defendant/Respondent FSWFL, LLC is a Nevada
9 limited liability company doing business under the fictitious firm name Green Harvest.

10 51. Upon information and belief, Defendant/Respondent GB Sciences Nevada LLC is a
11 Nevada limited liability company doing business under the fictitious firm name GB Science.

12 52. Upon information and belief, Defendant/Respondent GBS Nevada Partners LLC is a
13 Nevada limited liability company doing business under the fictitious firm name ShowGrow.

14 53. Upon information and belief, Defendant/Respondent GFive Cultivation LLC is a
15 Nevada limited liability company doing business under the fictitious firm names G5 and/or
16 GFiveCultivation.

17 54. Upon information and belief, Defendant/Respondent Global Harmony LLC is a
18 Nevada limited liability company doing business under the fictitious firm names as Top Notch
19 Health Center, Top Notch, The Health Center, Tetra Research, The Health Center, and/or Top
20 Notch.

21 55. Upon information and belief, Defendant/Respondent Good Chemistry Nevada, LLC
22 is a Nevada limited liability company doing business under the fictitious firm name Good
23 Chemistry.

24 56. Upon information and belief, Defendant/Respondent Gravitas Henderson L.L.C. is a
25 Nevada limited liability company doing business under the fictitious firm name Better Buds.

26 57. Upon information and belief, Defendant/Respondent Gravitas Nevada Ltd. is a
27 Nevada limited liability company doing business under the fictitious firm names The Apothecarium
28 Las Vegas, The Apothecarium Nevada, and/or the Apothecarium Henderson.

1 58. Upon information and belief, Defendant/Respondent Green Leaf Farms Holdings
2 LLC is a Nevada limited liability company doing business under the fictitious firm name Players
3 Network.

4 59. Upon information and belief, Defendant/Respondent Green Life Productions LLC is
5 a Nevada limited liability company doing business under the fictitious firm name Green Life
6 Productions.

7 60. Upon information and belief, Defendant/Respondent Greenleaf Wellness, Inc. is a
8 Nevada corporation doing business under the fictitious firm name GreenleafWellness.

9 61. Upon information and belief, Defendant/Respondent Greenpoint Nevada Inc. is a
10 Nevada corporation doing business under the fictitious firm name Chalice Farms.

11 62. Upon information and belief, Defendant/Respondent Greenscape Productions LLC is
12 a Nevada limited liability company doing business under the fictitious firm name Herbal Wellness
13 Center.

14 63. Upon information and belief, Defendant/Respondent Greenway Health Community
15 L.L.C. is a Nevada limited liability company doing business under the fictitious firm name
16 Greenway Health Community LLC.

17 64. Upon information and belief, Defendant/Respondent Greenway Medical LLC is a
18 Nevada limited liability company doing business under the fictitious firm names GWM and/or
19 Greenway Las Vegas.

20 65. Upon information and belief, Defendant/Respondent GTI Nevada, LLC is a Nevada
21 limited liability company doing business under the fictitious firm name Rise.

22 66. Upon information and belief, Defendant/Respondent H&K Growers Corp. is a
23 Nevada corporation doing business under the fictitious firm name H&K Growers.

24 67. Upon information and belief, Defendant/Respondent Harvest of Nevada LLC is a
25 Nevada limited liability company doing business under the fictitious firm name Harvest.

26 68. Upon information and belief, Defendant/Respondent Healthcare Options for Patients
27 Enterprises, LLC is a Nevada limited liability company doing business under the fictitious firm
28 names Shango and/or Hope.

69. Upon information and belief, Defendant/Respondent Helios NV LLC is a Nevada limited liability company doing business under the fictitious firm names Hydrovize, Helios NV and/or Helios Nevada.

70. Upon information and belief, Defendant/Respondent Herbal Choice Inc. is a Nevada corporation doing business under the fictitious firm name Herbal Choice.

71. Upon information and belief, Defendant/Respondent is a High Sierra Cultivation LLC is a Nevada limited liability company doing business under the fictitious firm name High Sierra.

72. Upon information and belief, Defendant/Respondent High Sierra Holistics, LLC is a Nevada limited liability company doing business under the fictitious firm names HSH, and/or High Sierra Holistics.

73. Upon information and belief, Defendant/Respondent International Service and Rebuilding, Inc. is a Nevada corporation doing business under the fictitious firm name VooDoo.

74. Upon information and belief, Defendant/Respondent Just Quality, LLC is a Nevada limited liability company doing business under the fictitious firm name Panacea Cannabis.

75. Upon information and belief, Defendant/Respondent Kindibles LLC is a Nevada limited liability company doing business under the fictitious firm name Area 51.

76. Upon information and belief, Defendant/Respondent Las Vegas Wellness and Compassion LLC is a Nevada limited liability company doing business under the fictitious firm name Pegasus Nevada.

77. Upon information and belief, Defendant/Respondent Libra Wellness Center, LLC is a Nevada limited liability company doing business under the fictitious firm name Libra Wellness.

78. Upon information and belief, Defendant/Respondent Livfree Wellness LLC is a Nevada limited liability company doing business under the fictitious firm name The Dispensary.

79. Upon information and belief, Defendant/Respondent LNP, LLC is a Nevada limited liability company doing business under the fictitious firm names LPN and/or Lynch Natural Products, LLC.

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1 80. Upon information and belief, Defendant/Respondent Luff Enterprises NV, Inc. is a
2 Nevada corporation doing business under the fictitious firm name Sweet Cannabis.

3 81. Upon information and belief, Defendant/Respondent LVMC C&P, LLC is a Nevada
4 limited liability company doing business under the fictitious firm name CannaCopia.

5 82. Upon information and belief, Defendant/Respondent Malana LV L.L.C. is a Nevada
6 limited liability company doing business under the fictitious firm name Malana LV.

7 83. Upon information and belief, Defendant/Respondent Matrix NV, LLC is a Nevada
8 limited liability company doing business under the fictitious firm name Matrix NV.

9 84. Upon information and belief, Defendant/Respondent Medifarm IV, LLC is a Nevada
10 limited liability company doing business under the fictitious firm name Blum Reno.

11 85. Upon information and belief, Defendant/Respondent Miller Farms LLC is a Nevada
12 limited liability company doing business under the fictitious firm name Lucid.

13 86. Upon information and belief, Defendant/Respondent MM Development Company,
14 Inc. is a Nevada corporation doing business under the fictitious firm names Planet 13 and/or
15 Medizin.

16 87. Upon information and belief, Defendant/Respondent MM R&D LLC is a Nevada
17 limited liability company doing business under the fictitious firm names Sunshine Cannabis and/or
18 the Green Cross Pharmacy.

19 88. Upon information and belief, Defendant/Respondent MMNV2 Holdings I, LLC is a
20 Nevada limited liability company doing business under the fictitious firm name Medmen.

21 89. Upon information and belief, Defendant/Respondent MMOF Las Vegas Retail, Inc.
22 is a Nevada corporation doing business under the fictitious firm names Panacea, MedMen,
23 MedMen Las Vegas, Medmen the Airport, and/or MedMen Paradise.

24 90. Upon information and belief, Defendant/Respondent Natural Medicine L.L.C. is a
25 Nevada limited liability company doing business under the fictitious firm name Natural Medicine
26 No. 1.

27 91. Upon information and belief, Defendant/Respondent NCMM, LLC is a Nevada
28 limited liability company doing business under the fictitious firm name NCMM.

1 92. Upon information and belief, Defendant/Respondent Nevada Botanical Science, Inc.
2 is a Nevada corporation doing business under the fictitious firm name Vigor Dispensaries.

3 93. Upon information and belief, Defendant/Respondent Nevada Group Wellness LLC
4 is a Nevada limited liability company doing business under the fictitious firm names Prime and/or
5 NGW.

6 94. Upon information and belief, Defendant/Respondent Nevada Holistic Medicine LLC
7 is a Nevada limited liability company doing business under the fictitious firm names MMJ America
8 and/or Nevada Holistic Medicine.

9 95. Upon information and belief, Defendant/Respondent Nevada Medical Group LLC is
10 a Nevada limited liability company doing business under the fictitious firm names The Clubhouse
11 Dispensary, Bam-Body, and/or Mind and King Cannabis.

12 96. Upon information and belief, Defendant/Respondent Nevada Wellness Center LLC
13 is a Nevada limited liability company doing business under the fictitious firm name NWC.

14 97. Upon information and belief, Defendant/Respondent NevadaPure, LLC is a Nevada
15 limited liability company doing business under the fictitious firm names Shango Las Vegas and/or
16 Shango.

17 98. Defendant/Respondent Nevcan, LLC is a Nevada limited liability company doing
18 business under the fictitious firm name Nev Cann.

19 99. Defendant/Respondent NLV Wellness LLC is a Nevada limited liability company
20 doing business under the fictitious firm name ETHCX.

21 100. Defendant/Respondent NLVG, LLC is a Nevada limited liability company doing
22 business under the fictitious firm name Desert Bloom Wellness Center.

23 101. Defendant/Respondent Nuleaf Incline Dispensary LLC is a Nevada limited liability
24 company doing business under the fictitious firm name Nuleaf.

25 102. Defendant/Respondent NV 3480 Partners LLC is a Nevada limited liability company
26 doing business under the fictitious firm name Evergreen Organix.

27 103. Defendant/Respondent NV Green Inc. is a Nevada corporation doing business under
28 the fictitious firm name NV Green.

1 104. Defendant/Respondent Nye Farm Tech Ltd. is a Nevada limited liability company
2 doing business under the fictitious firm name URBN Leaf.

3 105. Defendant/Respondent Paradise Wellness Center LLC is a Nevada limited liability
4 company doing business under the fictitious firm name Las Vegas Releaf.

5 106. Defendant/Respondent Phenofarm NV LLC is a Nevada limited liability company
6 doing business under the fictitious firm name Marapharm Las Vegas.

7 107. Defendant/Respondent Physis One LLC is a Nevada limited liability company doing
8 business under the fictitious firm names Physis One and/or LV Fortress.

9 108. Defendant/Respondent Qualcan, L.L.C. is a Nevada limited liability company doing
10 business under the fictitious firm name Qualcan.

11 109. Defendant/Respondent Red Earth, LLC is a Nevada limited liability company doing
12 business under the fictitious firm name Red Earth

13 110. Defendant/Respondent Releaf Cultivation, LLC is a Nevada limited liability
14 company doing business under the fictitious firm name Releaf Cultivation.

15 111. Defendant/Respondent RG Highland Enterprises Inc. is a Nevada corporation doing
16 business under the fictitious firm name Tweedleaf.

17 112. Defendant/Respondent Rombough Real Estate Inc. is a Nevada corporation doing
18 business under the fictitious firm name Mother Herb.

19 113. Defendant/Respondent Rural Remedies LLC is a Nevada limited liability company
20 doing business under the fictitious firm name Doc's Apothecary.

21 114. Defendant/Respondent Serenity Wellness Center LLC is a Nevada limited liability
22 company doing business under the fictitious firm names Oasis Cannabis and/or Oasis Cannabis
23 Dispensary.

24 115. Defendant/Respondent Silver Sage Wellness LLC is a Nevada limited liability
25 company.

26 116. Defendant/Respondent Solace Enterprises, LLP is a Nevada limited liability limited
27 partnership doing business under the fictitious firm names Thallo, Aether Gardens, @Hith LP
28 and/or Aether Extracts.

117. Defendant/Respondent Southern Nevada Growers, LLC is a Nevada limited liability company doing business under the fictitious firm name Bowtie Cannabis.

118. Defendant/Respondent Strive Wellness of Nevada, LLC is a Nevada limited liability company doing business under the fictitious firm name Strive.

119. Defendant/Respondent Sweet Goldy LLC is a Nevada limited liability company,

120. Defendant/Respondent TGIG, LLC is a Nevada limited liability company doing business under the fictitious firm names The Grove, The Grove Wellness Center, Vert Infusibles and/or Vert Edibles.

121. Defendant/Respondent THC Nevada LLC is a Nevada limited liability company doing business under the fictitious firm names Canna Vibe, FloraVega, and/or Welleaf.

122. Defendant/Respondent The Harvest Foundation LLC is a Nevada limited liability company doing business under the fictitious firm name Harvest Foundation.

123. Defendant/Respondent Thompson Farm One L.L.C. is a Nevada limited liability company doing business under the fictitious firm names Green Zon, Gold Leaf, and/or Thompson Farm.

124. Defendant/Respondent Tryke Companies Reno, LLC is a Nevada limited liability company doing business under the fictitious firm name Reef.

125. Defendant/Respondent Tryke Companies SO NV, LLC is a Nevada limited liability company doing business under the fictitious firm name Reef Dispensaries.

126. Defendant/Respondent Twelve Twelve LLC is a Nevada limited liability company doing business under the fictitious firm names 12/12 Dispensary and/or Twelve Twelve.

127. Defendant/Respondent Vegas Valley Growers LLC is a Nevada limited liability company doing business under the fictitious firm name Kiff Premium Cannabis.

128. Defendant/Respondent Waveseer of Nevada, LLC is a Nevada limited liability company doing business under the fictitious firm name Jenny's Dispensary.

129. Defendant/Respondent Wellness & Caregivers of Nevada NLV, LLC is a Nevada limited liability company doing business under the fictitious firm names MMD Las Vegas and/or Las Vegas Cannabis.

130. Defendant/Respondent Wendovera LLC is a Nevada limited liability company doing business under the fictitious firm name Wendovera.

131. Defendant/Respondent West Coast Development Nevada, LLC is a Nevada limited liability company doing business under the fictitious firm name Sweet Goldy.

132. Defendant/Respondent WSCC, Inc. is a Nevada corporation doing business under the fictitious firm name Sierra Well.

133. Defendant/Respondent YMY Ventures, LLC is a Nevada limited liability company doing business under the fictitious firm names Stem and/or Cannavore.

134. Defendant/Respondent Zion Gardens LLC is a Nevada limited liability company doing business under the fictitious firm name Zion Garden.

135. On information and belief, ROES 1-100 are each Nevada individuals and residents or Nevada entities whose identities are unknown.

136. On information and belief, the Defendants/Respondents identified in Paragraphs 28-135 are natural persons or entities who are qualified holders of Medical Marijuana Establishment (“MME”) Certificates, who submitted an application to operate a recreational retail marijuana establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the “Denied Applicants”).

III. FACTUAL ALLEGATIONS

A. The Department.

137. During Nevada’s 2016 General Election, the voters approved an initiative petition to legalize the recreational use of marijuana by persons 21 years of age or older. This initiative petition has been codified as Chapter 453D of the Nevada Revised Statutes (“Ballot Initiative”).

138. The Department, which administers Nevada's medical and adult-use marijuana programs, is charged with the following responsibilities:

- a. Overseeing the licensing of marijuana establishments and agents (establishing licensing qualifications; granting, transferring, suspending, revoking, and reinstating licenses);

- b. Establishing standards and procedures for the cultivation, production, testing, distribution, and sale of marijuana in Nevada; and
- c. Ensuring compliance of marijuana establishments with state laws and regulations.

139. In 2018, the Department reportedly collected more than \$82 million in taxes, fees, and penalties.

140. The Department's Marijuana Enforcement Division ("Division") reports that during the 2018 fiscal year, it had 44 budgeted positions.¹

141. Despite its responsibility to oversee 659 final medical and adult-use certificates/licenses; 245 provisional certificates/conditional licenses; and 11,932 holders of marijuana agent cards, the Division does not have a licensing department or any employees specifically responsible for licensing, and only has 31 employees to monitor compliance and enforcement.

142. Between July 1, 2017 – June 30, 2018, the Division initiated only 234 investigations (146 of which were substantiated).

143. The resources of the Department are not adequate to competently and effectively regulate the number of MME and adult use licensees.

B. The Ballot Initiative

144. The Ballot Initiative requires that "[w]hen 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." NRS 453D.210(6).

145. It also requires that "[t]he Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." NRS 453D.200(6).

¹ Upon information and belief, the Gaming Control Board is charged with overseeing approximately 2,900 facilities that hold gaming licenses and employed almost 400 people during the same time period (50 in the Administrative Division, 90 in the Audit Division; 118 in the Enforcement Division, 76 in the Investigations Division, 27 in the Tax and License Division, and 26 in the Technology Division).

1 146. It also sets forth certain requirements for granting a marijuana establishment license
2 application, including, “[p]roof that the physical address where the proposed marijuana
3 establishment will operate is owned by the applicant or the applicant has the written permission of
4 the property owner to operate the proposed marijuana establishment on that property.” NRS
5 453D.210(5)(b).

6 147. Additionally, the Ballot Initiative requires the Department² to adopt all regulations
7 necessary or convenient to carry out the Act no later than January 1, 2018, including regulations
8 that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a license to
9 operate a marijuana establishment” and “[q]ualifications for licensure that are directly and
10 demonstrably related to the operation of a marijuana establishment.” NRS 453D.200(1)(a)-(b).

11 148. However, Article 19, Section 2 of the Constitution of the State of Nevada provides,
12 in pertinent part, that “[a]n initiative measure so approved by the voters shall not be amended,
13 annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes
14 effect.”

15 149. Likewise, “administrative regulations cannot contradict the statute they are designed
16 to implement.” *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. 362, 368, 373 P.3d 66, 70
17 (2016) (quoting (*Nev. Attorney for Injured Workers v. Nev. Self-Insurers Ass’n*, 126 Nev. 74, 84,
18 225 P.3d 1265, 1271 (2010) (internal quotations omitted).) Therefore, the Department’s regulations
19 may not contravene any provisions of the Ballot Initiative.

20 **C. The Approved Regulations.**

21 150. On or about May 8, 2017, the Department adopted temporary regulations that
22 expired on November 1, 2017.

23 151. Marijuana establishments became licensed under the temporary regulation to sell
24 adult-use marijuana starting July 1, 2017.

25 152. The Department drafted proposed regulations and held public workshops from July
26 24, 2017 through July 27, 2017 on proposed permanent regulations.

27 ² Pursuant to Nevada law, the Commission shall prescribe regulations for carrying on the business of the
28 Commission and of the Department.

1 153. The draft permanent regulations were submitted to the Legislative Counsel Bureau
2 on September 9, 2017, and assigned LCB File No. R092-17.

3 154. On December 16, 2017, the Commission gave notice of its intent to adopt final
4 marijuana regulations.

5 155. On January 16, 2018, the Commission unanimously approved the proposed
6 permanent regulations (“Approved Regulations”).

7 156. The Approved Regulations became effective February 27, 2018. All provisions
8 related to the procedures for the issuance, suspension, or revocation of licenses issued by the
9 Department of Taxation for marijuana establishments were implemented immediately.

10 157. Subsection 1 of Section 76 of the Approved Regulations provides that “[a]t least
11 once each year, the Department will determine whether a sufficient number of marijuana
12 establishments exist to serve the people of this State and, if the Department determines that
13 additional marijuana establishments are necessary, the Department will issue a request for
14 applications to operate a marijuana establishment.”

15 158. Pursuant to Subsection 3 of Section 76 of the Approved Regulations, the Department
16 will accept applications in response to such a request for applications “for 10 business days
17 beginning on the date which is 45 business days after the date on which the Department issued the
18 request for applications.”

19 159. Section 77 of the Approved Regulations provides the procedures for an existing
20 MME registration certificate holder to apply for one license, of the same type, for recreational
21 marijuana.

22 160. Section 78 of the Approved Regulations provides the procedures for an existing
23 MME registration certificate holder to apply for one or more licenses, of the same type or of a
24 different type, for recreational marijuana.

25 161. A license application submitted pursuant to Section 78 of the Approved Regulations
26 “must include,” among other things, the following:

- 27 a. The physical address where the proposed marijuana establishment will be located
28 (Section 78(1)(b)(5) of the Approved Regulations);

- b. A list of all owners, officers and board members of the proposed marijuana establishment;
- c. Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details (Section 78(1)(f) of the Approved Regulations);
- d. Proof that the physical address of the prospective marijuana establishment is owned by the applicant or that the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property (NRS 453D.210(5)(b); and
- e. A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be allocated to the applicable portions of the application pursuant to subsection 2 of Section 76 of the Approved Regulations (Section 78(1)(l) of the Approved Regulations).

162. Section 80 of the Approved Regulations (now codified at NAC 453D.272) provides that when the Department receives more than one complete and qualified application for a license for a retail marijuana store in response to its request for applications, the Department will rank the applicants in order from first to last based on numerous categories of information including, but not limited to:

- a. Whether the owners, officers, or board members have experience operating another kind of business that has given them experience which is applicable to the operation of a marijuana establishment;
- b. The diversity of the owners, officers, or board members of the proposed marijuana establishment;
- c. The educational achievements of the owners, officers, or board members of the proposed marijuana establishment;
- d. The financial plan and resources of the applicant, both liquid and illiquid;

- e. Whether the applicant has an adequate integrated plan for the care, quality, and safekeeping of marijuana from seed to sale;
- f. The amount of taxes paid and other beneficial financial contributions, including, without limitation, civic or philanthropic involvement with this State or its political subdivisions, by the applicant or the owners, officers, or board members of the proposed marijuana establishment;
- g. Whether the owners, officers, or board members of the proposed marijuana establishment have direct experience with the operation of a medical marijuana establishment or marijuana establishment in this State and have demonstrated a record of operating such an establishment in compliance with the laws and regulations of this State for an adequate period of time to demonstrate success; and
- h. The experience of key personnel that the applicant intends to employ in operating the type of marijuana establishment for which the applicant seeks a license.

163. Pursuant to Section 91(4) of the Approved Regulations and NRS 453D.210(4)(b), if an application for a marijuana establishment license is not approved, the Department must send the applicant a notice of rejection setting forth the specific reasons why the Department did not approve the license application.

D. The Department's Request for License Applications.

164. Pursuant to NRS 453D.210, for the first 18 months after the Department began to receive applications for recreational marijuana establishments, applications for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities could only be submitted by holders of MME certificates.

165. On July 6, 2018, the Department issued a Notice of Intent to Accept Applications for Marijuana Licenses ("Notice") and released version 5.4 of the Recreational Marijuana Establishment License Application: Recreational Retail Marijuana Store Only, which was dated June 22, 2018 ("Original Application").

166. The footer of the Original Application stated: "*Version 5.4 – 06/22/2018 Recreational Marijuana Establishment License Application*" and consisted of 34 pages.

167. The request for applications was limited to existing MME certificate holders seeking a retail recreational marijuana establishment license pursuant to Section 78 of the Approved

Regulations, and the Notice required that all applications be submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

168. Pursuant to Subsection 2 of Section 76 of the Approved Regulations, the Original Application included the following point values associated with each category of requested information:

Nevada Recreational Marijuana Application Criteria	Total Points Possible
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 ³
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:	40

³ The Division recently disclosed that 20 of the 60 points were allocated to diversity of the applicant's owners, officers, and board members.

<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. 	
<p>Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include:</p> <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
<p>A plan which includes:</p> <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. 	20
<p>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:</p> <ul style="list-style-type: none"> • Building plans with supporting details. 	20
<p>A proposal demonstrating:</p> <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. 	15
Application Total	250
<p>Unweighted:</p> <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.

169. Upon information and belief, the rankings referenced in Section 80 of the Approved Regulations are based on the scores awarded to each applicant for these categories of information included in the application.

170. On or about July 30, 2018 (less than 45 days before applications would be accepted), the Department released a revised version of the Recreational Marijuana Establishment License Application: Recreational Retail Marijuana Store Only (“Revised Application”).

171.

172. Just like the Original Application, the footer of the Revised Application states: “Version 5.4 – 06/22/2018 Recreational Marijuana Establishment License Application” and consists of 34 pages.

173. In the Revised Application, the Department made clerical revisions, clarifying revisions, and substantive revisions. The substantive revisions include, but are not limited to, the following:

- a. Elimination of the requirement that the application include the proposed physical address of the prospective marijuana establishment;
- b. Elimination of the requirement that applicants prove ownership of the physical address of the prospective marijuana establishment or written permission of the property owner to operate the proposed marijuana establishment on that property; and
- c. Revision to the highest-scored category of information in the application (regarding the organizational structure of the proposed marijuana establishment) to now require information about “key personnel” of the proposed marijuana establishment.

174. Neither the Approved Regulations nor NRS Chapter 453D were properly amended to permit the substantive changes to the Revised Application, and applicants were not given proper notice of the revisions (as license applications were due to be submitted to the Department less than 45 days after the Revised Application was released).

E. Plaintiffs/Petitioners' Applications.

175. Plaintiffs/Petitioners are each existing MME certificate holders.

176. Plaintiffs/Petitioners each sought retail store licenses for recreational marijuana and each submitted a Recreational Marijuana Establishment License Application: Recreational Retail Marijuana Store Only ("Application") between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

177. DH Flamingo, which currently holds a retail shop license in Unincorporated Clark County, submitted three applications seeking licenses for the following locations:

- a. 5701 West Charleston Boulevard in Las Vegas;
- b. Sunset Road & Decatur Boulevard in Unincorporated Clark County; and
- c. 1901 Civic Center in North Las Vegas.

178. Inyo, which currently holds a retail shop license in Las Vegas, submitted four applications seeking licenses for the following locations:

- a. 9744 West Flamingo Road in in Unincorporated Clark County;
- b. 2301 North Decatur Boulevard in Las Vegas;
- c. 43 W. Cheyenne Avenue in North Las Vegas; and
- d. 634 Ryland Street in Reno.

179. NuVeda submitted applications for a combination of ten locations on behalf of its three licensed entities: Clark NMSD LLC, which holds two retail shop licenses in Las Vegas and North Las Vegas; Nye Natural Medicinal Solutions LLC, which holds a cultivation and production license; and Clark Natural Medicinal Solutions LLC, which holds a cultivation and production license:

- a. 2180 East Craig Road in North Las Vegas;
- b. 330 Emery Street in Nye County;
- c. Two locations to be determined in Unincorporated Clark County;
- d. A location to be determined in Las Vegas;
- e. A location to be determined in Henderson;
- f. A location to be determined in Carson City;

- g. A location to be determined in Reno;
- h. A location to be determined in Unincorporated Washoe County; and
- i. A location to be determined in Sparks.

180. Each of NuVeda’s three MME registration certificate holders (Clark NMSD LLC; Nye Natural Medicinal Solutions LLC; and Clark County Medicinal Solutions LLC) submitted an application for eight of the locations. The applications for North Las Vegas and one of the locations in Unincorporated Clark County were submitted only by Nye Natural Medicinal Solutions, LLC and Clark County Medicinal Solutions, LLC.

F. The Department’s Decision.

181. On December 5, 2018, the Department provided each applicant with written notice of either the grant or denial of their application for a license.

182. Upon information and belief, the Department awarded approximately 61 recreational retail marijuana store licenses (the “Conditional Licenses”), 31 of which were for Clark County, Nevada:

- a. 6 in Henderson;
- b. 10 in the City of Las Vegas;
- c. 5 in the City of North Las Vegas; and
- d. 10 in unincorporated Clark County.

183. The Department denied each of the Plaintiffs/Petitioners’ applications.

184. Although Section 91(4) of the Department’s Approved Regulations requires that the Department provide a denied applicant with the specific reasons for the denial of the license, the Department merely informed each of the Plaintiffs/Petitioners that it “did not achieve a score high enough to receive an available license” within the applicable jurisdiction. No “specific reasons” were given.

185. On December 5, 2018, DH Flamingo requested its score total, pursuant to Section 93(1) of the Department’s Approved Regulations, and on December 5, 2018, it was informed that its applications received the following number of points:

- a. Las Vegas – 196;

b. Unincorporated Clark County – 195.67; and

c. North Las Vegas – 195.67.

186. On December 18, 2018, NuVeda requested its score totals, pursuant to Section 93(1) of the Department’s Regulations, and on that same day, it was informed that its applications received the following number of points:

a. Clark Natural Medicinal Solutions, LLC’s Applications:

i. North Las Vegas – 191.67;

ii. Nye County – 191.67;

iii. Unincorporated Clark County – 191.67;

iv. Las Vegas – 191.67;

v. Unincorporated Clark County – 191.67;

vi. Henderson – 191.67;

vii. Carson City – 191.67;

viii. Reno – 191.67;

ix. Unincorporated Washoe County – 191.67; and

x. Sparks – 192.01.

b. Nye Natural Medicinal Solutions, LLC’s Applications:

i. North Las Vegas – 191.67;

ii. Nye County – 191.67;

iii. Unincorporated Clark County – 191.67;

iv. Las Vegas – 191.67;

v. Unincorporated Clark County – 191.67;

vi. Henderson – 191.67;

vii. Carson City – 191.67;

viii. Reno – 191.67;

ix. Unincorporated Washoe County – 191.67; and

x. Sparks – 191.67.

c. Clark NMSD, LLC:

- i. Nye County – 178.84;
- ii. Las Vegas – 178.84;
- iii. Unincorporated Clark County – 178.84;
- iv. Henderson – 178.84;
- v. Carson City – 178.84;
- vi. Reno – 178.84;
- vii. Unincorporated Washoe County – 178.84; and
- viii. Sparks – 178.84.

187. On December 6, 2018, Inyo requested its score total, pursuant to Section 93(1) of the Department’s Regulations, and on December 17, 2018, it was informed that each of its applications scored the exact same number of points:

- a. Las Vegas – 189.68;
- b. Unincorporated Clark County – 189.68;
- c. North Las Vegas – 189.68; and
- d. Reno – 189.68.

G. The Department Refuses Plaintiffs’ Requests to Review All Scores.

188. If an applicant wishes to know the scores assigned to each criterion included in the Application, the applicant must, pursuant to Section 93(2) of the Department’s Regulations, submit a request to the Department to review this scoring information.

189. On December 5, 2018, DH Flamingo submitted such a request to review its scoring information, and the Department scheduled a meeting with one of its employees on January 9, 2019.

190. DH Flamingo requested that the meeting occur prior to January 4, 2019, so that it could timely appeal the Department’s denial of its license application, if such an appeal was warranted, but the Department denied this request.

191. On December 6, 2018, NuVeda, pursuant to Section 93(2) of the Department’s Approved Regulations, submitted a request to review its scoring information on the earliest available date, and the Department scheduled the meeting with one of its employees on January 11, 2019.

192. On December 6, 2018, Inyo, pursuant to Section 93(2) of the Department's Approved Regulations, submitted a request to review its scoring information on the earliest available date, and the Department scheduled a meeting with one of its employees on January 9, 2019.

193. Pursuant to Section 93(3) of the Department's Regulations, meetings to review scoring information are limited to no more than thirty (30) minutes in duration, and while Plaintiffs/Petitioners are permitted to take notes during the meeting, they cannot photocopy, scan, record, photograph, or otherwise duplicate any of the records and information they review. They are also not permitted to ask the Department's employee to comment on or otherwise discuss:

- a. The scores;
- b. The Department's review of the application; or
- c. The applications submitted by any other applicants.

194. At the scoring meetings, the Department refused to provide Plaintiffs the scores assigned to each criterion included in the Application. Instead, the Division insisted on combining the scores for multiple criteria. Specifically:

- a. The Department refused to separately disclose the points allocated to each applicant's financial plan and the points allocated to providing proof of funds and insisted on providing a combined score for those two criteria.

<p>A financial plan which includes:</p> <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	40
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates:	10	

<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. 		
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

- b. The Department refused to separately disclose the points allocated to the security and care plan, education plan, and operating procedures and insisted on providing a combined score for the three criteria.

<p>Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including:</p> <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. 	40	90
<p>Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include:</p> <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	
<p>A plan which includes:</p> <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. 	20	

195. In addition to requesting the scores for each criterion included in the license application, Plaintiffs also prepared a list of questions about the procedures the Department used for scoring the applications. .

196. The Department refused to answer any of the questions.

197. Notwithstanding the Department's refusal to provide transparency in the scoring process, it did provide the average score (among all applicants) for each of the scoring categories it was willing to disclose.

Nevada Recreational Marijuana Application Criteria	Total Points Possible	Average Points Awarded
Organizational Structure	60	36.87
Taxes paid or other beneficial financial contributions	25	11.98
Financial plan	30	31.53
Proof of at least \$250,000 in liquid assets	10	
Plan care, quality and safekeeping of marijuana	40	
Education Plan	30	
Operating procedures	20	68.39
Adequacy of the size of the proposed marijuana establishment	20	
The likely impact in the community	15	10.64
Application Total	250	173.33

198. Plaintiffs each scored higher than average in the majority of all categories.

- NuVeda scored above average in 5 of the 6 disclosed categories.
- DH Flamingo scored above average in 3 of the 6 disclosed categories.
- Inyo scored above average in 5 of the 6 disclosed categories.

H. Corruption Within the Department.

199. Since the award of Conditional Licenses in December 2018, Plaintiffs have learned of numerous ethical infractions and/or criminal conduct by Department employees which suggest widespread corruption within the Department. Some of this information has been provided to Plaintiffs by Department whistleblowers and other information has been revealed by the testimony

1 of Department employees in an evidentiary hearing (“Preliminary Injunction Hearing”) conducted in
2 another case⁴ alleging defects in the Department’s grant of Conditional Licenses.

3 200. Moreover, Plaintiffs are informed and believe that the FBI is actively investigating
4 and seeking tips on public corruption within the marijuana industry, particularly relating to the
5 license application process at issue in this case.⁵

6 201. Chapter 281A of the Nevada Revised Statutes sets forth a code of ethical standards
7 for government employees. It provides:

- 8 1. A public officer or employee shall not seek or accept any gift,
9 service, favor, **employment**, engagement, emolument or
10 economic opportunity, for the public officer or employee or any
11 person to whom the public officer or employee has a
12 commitment in a private capacity, **which would tend improperly
to influence a reasonable person in the public officer’s or
employee’s position to depart from the faithful and impartial
discharge of the public officer’s or employee’s public duties.**
- 13 2. A public officer or employee shall not use the public officer’s or
14 employee’s position in government to secure or grant
15 unwarranted privileges, preferences, exemptions or advantages
16 for the public officer or employee, any business entity in which
17 the public officer or employee has a significant pecuniary interest
18 or any person to whom the public officer or employee has a
19 commitment in a private capacity. As used in this subsection,
20 “unwarranted” means without justification or adequate reason.
- 21 3. A public officer or employee shall not participate as an agent of
22 government in the negotiation or execution of a contract between
23 the government and the public officer or employee, any business
24 entity in which the public officer or employee has a significant
25 pecuniary interest or any person to whom the public officer or
employee has a commitment in a private capacity.
- 26 4. A public officer or employee shall not accept any salary, retainer,
27 augmentation, expense allowance **or other compensation** from
28 any private source, for the public officer or employee or any
person to whom the public officer or employee has a
commitment in a private capacity, **for the performance of the**

⁴ *Serenity Wellness Center, LLC v. Nev. Dept. of Taxation*, No. A-19-786962-B (Nev. Dist. Ct.) (the “Serenity Case”)

⁵ Such investigations are not limited to Nevada. *See e.g.* FBI Seeks Tips on Marijuana Industry Corruption, *Forbes*, Aug. 16, 2019, *available at* <https://www.forbes.com/sites/tomangell/2019/08/16/fbi-seeks-tips-on-marijuana-industry-corruption/#7671965c4ca7> (last visited Aug. 29, 2019).

public officer's or employee's duties as a public officer or employee.

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further a significant pecuniary interest of the public officer or employee or any other person or business entity.
6. A public officer or employee *shall not suppress any governmental report or other official document* because it might tend to affect unfavorably a significant pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity.

NRS 281A.400(1)-(6) (emphasis added).

1. Department Whistleblowers Report Corruption

202. As DH Flamingo's then-principal, Dr. Nicola Spirtos, was leaving the Department of Taxation after DH Flamingo's scoring review meeting, when he was stopped by [Individual #1], a Department employee, who informed Dr. Spirtos that [Individual #2] (a prominent Nevada attorney who had several clients who received Dispensary licenses) was at the Department and meeting with Jorge Pupo, Deputy Executive Director of the Division, every day for a week before the Department announced its decision regarding the Dispensary licenses.

203. Further, shortly after exiting the Department, Dr. Spirtos received a number of text messages from an anonymous individual, believed to be a Department employee. Those texts read as follows:

Dr. Spirtos your [sic] on
the right path Jorge has
been taking kickback[s]
from [Individual #3]
and others keep digging

. . . . Rumor has it
[Individual #3] hired
jorge [sic]. Explains
why they were awarded
8 licenses. Keep
following the scent trail

1 And anybody that was a
2 threat to [Individual
#3's Company] didn't
3 get licenses

4 Just keep digging

5

6 There is an internal
7 investigations Dept
8 within the state
9 . . . u need to get ahold
of jorges [sic] phone
and email records and
get that outfit to
investigate him

10

11 There is [sic] people
12 who know this its [sic]
an open secret
13 . . . [Individual #3] and
Jorge are scaring people
14 from coming out with
threats of retaliation.
Jorge has asked many
15 big operations for
bribes for favors. It
16 [sic] will testify to that
will others

17
18 204. On or about February 1, 2018, Plaintiffs were also contacted on behalf of a current
19 Department employee who reported that he knew of a conspiracy within the Department to protect
20 the clients of [Individual #2] and the individual owners of these clients. The employee informed
21 Plaintiffs that the Department had instructed employees that it should not record violations
22 committed by the clients of [Individual #2]

23 **2. Offers of Employment and Other Perks**

24 205. In addition to being an ethics violation, offering any "compensation, gratuity or
25 reward to any executive or administrative officer . . . with the intent to influence the officer with
26 respect to any act, decision, vote, opinion or other proceeding, as such officer" is a felony in the
27 State of Nevada. NRS 197.010.

28 ///

1 206. During the Preliminary Injunction Hearing, Mr. Pupo testified that he has frequently
2 been offered employment by licensees, including some of the Successful Applicants.

3 207. In particular, Mr. Pupo testified that sometime during 2018 (presumably before the
4 Department notified applicants of its decision regarding the Dispensary applications) he was
5 approached by Armen Yemenidjian, an owner of Defendant/Respondents Essence Tropicana, LLC
6 and Essence Henderson, LLC, with a job offer.

7 208. Mr. Pupo did not report or disclose any of these offers of employment.

8 209. Defendant/Respondents Essence Tropicana, LLC and Essence Henderson, LLC
9 received a total of 8 Conditional Licenses in December 2018.

10 210. In addition to offers of employment, Mr. Pupo benefited in other ways from his
11 relationship with certain licensees.

12 211. Mr. Pupo regularly dined as the guest of Amanda Connor, a lawyer who represented
13 several Successful Applicants (including Defendants/Respondents Essence Henderson, LLC,
14 Essence Tropicana, LLC, Commerce Park Medical L.L.C., Cheyenne Medical, LLC, and Nevada
15 Organic Remedies, LLC), who collectively received 21 of the 61 Conditional Licenses. It was not
16 uncommon for Mr. Pupo to dine with her several times per week.

17 212. In addition to his relationship with Ms. Connor, Mr. Pupo frequently accepted lunch
18 and dinner invitations from licensees (particularly, the owners of Defendants/Respondents Essence
19 Henderson, LLC, Essence Tropicana, LLC, Commerce Park Medical, L.L.C., and Cheyenne
20 Medical LLC.

21 213. Licensees who chose to socialize with Mr. Pupo received favorable treatment in
22 exchange. Mr. Pupo allowed favored licensees to call him on his personal cell phone number and
23 provided them with additional instruction regarding the application process (by email, phone, or in
24 person).

25 214. In particular, Mr. Pupo and Ms. Connor engaged in numerous discussions regarding
26 the physical location criteria required in the application in July 2018—immediately before the
27 Department created the Revised Application, which eliminated the requirement that the application
28 include the proposed physical address of the prospective Dispensary.

1 **3. Scrubbing of Licensee Records**

2 215. Pursuant to Section 80 of the Approved Regulations, one of the factors that the
3 Department must consider when it receives more than one complete and qualified application for a
4 license for a retail marijuana store is:

5 Whether the owners, officers, or board members of the proposed
6 marijuana establishment have direct experience with the operation of a
7 medical marijuana establishment or marijuana establishment in this
8 State and have demonstrated a record of operating such an
establishment in compliance with the laws and regulations of this State
for an adequate period of time to demonstrate success

9 NAC 453D.272(1)(g).

10 216. During the Preliminary Injunction Hearing, Andrew Jolley (an owner of
11 Defendant/Respondent Nevada Organic Remedies LLC) testified that Henderson Organic Remedies
12 LLC (a related entity with some common ownership with Nevada Organic Remedies LLC) had
13 previously sold marijuana to a person under 21 years of age.

14 217. Evidence presented at the Preliminary Injunction Hearing demonstrated that Ms.
15 Connor requested that documentation of this violation be removed from the Department's records
16 regarding Henderson Organic Remedies LLC. The Department did not deny that this information
17 had been removed from its records at Ms. Connor's request.

18 218. This violation was not disclosed on applications submitted by Defendant/Respondent
19 Nevada Organic Remedies LLC, despite the fact that it had some common ownership with
20 Defendant/Respondent Henderson Organic Remedies LLC

21 219. Despite the regulatory requirement that the Department consider the compliance
22 history of an applicant's owners, officers, or board members, the Department did not provide any
23 applicant's compliance information to the Temporary Employees who scored the applications.
24 When questioned, none of the Department employees could identify the person who made the
25 decision to remove compliance information from the application.

26 220. Defendant/Respondent Nevada Organic Remedies, LLC received 7 of the
27 Conditional Licenses awarded in December 2018.
28

1 **4. Destruction of Records in Violation of Court Order**

2 221. In another case alleging defects in the Department’s grant of Conditional Licenses,
3 Judge Bailus ordered that the Department preserve virtually all documents relating to the
4 application process, including “all cell phones (personal and/or business) of each such person that
5 assisted in the processing of applications for dispensary licenses and/or evaluated such license
6 applications.”⁶

7 222. During the Preliminary Injunction Hearing, Department employees testified that they
8 failed to preserve text messages among Department employees, emails, and other records that were
9 subject to the preservation order.

10 223. In addition to violation of the preservation order, it is a gross misdemeanor to
11 willfully destroy, alter, erase, obliterate or conceal any evidence for the purposed of concealing a
12 felony or hindering the administration of the law. NRS 199.220.

13 **I. Public Records Request.**

14 224. Nevada passed the Nevada Public Records Act (“NPRA”), which provides that all
15 state agency records are public unless declared confidential by law.

16 225. “The Legislature has declared that the purpose of the NPRA is to further the
17 democratic ideal of an accountable government by ensuring that public records are broadly
18 accessible.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877–78, 266 P.3d 623, 626 (2011)
19 (citing NRS 239.001(1)).

20 226. Even if a public record contains information that is deemed confidential, the agency
21 may not deny a public records request on the basis that the requested public book or record contains
22 information that is confidential if it can redact, delete, conceal, or separate the confidential
23 information from the information included in the public book or record that is not otherwise
24 confidential.

25
26 ⁶ Order Granting In Part and Denying In Part Emergency Motion for Order Requiring the SMC To Preserve
27 and/or Immediately Turn Over Relevant Electronically Stored Information From Servers, Stand-Alone Computers, and
28 Cell Phones, *MM Dev. Co. v. Nev. Dept. of Taxation*, No. A-18-785818-W (Nev. Dist. Ct. Dec. 13, 2018), attached as
Exhibit 1.

227. On January 23, 2019, Plaintiffs submitted a Public Records Request to the Department for the “[v]isitor sign[-]in logs for the Department of Taxation office located at 555 E. Washington Blvd. Ste. 4100 in Las Vegas, Nevada[,] for the period beginning November 26, 2018 through December 5, 2018.”

228. Defendants believed that the logs would substantiate the information received from [Individual #1].

229. On January 23, 2019, the Department responded to Plaintiffs/Petitioners’ public records request, and claimed that the requested logs were “confidential” under NRS 360.255(1)⁷ because “[t]he visitor sign-in logs identify taxpayers and document taxpayers’ visits to the Taxation office and the business they are there to conduct (e.g., register a business, file a return, make a payment, etc.).”

230. The Department has refused to provide copies of the visitor logs—with or without redactions.

J. Plaintiffs Request Administrative Review by the Tax Commission.

231. Pursuant to NRS 360.245(1), Plaintiffs/Petitioners filed an administrative appeal of the denial of their application with the Commission.

232. To avoid any possible confusion about the proper procedure, Plaintiffs contacted the Department and asked which office would accept service of the notice of an appeal to the Commission. Plaintiffs were informed that a notice of appeal could be served at either of the offices in the Las Vegas Valley or sent via US Mail.

233. Plaintiffs sent a process server to the Department’s office at 555 East Washington Avenue (the Grant Sawyer Building) on January 4, 2019, but no one would accept service.

⁷ NRS 360.255(1) provides that “[e]xcept as otherwise provided in this section and NRS 239.0115 and 360.250, the records and files of the Department concerning the administration or collection of any tax, fee, assessment or other amount required by law to be collected are confidential and privileged. The Department, an employee of the Department and any other person engaged in the administration or collection of any tax, fee, assessment or other amount required by law to be collected or charged with the custody of any such records or files:

- (a) Shall not disclose any information obtained from those records or files; and
- (b) May not be required to produce any of the records or files for the inspection of any person or governmental entity or for use in any action or proceeding.”

- a. Plaintiffs' process server arrived at the Department's office at 4:30 p.m.
- b. After waiting in line for 18 minutes, he was told that he was in the wrong office, and that the Department needed to make copies of the Notices of Appeal.
- c. Plaintiffs' process server asked why copies were needed if he was in the wrong office, but he was not provided with a response.
- d. It took the Department 12 minutes to make a copy of the Notices of Appeal and notify the process server which office would accept the appeals.
- e. Plaintiffs' process sever was directed to room 1402.
- f. Upon arriving at room 1402, Plaintiffs' process server was told to go to room 1401.
- g. Upon arriving at 1401, Plaintiffs' process server was told that it was closing time and that the person who was responsible for accepting and filing the documents had not been in the office all day.

234. As a result of the Departments' obstruction and refusal to accept service, Plaintiffs were forced to serve the Notices of Appeal by mail.

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

236. Under Nevada law, it is a misdemeanor to obstruct any public officer in the discharge of official powers or duties. NRS 197.190. Furthermore, it is a gross misdemeanor to willfully intrude into a public office to which a person has not been duly elected or appointed, or willfully exercise the functions or perform any of the duties of such office. NRS 197.120.

237. Mr. Pupo is not a member of the Tax Commission, and, in unilaterally rejecting Plaintiffs' appeal, Mr. Pupo usurped the Commission's authority and obstructed its ability to perform its official duties.

K. The Commission Meetings

238. On January 14, 2019, the Commission held a properly noticed meeting in Carson City, Nevada and Henderson, Nevada.⁸

239. At the meeting, Nicola Spirtos, M.D. and Nicholas Thanos, M.D. offered public comments on behalf of DH Flamingo, and Pejman Bady, M.D. offered public comments on behalf of NuVeda. Each raised concerns regarding the deficiencies in the licensing process.

240. Commissioner George Kelesis responded by sharing his own concerns about the licensing process, which included, but are not limited to, the following:

- a. The Department's response to questions from various applicants who were denied information;
- b. "Regulations that were applied beyond the scope of the regulation," and "things that were changed . . . [without being] rule[d] on as a Commission;"
- c. The adequacy of disclosure by certain applicants to the Department;
- d. The qualifications of the individuals who scored the applications; and
- e. The scoring process.

241. Commissioner Kelesis also expressed his dismay that the Commission was being deprived of the opportunity to review the licensing decision. He added that "[s]omebody is under the distinct impression that we, as a Commission, do not have jurisdiction over this. I suggest they read [NRS Chapter] 360 real close. We are the head of the Department, and we are the head of the Division, and it comes to us."

242. Commissioner Kelesis concluded by calling for a special meeting of the Commission to address the problems.

243. Before closing the meeting, Commission Chairman James C. DeVolld assured the public that the issue would be included on a future agenda.

244. On March 3, 2019, the Commission held a properly noticed meeting in Carson City, Nevada and Henderson, Nevada. At the March 3, 2019 meeting, Commissioner Kelesis inquired

⁸ An excerpted transcript of this meeting is attached as Exhibit 2.

1 about the status of the administrative appeals filed by applicants whose applications for retail
2 marijuana stores were denied in December 2018. He noted that “[t]hey're not in the system” and
3 asked “when can we expect to hear those and why haven't we heard them yet?”

4 245. Melanie Young, Executive Director of the Department, responded to Commissioner
5 Kelesis: “I would have to get back to you on that. I'm not sure what the status of those are.”

6 246. To date, the Commission has never scheduled a special meeting to address the
7 numerous problems with the Dispensary licensing or included it on the agenda of any regularly
8 scheduled meeting. Moreover, the Commission never took any action to remedy Mr. Pupo's
9 wrongful denial of the Plaintiffs' notices of appeal.

10 **L. The Preliminary Injunction Hearing**

11 247. The Preliminary Injunction Hearing lasted 20 days and concluded on August 16,
12 2019.

13 248. During the Hearing, the Court took testimony from numerous witnesses, including
14 several key employees of the Division.

15 249. Based on the testimony and other evidence, the Court published a 24-page order⁹
16 that included the following findings:

- 17 a. The Department hired temporary employees to grade the application, but “failed
18 to properly train the Temporary Employees”;
- 19 b. “The [Department] failed to establish any quality assurance or quality control of
20 the grading done by Temporary Employees”;
- 21 c. “When the [Department] received applications, it undertook no effort to
22 determine if the applications were in fact ‘complete and in compliance’” and
23 “made no effort to verify owners, officers or board members (except for
24 checking whether a transfer request was made and remained pending before the
25 [Department])”;
- 26

27 ⁹ Findings of Fact & Conclusions of Law Granting Prelim. Ing., *Serenity Wellness Center LLC. Nev. Dept. of*
28 *Taxation*, No. A-19-786962-B (Nev. Dist. Ct. Aug. 23. 2019), attached as Exhibit 3.

- d. The [Department's] late decision to delete the physical address requirement on some application forms while not modifying those portions of the application that were dependent on a physical location (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated communications by an applicant's agent; not effectively communicating the revision; and, leaving the original version of the application on the website, is evidence of conduct that is a serious issue.
- a. "The [Department's] inclusion of the diversity category was implemented in a way that created a process which was partial and subject to manipulation by applicants";
- b. During the application process, the Department "utilized a question and answer process through a generic email account at marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers directly from the Department, which were not consistent with NRS 453D, and that information was not further disseminated by the [Department] to other applicants";
- c. "The process was impacted by personal relationships in decisions related to the requirements of the application and the ownership structures of competing applicants";
- d. "The [Department] disseminated various versions of the 2018 Retail Marijuana Application" and "selectively discussed with applicants or their agents the modification of the application related to physical address information";
- e. "[C]ertain of the Regulations created by the [Department] are unreasonable, inconsistent with [Ballot Question 2] and outside of any discretion permitted to the [Department]";
- f. "The [Department] acted beyond its scope of authority when it arbitrarily and capriciously replaced the mandatory requirement of . . . [a] background check of each prospective owner, officer and board member with the 5% or greater

standard in NAC 453.255(1) . . . in violation of Article 19, Section 2(3) of the Nevada Constitution”;

g. “[T]he [Department] clearly violated NRS Chapter 453D.”

250. Based upon its findings of fact and conclusions of law, the Court “enjoined [the Department] from conducting a final inspection of any of the conditional licenses issued in or about December 2018[, for applicants] 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.”

251. Based upon the Court’s findings, Plaintiffs are informed and believe that the injunction will prevent the Department from conducting a final inspection of the conditional licenses issued to Defendant/Respondents Nevada Organic Remedies LLC; Greenmart of Nevada NLV, LLC; Helping Hands Wellness Center, Inc.; and Lone Mountain Partners, LLC, who were granted the following licenses:

- a. 1 license in Carson City;
- b. 2 licenses in Henderson;
- c. 4 licenses in Las Vegas;
- d. 3 licenses in North Las Vegas;
- e. 4 licenses in Unincorporated Clark County;
- f. 1 license in Douglas County;
- g. 1 license in Esmeralda County;
- h. 1 license in Eureka County;
- i. 1 license in Lander County;
- j. 1 license in Lincoln County;
- k. 1 license in Mineral County;
- l. 1 license in Nye County;
- m. 1 license in White Pines County; and
- n. 3 licenses in Washoe County-Reno.

M. Plaintiffs Are Without Any Other Means to Obtain Review.

252. Neither NRS Chapter 453D nor the Department's Approved Regulations expressly provide for an appeal or reconsideration of the Department's licensing determination and the Department has denied Plaintiffs' appeal filed under NRS Chapter 360.

253. Because the Department has failed to provide the Plaintiffs/Petitioners with written notice of the specific reasons for the denial of their license applications, refused to let them review the scoring for their license applications until after the time to appeal the licensing determination had run (pursuant to NRS 233B.130), refused to provide them any explanation as to how their scores for each criterion was determined, and refused to provide them copies of the scoring for their own applications or the applications for any of the Successful Applicants or other Denied Applicants, the Department has deprived the Plaintiffs/Petitioners of any means to: (1) determine whether the Department accurately scored their applications; (2) appeal the Department's licensing determinations; or (3) obtain proper judicial review of the Department's administrative decisions.

254. Upon information and belief, the Department did not properly score the Plaintiffs/Petitioners' license applications submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

255. Upon information and belief, the Department's ranking and scoring process was corrupted and the applications of the Successful Applicants were not fairly and accurately scored in comparison to the Plaintiffs/Petitioners' applications.

256. Upon information and belief, the Department improperly allocated licenses and improperly favored certain applicants to the detriment of the Plaintiffs/Petitioners.

257. Upon information and belief, the Department and/or the Commission and/or their individual members or employees are now engaging in a cover-up of the rampant illegality and corruption that infected the license application process for the recreational Dispensaries.

258. Plaintiffs/Petitioners are each parties to a proceeding by the Department which determined their rights, duties, and privileges; namely, the Department's scoring and ranking of Plaintiffs/Petitioners' applications for a recreational Dispensary license and the Department's refusal to issue a conditional license to Plaintiffs/Petitioners.

1 259. The Department's scoring and ranking process was marred by significant errors,
2 procedural flaws, violations of Nevada law, and/or illegality and corruption.

3 260. After publishing the Notice of Intent to Accept Applications on June 6, 2018, the
4 Department revised the application form in violation of the Approved Regulations and NRS
5 Chapter 453D.

6 261. As such, the Department's scoring and ranking process and subsequent issuance of
7 conditional recreational Dispensary licenses was unlawful, arbitrary, capricious, in excess of the
8 Department's jurisdiction, and clearly erroneous.

9 262. The Department's scoring and ranking of the applications was unlawful and in
10 excess of its jurisdiction because the Department eliminated certain categories of application
11 information clearly required by the Approved Regulations and NRS 453D.210 (i.e., the physical
12 address and property ownership requirements) without following the proper procedures to amend its
13 Regulations and/or NRS 453D.210 to officially eliminate these requirements from the license
14 application process.

15 263. The Department's scoring and ranking was also unlawful and in excess of its
16 jurisdiction because the Department added a new category of information to its scoring criterion
17 (i.e., information relating to key personnel of the proposed recreational Dispensary) after issuing its
18 Notice and without clearly informing applicants of the revision.

19 264. Further, the Department's scoring and ranking of applications was arbitrary and
20 capricious because it was conducted by Temporary Employees whose training and qualifications
21 were concealed from the public.

22 265. The Department's scoring and ranking of applications was also arbitrary and
23 capricious because the Department has not provided any information to the public regarding how
24 scores are assessed for each criterion in the Application or any information as to how the
25 Department ensures uniformity in the assessment of scores by the unknown persons conducting the
26 scoring process.

27 266. Moreover, the Department's scoring and ranking was unlawful and in excess of its
28 jurisdiction because the process of scoring and ranking the license applications submitted between

1 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018 was corrupted and certain
2 applicants and applications were favored over others.

3 267. Finally, the denial of the Plaintiffs/Petitioners' applications for recreational retail
4 marijuana establishment licenses was clearly erroneous, unlawful, arbitrary, capricious, and in
5 excess of the Department's jurisdiction, because the Department has failed to provide the specific
6 reasons for the denial of the applications and has not provided any record demonstrating the basis
7 for the denial of the applications.

8 268. Upon information and belief, a complete review of the record will show that the
9 Department's final scoring and ranking of the Plaintiffs/Petitioners', Denied Applicants', and
10 Successful Applicants' applications was arbitrary, capricious, and clearly erroneous.

11 269. Plaintiffs/Petitioners request that the entire record of the Department's scoring and
12 ranking (not only for the Plaintiffs/Petitioners' applications, but also the applications submitted by
13 each of the Denied Applicants and Successful Applicants) – including the process by which the
14 scorers were hired, the qualifications of the scorers, and the guidelines and procedures followed by
15 the scorers to ensure uniformity in assessing the scores and ranks – be immediately provided for
16 review.

17 IV. CLAIMS FOR RELIEF

18 First Claim for Relief: Petition for Judicial Review

19 270. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
20 in all previous paragraphs, inclusive.

21 271. Plaintiff/Petitioners are parties to a proceeding at the Department—specifically, the
22 review, scoring, and ranking of applications for and issuance of recreational dispensary licenses—
23 and have been aggrieved by what the Department claims is its final decision.

24 272. As set forth above,

- 25 a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of
26 the Approved Regulations;
27 b. The Department's scoring and ranking of the applications submitted for
28 recreational dispensary licenses between 8:00 a.m. on September 7, 2018 and

5:00 p.m. on September 20, 2018 was arbitrary, capricious, unlawful, clearly erroneous, and in excess of the Department's jurisdiction;

- c. The Department's denial and award of Conditional Licenses for recreational dispensaries was unlawful, clearly erroneous, arbitrary, capricious, and in excess of the Department's jurisdiction; and
- d. The Department's misconduct and failure to properly administer the application process denied Plaintiffs of due process and equal protection as guaranteed by the Nevada Constitution.

273. Under NRS 233B.010, *et seq.*, Plaintiffs/Petitioners are entitled to Judicial Review of the Department's decision by which they were denied the rights and privileges afforded to them by Nevada law.

- a. Pursuant to NRS 360.245(1)(b), "Any natural person, partnership, corporation, association or other business or legal entity who is aggrieved by [] a decision [of the Executive Director or other officer of the Department] may appeal the decision by filing a notice of appeal with the Department within 30 days after service of the decision upon that person or business or legal entity."
- b. Furthermore, "[t]he Nevada Tax Commission, as head of the Department, may review all decisions made by the Executive Director that are not otherwise appealed to the Commission pursuant to this section."

274. Plaintiffs/Petitioners timely appealed to the Commission for review of the Department's December 5, 2018 decision to deny them Dispensary licenses.

275. The Department abused its discretion when, without justification, it asserted that Plaintiffs/Petitioners are not entitled to the Commission's review of the Department's decision to deny them Dispensary licenses.

276. Accordingly, Plaintiffs/Petitioners petition this Court for Judicial Review of the proceeding at the Department whereby the applications for recreational Dispensary licenses were reviewed, scored, and ranked, and demand that the entire record of the proceeding (for each and every application submitted by Plaintiffs/Petitioners, the Denied Applicants, and the Successful

Applicants) be transmitted in accordance with NRS 233B.131.¹⁰ This includes, but is not limited to:

- a. All applications and scoring information for every application for a recreational Dispensary license that was submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
- b. Information regarding the identities, qualifications, and training of the Temporary Employees who scored the applications for recreational Dispensary licenses;
- c. The policies, procedures, guidelines, and/or regulations which governed how the scorers assessed points to each criterion in the license application and how uniformity was ensured in the scoring assessment process for the recreational Dispensary licenses;
- d. All communications between the Temporary Employees who scored the applications and Department employees from the date of hire to the present, including but not limited to, cell phone records, text messages, emails or voicemails;
- e. All communications among Department employees regarding implementation of the Ballot Initiative, the drafting and adoption of the Approved Regulations, and the drafting and adoption of Chapter 453D of the Nevada Administrative Code, including but not limited to cell phone records, text messages, emails or voicemails;
- f. All communications related to the creating, adoption, and revision of the application or the scoring process, including, but not limited to, cell phone records, text messages, emails or voicemails (whether by or among Department employees, with any applicant, or other third party)

¹⁰ “Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: . . . The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review.” NRS 233.131(1)(b).

- g. All communications or other evidence of invitations by any licensee to any Department Employee relating to social engagements, business meetings occurring outside the Department's offices, offers of employment, or any gift, gratuity, or other item or service of value, including, but not limited to cell phone records, text messages, emails or voicemails (whether by or among Department employees, with any applicant, or other third party)
- h. Communications between Department employees and applicants or other third parties regarding revisions to an applicant's or licensee's compliance records with the Department, including but not limited to cell phone records, text messages, emails or voicemails; and
- i. Non-privileged communications or policies relating to record retention or the Preservation Order;

277. Specifically, following review and further proceedings in this Court, Plaintiffs seek an order remanding this matter back to the Department for administrative appeal before the Commission in accordance with NRS 360.245(1), with such instructions as the Court deems necessary and appropriate.

Second Claim for Relief: Petition for Writ of Certiorari

278. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in all previous paragraphs, inclusive.

279. The Department has exceeded its jurisdiction to review, score, and rank applications for recreational Dispensary licenses and to issue recreational Dispensary licenses by, among other things:

- a. Employing unqualified and improperly trained employees to conduct the review, scoring, and ranking of applications;
- b. Failing to ensure uniformity in the assessment of the applications and the assignment of scores to various categories of information in the applications;
- c. Allowing the license application process to be corrupted by unfairly favoring certain applicants over others and by eliminating categories of information from

the license application despite such categories being required under the
Approved Regulations and/or NRS Chapter 453D;

- d. Adding a new category of information to the license application after issuing the
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
statutory or regulatory infractions by licensees;
- f. Failing to inform the Plaintiffs/Petitioners of the specific reasons for the denial of
their applications;
- g. Improperly communicating with certain licensees (or their counsel) regarding the
application process; and
- h. Failing to comply with the Preservation Order.

280. The Department has informed Plaintiffs that Plaintiffs have no right to appeal the
Department's licensing decision. Therefore, Plaintiffs do not have any plain, speedy, and adequate
remedy for the Department's improper actions.

281. Plaintiffs/Petitioners petition this Court for a writ of certiorari regarding the
Department's reviewing, scoring, and ranking of Plaintiffs/Petitioners' applications for recreational
Dispensary licenses, and that this Court undertake such review of the Department's conduct as it
deems necessary and appropriate

282. Plaintiffs/Petitioners also request that the Court order the Department to provide the
complete record of the Department's proceeding with respect to the Plaintiffs/Petitioners'
applications for recreational Dispensary licenses (along with the complete record of the
Department's proceeding related to the licensing process and each of the applications for the
Denied Applicants and the Successful Applicants).

Third Claim for Relief: Petition for Writ of Mandamus

283. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
in all previous paragraphs, inclusive.

1 284. The Department has failed to perform an act which the law compels it to perform;
2 specifically,

- 3 a. Use of an using an impartial and numerically scored competitive bidding process
4 to evaluate license applications and issue licenses in compliance with Nevada
5 laws and regulations; and
6 b. Preservation of public records and other evidence not subject to the Preservation
7 Order.

8 285. The Plaintiffs have already been denied a right to appeal the Department's licensing
9 decision. Therefore, there is no plain, speedy, and adequate remedy in the ordinary course of law to
10 correct the Division's failure to perform the acts required by law.

11 286. The Plaintiffs/Petitioners therefore petition this Court to issue a writ of mandamus to
12 the Department compelling it to issue a new Notice for recreational Dispensary license applications
13 and to conduct the scoring and ranking of such applications in accordance with Nevada law and the
14 Approved Regulations.

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

16 287. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
17 in all previous paragraphs, inclusive.

18 288. The Department has issued conditional recreational Dispensary licenses in excess of
19 its jurisdiction by, among other things: (1) eliminating key categories of information from the
20 application (despite the Approved Regulations and NRS Chapter 453D requiring that the
21 Department consider such information); (2) by adding a new category of information to the
22 application after it issued its Notice for license applications and failing to adequately inform license
23 applicants of this new category of information; and (3) failing to comply with NRS Chapter 453D
24 and the Approved Regulations related to dispensary licensing;

25 289. The Department has denied Plaintiffs/Petitioners the right to appeal the
26 Department's licensing decision. Therefore, there is no plain, speedy, and adequate remedy in the
27 ordinary course of law to correct the Department's improper review, scoring, and ranking of the
28 license applications or the issuance of the conditional recreational Dispensary licenses.

1 290. Plaintiffs/Petitioners therefore petition the Court to issue a writ of prohibition which
2 prohibits the Department from issuing and/or recognizing any new recreational Dispensary licenses
3 (conditional or final) for applicants who submitted a license application between 8:00 a.m. on
4 September 7, 2018 and 5:00 p.m. on September 20, 2018.

5 WHEREFORE, Plaintiffs/Petitioners pray for the following relief:

6 1. Judicial Review of the Department's decision denying Plaintiff's appeal;
7 2. A writ of certiorari ordering the review of the Department's review, scoring, and
8 ranking of applications for recreational Dispensary licenses submitted between 8:00 a.m. on
9 September 7, 2018 and 5:00 p.m. on September 20, 2018; and order that the Department provide the
10 complete record of the Department's proceeding (for each and every application submitted by
11 Plaintiffs/Petitioners, the Denied Applicants, and the Successful Applicants). This includes, but is
12 not limited to:

- 13 a. All applications and scoring information for every application for a recreational
14 Dispensary license that was submitted between 8:00 a.m. on September 7, 2018
15 and 5:00 p.m. on September 20, 2018;
16 b. Information regarding the identities, qualifications, and training of the
17 Temporary Employees who scored the applications for recreational Dispensary
18 licenses; and
19 c. The policies, procedures, guidelines, and/or regulations which governed how the
20 scorers assessed points to each criterion in the license application and how
21 uniformity was ensured in the scoring assessment process for the recreational
22 Dispensary licenses;
23 d. Communications related to the application or the scoring process, including, but
24 not limited to, cell phone records, text messages, emails or voicemails (whether
25 by or among Department employees, with any applicant, or other third party)
26 e. Communications or other evidence of (1) invitations by any licensee to any
27 Department Employee relating to social engagements or (3) any gift, gratuity, or
28 other item or service of value;

f. Non-privileged communications or policies relating to record retention or the Preservation Order.

3. A writ of mandamus compelling the Department to: issue a new Notice for recreational Dispensary license applications and to conduct the scoring and ranking of such applications in accordance with Nevada law and the Approved Regulations.

4. A writ of prohibition barring the Department from issuing and/or recognizing any new recreational Dispensary licenses (conditional or final) based on applications submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

DATED this 6th day of September, 2019.

BAILEY❖KENNEDY

By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

JOSHUA M. DICKEY

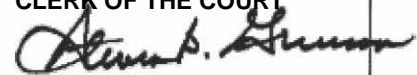
SARAH E. HARMON

KELLY B. STOUT

Attorneys for Plaintiffs/Petitioners

D.H. FLAMINGO, INC., d/b/a THE APOTHECARY SHOPPE; CLARK NATURAL MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA; NYE NATURAL MEDICINAL SOLUTIONS LLC, d/b/a NuVEDA; CLARK NMSD LLC, d/b/a NuVEDA; and INYO FINE CANNABIS DISPENSARY L.L.C., d/b/a INYO FINE CANNABIS DISPENSARY

EXHIBIT 1



1 Will Kemp, Esq. (#1205)
2 Nathanael R. Rulis, Esq. (#11259)
3 n.rulis@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 *Attorneys for Plaintiff*

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 MM DEVELOPMENT COMPANY, INC., a
9 Nevada corporation,

Case No.: A-18-785818-W
Dept. No.: XVIII

10 Plaintiff,

11 vs.

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

15 Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART EMERGENCY
MOTION FOR ORDER REQUIRING
THE SMC TO PRESERVE AND/OR
IMMEDIATELY TURN OVER
RELEVANT ELECTRONICALLY
STORED INFORMATION FROM
SERVERS, STAND-ALONE
COMPUTERS, AND CELL PHONES**

Date of Hearing: 12/13/18
Time of Hearing: 10:00 a.m.

16
17
18 Plaintiff MM Development having filed an Emergency Motion For Preservation Of
19 Electronic Data and having given the counsel for Department of Taxation notice of such
20 request, the Court conducting a hearing on December 13, 2018 at 10:00 a.m., Plaintiff appearing
21 by Will Kemp, Esq., and Nathanael R. Rulis, Esq., of the law firm of Kemp, Jones & Coulthard,
22 LLP, the State of Nevada, Department of Taxation (the "State") appearing by Robert Werbicky,
23 Esq., and David J. Pope, Esq., and it appearing that the State used employees retained by an
24 outside employment agency (i.e. Manpower) to evaluate and rate marijuana dispensary license
25 applications (hereinafter referred to as "Manpower"), and good cause appearing for the
26 preservation of electronic data of the State and Manpower, the Motion is GRANTED IN PART
27
28

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

1 regarding preservation and DENIED IN PART regarding immediate turnover and it is hereby
2 ORDERED, ADJUDGED and DECREED as follows:

3 ORDERED that the State shall preserve server or any standalone computers (including
4 laptops, iPads or thumb drives) in its possession and used in the evaluation and rating of
5 marijuana dispensary license applications as part of the September 2018 application period (the
6 “ESI” or “electronically-stored information”). The State shall also preserve communication
7 made with Manpower related to the hiring of the personnel by Manpower for the September
8 2018 application period. The State shall make the ESI available for copying by the State in the
9 presence of a computer expert retained by Plaintiff in the next 10 business days after notice of
10 entry of this order. The State shall make 3 copies of the hard drive of the ESI with one copy
11 being preserved by the State as a master copy retained by the State and one additional copy
12 retained by the State, and one copy provided to the Court under seal. To allow Plaintiff and the
13 State (i.e., the Nevada Department of Taxation) to determine the most efficient way to allow the
14 State to make such copies, the State shall make their primary IT persons available for a
15 conference call with the ESI expert for Plaintiff and counsel for the Plaintiff, counsel for the
16 State (and counsel and IT manager for Manpower if desired by Manpower) to identify in
17 general the types of servers (including standalone computers and laptops) that will be subject to
18 the copying protocol and types and amount of data maintained on such servers (including
19 standalone computers and laptops). The conference call shall be held no later than 5 business
20 days after notice of entry of this order.

21 ORDERED that the State shall provide Plaintiffs a list of Department personnel
22 including Manpower personnel that primarily assisted in the evaluation and rating of all
23 applications for dispensary licenses and/or evaluated such license applications received in the
24 September 2018 application period and provide a list of any full or partial cell phone numbers
25 known to the Department sufficient to allow the identification of the cell phone (including but
26 not limited to personal cell phone numbers) for each such person within 5 business days of after
27 notice of entry of this order. At the same time, the State may use reasonable identifiers, e.g.
28 “Manpower Employee 1,” instead of names if the State so desires. At the same time the State

1 may designate up to 6 persons on a list that the State believes were primarily involved on behalf
2 of Manpower and/or the State in the processing of all applications for dispensary licenses and/or
3 the evaluation of such license applications. If the State has a pre-existing organizational chart
4 of the Manpower employees, it shall provide the same to Plaintiff at such time but the State is
5 not obligated to create an organizational chart. Again, the State may use reasonable identifiers
6 instead of names. Within 10 business days after receiving the foregoing list from the State,
7 Plaintiffs shall be allowed to take the telephonic deposition of the PMK for the State to identify
8 the names (or reasonable identifiers) and job descriptions of all persons (including temporary
9 employees, if any) that were involved on behalf of State in assisting in the evaluation and rating
10 of applications for dispensary licenses and/or evaluating such licenses for the September 2018
11 application period. The purpose of the PMK deposition is to reasonably identify persons whose
12 cell phone data may contain relevant discoverable materials to ensure that all such data is
13 preserved. At its option, the State may provide a written response in lieu of the PMK
14 deposition.

15 ORDERED that the State shall make all cell phones (personal and/or business) of each
16 such person that assisted in the processing of applications for dispensary licenses and/or
17 evaluated such license applications, including but not limited to Steve F. Gilbert and a Northern
18 Nevada State employee, available for copying in the 10 business days after notice of entry of
19 this order at a location convenient to State and Manpower, and that the State, in the presence of
20 Plaintiff's computer expert, shall make 3 copies of the data from each cell phone with one copy
21 being preserved as a master copy, one copy provided to counsel for the State and one copy
22 provided to the Court under seal. In the event any such cell phones are not available, the State
23 shall file a sworn declaration regarding any cell phone that is not available explaining why such
24 cell phone is not available within 10 business days after notice of entry of this order.

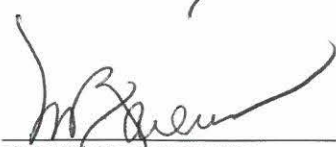
25 ORDERED that neither Plaintiff's counsel nor Plaintiff or their agents or employees
26 shall access the cell phone data until the State and Plaintiff agrees to a procedure to protect non-
27 discoverable confidential data or the Court allows such access by subsequent order. The State is
28 authorized to inform any such persons whose cell phone data is copied that any and all personal

1 information will either be returned or destroyed at a later date. Plaintiff's counsel and Plaintiff
2 and their agents or employees are restricted from accessing ESI data except as authorized by a
3 confidentiality order or other order of the Court.

4 ORDERED that the State is directed to maintain any and all documents in its possession
5 regarding the processing of applications for dispensary licenses and/or evaluation of such
6 license applications, for the September 2018 application period including but not limited to the
7 following: (1) any and all communications between Manpower and the State; (2) any and all
8 directions provided by the State to Manpower regarding the processing of applications or the
9 evaluation of the applications and any requests for information from Manpower; (3) any and all
10 communications between Manpower or State employees and any applicant (or with the
11 attorneys or consultants for an applicant) regarding any subject matter; (4) the contract, if any,
12 between Manpower and the State and all invoices, if any, sent by Manpower to the State; (5)
13 any and all preliminary rankings of applicants by jurisdiction or otherwise by Manpower or the
14 State that pre-date the final ranking; (6) any and all work papers (including notes) used by
15 Manpower or the State in the processing of applications for dispensary licenses and/or
16 evaluation of such license applications; (7) any and all spread sheets created by Manpower or
17 the State regarding the applications for dispensary licenses; and (8) any and all notes of formal
18 or informal meetings among Manpower or the State personnel regarding the processing of
19 applications for dispensary licenses and/or evaluation of such license applications. The State
20 shall not be required to produce the documents set forth in categories 1 through 8 at an
21 expedited pace but shall be required to identify the same with specificity at the Rule 16.1
22 conference subject to all privileges and objections by the State to such production.

23 ORDERED that the State shall serve a copy of this Order upon Manpower within one
24 business day of notice of entry of this Order.

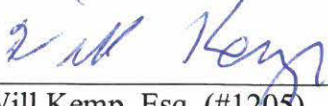
25 DATED this 13th day of December, 2018

26
27 
28 DISTRICT JUDGE

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 Respectfully Submitted by:

2
3 KEMP, JONES & COULTHARD, LLP

4 
5 _____
6 Will Kemp, Esq. (#1205)
7 Nathanael R. Rulis, Esq. (#11259)
8 3800 Howard Hughes Parkway, 17th Floor
9 Las Vegas, Nevada 89169
10 *Attorneys for Plaintiff*

11 Approved as to content and form

12 OFFICE OF THE ATTORNEY GENERAL

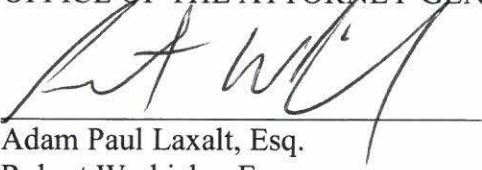
13 
14 _____
15 Adam Paul Laxalt, Esq.
16 Robert Werbicky, Esq.
17 David J. Pope, Esq.
18 555 East Washington Ave., Suite 3900
19 Las Vegas, Nevada 89101
20 *Attorneys for Defendant*
21 *State of Nevada, Department of Taxation*

EXHIBIT 2

STATE OF NEVADA
TAX COMMISSION
VIDEO CONFERENCE OPEN MEETING
MONDAY, JANUARY 14, 2019
CARSON CITY, NEVADA

THE BOARD:

MELANIE YOUNG, Executive
Director
JIM DEVOLLD, Chairman
CRAIG WITT, Member
RANDY BROWN, Member
TONY WREN, Member
GEORGE KELESIS, Member
ANN BERSI, Member
FRANCINE LIPMAN, Member

FOR THE DEPARTMENT:

SHELLIE HUGHES,
Chief Deputy Executive
Director

TINA PADOVANO,
Executive Assistant

ATTORNEY GENERAL'S
OFFICE:

JENNIFER CRANDELL,
Special Counsel

REPORTED BY:

NICOLE J. HANSEN, CCR #446

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III. <u>CONSENT CALENDAR:</u>	
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1) <u>Bonds Administratively Waived (dates as indicated) (Sales/Use Tax) (for possible action):</u>	
a) B&D Healthy Homes LLC	
b) Desert Footwear LLC	
c) Diversified Capital Inc.	
d) DQ Grill N Chill of Carson City LLC	
e) DW Quality Tools LLC	
f) Echo & Rig Las Vegas 1 LLC	
g) JMM/RKG Ltd.	
h) Nevada Steam Inc.	
i) Oscar L. Carrescia	
j) Parkway Flamingo LLC	
k) PBR Rock LLC	
l) Sharmark-Las Vegas Inc.	
m) Thiel & Thiel Inc.	
n) WBF McDonalds Management LLC	
o) Zhuliang Investment LLC	
B. <u>Waiver of Penalty and Interest Pursuant to a Request on a Voluntary Disclosure (Sales/Use Tax):</u>	
1) Insitu Inc. (for possible action)	
2) International Systems of America, LLC (ISA Fire & Security (for possible action)	
3) MDK Ventures LLC (Medical Department Stores) (for possible action)	
4) Miller Rentals Inc. (for possible action)	
5) OCuSOFT Inc. (for possible action)	
6) Parkway Recovery Care Center LLC (for possible action)	
7) Quad Graphics Inc. (for possible action)	
8) Russell Bay Fee Owner LLC (for possible action)	
9) Silver Ticket Products (for possible action)	

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C. Waiver of Penalty and/or Interest Pursuant to NRS 360.419 that exceeds \$10,000:

1) Oscars Auto Sales LLC (for possible action)

D. Consideration for Approval of the Recommended Settlement Agreement and Stipulations (sales/use/and/pr modified business tax)

(for possible action)

1. Westgate Las Vegas Resort & Casino dba LVH Las Vegas Hotel & Casino

2. Benos Flooring Services

3. AG Production Services, Inc.

4. AG Light and Sound, Inc.

5. Goldland Capital, Inc. dba Lee's Sandwiches

6. Executive Housewares

E. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (request for refund of Net Proceeds of Minerals Tax)

7

1) University of Nevada, Reno (for possible action)

F. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (excise tax)

14

1) Vegas Bros Ltd. dba Boulder City Cigarette Factory (for possible action)

2) Vegas Bros. Ltd. dba Pahrump Valley Smokes (For possible action)

3) Vegas Bros. Ltd. dba Sin City Cigarette Factory (For possible action)

4) Vegas Bros. Ltd. dba Laughlin Cigarette Factory (For possible action)

5) RYO Cigarettes of Nevada Inc. dba Double D's Tobacco Emporium (for possible action)

6) RYO Cigarettes of Nevada Inc. dba Smokes 4 Less (For possible action)

7) SCCF Craig dba Sin City Cigarette Factory 2 (For possible action)

8) SCS Nellis LLC dba Sin City Smokes (For possible action)

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3 G. Consideration for the Approval of the Administrative
4 Law Judge's Recommended Decision regarding an Appeal of
5 the Department's Denial of Waiver of Penalty and/or
6 Interest pursuant to NRS 360.419:

- 7 1) J&R Flooring, Inc. (For possible action)
8 2) NTNDQ dba Dairy Queen 19561
9 (For possible action)

10 **DIVISION OF LOCAL GOVERNMENT SERVICES:**

11 **A. Local Government Services**

18

12 **1. REGULATION**

13 a) Consideration for Approval of Adoption of
14 Permanent Regulation - LCB File No. R021-17 relating to
15 property taxes; revising the methods for determining the
16 applicability and amount of the partial abatement of
17 property taxes for remainder parcels of property; and
18 providing other matters properly relating thereto. (For
19 possible action)

20 **V. COMPLIANCE DIVISION:**

24

21 A. Status of Commission's July 9, 2018, Decision and
22 Department's Request for the Commission to affirm
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1 Governor's recommended budget. And we'll be able to
2 present that at the next meeting. Thank you.

3 CHAIR DEVOLLD: Okay. Thanks so much.

4 Our next meeting is March 4th, 2019.

5 I would ask for any public comment in Las
6 Vegas. Is there any public comment?

7 COMMISSIONER BERSI: There is public comment,
8 Mr. Chairman.

9 CHAIR DEVOLLD: Thank you.

10 DR. SPIRTOS: Good morning. My name is Nick
11 Spirtos, and I'd like to comment about the marijuana
12 retail application process. I have three, maybe four
13 comments regarding that process.

14 In my opinion, it was manipulated by an
15 individual or individuals who were either allowed to make
16 changes to the language in the regulations or made them
17 unilaterally, and thus calling into serious question any
18 of the results of that process.

19 In my opinion, in an effort approaching the
20 Nixon White House, this person or group of people are
21 going to great lengths to deny applicants information
22 that is rightfully theirs regarding their conduct.

23 Most egregious and recent example of this is
24 the refusal to provide us scores, as required by Section
25 93 or R097-012, where it specifically states: If an

1 applicant who receives an application score from the
2 Department -- pursuant to Subsection 1 -- wishes to
3 review the scores assigned to each criterion in the
4 application to generate that application score, the
5 applicant may submit to the Department a request to
6 review scoring information. Such a request must include
7 the name of the owner, operator, board member of the
8 applicant who reviews scoring information on behalf of
9 applicant.

10 Upon receipt of the request to review the
11 scoring information pursuant to Subsection 2, the
12 Department will designate an employee of the Department
13 to respond to the request and schedule and conduct the
14 review of scoring information.

15 Before conducting the review, the employee
16 designated by the Department shall confirm that the
17 identity of the person attending the review matches the
18 person named in the request and make a copy of a
19 document.

20 We were denied this. We were flat-out told
21 we are not going to receive the individual scores
22 associated with these sections in the application. We
23 were given an aggregate score. And when I asked one that
24 was supposed to be one person assigned by the Department
25 when, in fact, three people showed up: Two in person and

1 Steve Gilbert on the phone. Not an individual. And
2 frankly, I think, the one individual was there to
3 continue the pattern of intimidation that's been ongoing
4 with the marijuana program.

5 If you make a complaint, all of a sudden, you
6 get an audit. If you make a second complaint, you get
7 two audits. It's insanity, but we were denied our
8 scores. I scheduled time out of my surgical schedule. I
9 appeared. I made all of the proper requests, and I was
10 told, "We're just not going to do this." And the basis
11 of that was: Well, then, you'll then be able to discover
12 the tools of how we come up with these scores.

13 I wasn't asking for any of their tools. I'll
14 speak to that in a moment. I just wanted our scores by
15 the category. And again, denied. And that's consistent
16 with this whole process.

17 I'd also like to comment that in receiving
18 scores related to the identical applications but with
19 different locations with different levels of public
20 access, different size spaces, we received scores that
21 were identical, identical to the second decimal place.

22 And being aware of other similar results, I
23 would tell you that I have a significant mathematical and
24 statistical background. And this kind of result, in and
25 of themselves, speak to data manipulation and nothing

1 else. If I got that kind of data in a medical journal
2 article that I were to review, I would send it
3 immediately back to investigate fraud.

4 There is no way these applications could be
5 identically scored in a fair-and-unbiased manner when
6 you've got identical scores to the second decimal place.

7 I would also like to comment that in
8 receiving -- the last comment I'd like to make is our
9 group of five physicians has published the absolute only
10 work regarding the successful use of a cannabis product
11 made in Nevada to reduce the chronic opiate injections in
12 patients with chronic pain. We demonstrated a 75 percent
13 reduction in opiate use, presented it at the American
14 Society of Clinical Oncology in June of this last year in
15 Chicago.

16 And so you understand how bizarre -- I'll use
17 the word "bizarre" the scoring was, we scored less than
18 the average for our impact on this community. That, in
19 and of itself, should give you some idea the extent that
20 the application process was not fair, just and unbiased.

21 I'll leave those comments at this point, and
22 hopefully, others will add to it. Thank you.

23 CHAIR DEVOLLD: Could you please restate your
24 name and spell it for the record, please?

25 MR. SPIRTOS: Nicola: N-I-C-O-L-A, middle

1 initial M. Last name: S-P-I-R-T-O-S. Forgive my cold.

2 CHAIR DEVOLLD: Thank you, Mr. Spirtos.

3 Is there any other public comment in Las
4 Vegas?

5 DR. BADY: Yes. My name is Page Bady:
6 B-A-D-Y. 2700 Las Vegas Boulevard, Unit 2709.

7 I want to agree with Dr. Spirtos's comments.
8 We applied, in 2014, scored highest amount amongst any
9 applicants that were not publicly traded.

10 We possess seven current licenses. We also
11 had the largest number of applications: 28 applications
12 from anybody else in the state. Our scoring from 20 of
13 the 28 were identical to the second decimal point.

14 The way that criteria for the applications --
15 as we were informed -- would give more weight for people
16 who have dispensary experience because this application
17 was for dispensaries.

18 Our eight applications from our dispensaries
19 applications scored lower than our 20 other applications
20 that were just from our cultivation and productions,
21 which is -- and they're all identical -- statistically
22 impossible. Since then, we have formed the Nevada
23 Cannabis Medical Association.

24 I'm a local physician of 20 years. I was a
25 medical director for Davita Health Care Partners, a

1 publicly-traded \$18 billion-dollar company. We have
2 Harvard-trained physicians in our group, and we sit on
3 the Governor's Task Force for Opiates. We scored lower
4 than average on impact on the community. I don't know
5 what's going on in there. I don't want to accuse anyone
6 of anything, but it's difficult to maneuver.

7 And it had a quality that we used to
8 experience in a publicly-traded company, and I wanted to
9 bring that quality and sophistication into this industry
10 when we have to fight these kind of obstacles.

11 I just wanted to thank the Commission for
12 hopefully taking the time to investigate this. Look. I
13 might be absolutely wrong. Everybody's baby seems to be
14 the prettiest baby in the world, right? All we ask is to
15 have a thorough investigation on how these were applied.
16 Thank you.

17 CHAIR DEVOLLD: Thank you.

18 DR. THANOS: Good morning. I'm Dr. Nicholas
19 Thanos.

20 CHAIR DEVOLLD: Could you spell your last
21 name for me, please?

22 DR. THANOS: I'm sorry. Thanos. T, as in
23 Tom, H-A-N-O-S. And I'm also concerned about how it is
24 that we're denied the information regarding why our
25 applications were turned down when the regulation

1 specifically allow us access.

2 Subparagraph four states: If the Department
3 denies an application for issuance or renewal of the
4 license for marijuana establishment or revokes such a
5 license, the Department will provide notice to applicant
6 or marijuana establishment that includes, without
7 limitation, the specific reasons for the denial or
8 revocation.

9 Not only didn't we get the specific reasons,
10 but we've been denied access to the breakdown of our
11 scores. It doesn't make any sense.

12 I'd also like to inquire of the Commissioners
13 if they were apprised of any of the changes that were
14 made to the retail marijuana applications that differ
15 from the regulations in R097-012.

16 If they were, if there were changes, were
17 they formally approved, and when did this happen? If
18 they weren't, under whose authority were they made?
19 Because the scoring system includes stuff that was not --
20 there were changes made between the time that we got
21 applications and the time the scoring system was done.
22 There's some discrepancies here and, you know, someone
23 needs to look into this, please. Thank you.

24 CHAIR DEVOLLD: Thank you.

25 Are there any other public comments in Las

1 Vegas?

2 COMMISSIONER BERSI: One is coming,
3 Mr. Chairman.

4 CHAIR DEVOLLD: Thank you. Is there new
5 public comment on the telephone?

6 Is there any public comment in Carson City?
7 Okay.

8 Are there any items for future agendas?

9 COMMISSIONER KELESIS: Mr. Chairman, this is
10 George.

11 CHAIR DEVOLLD: Commissioner Kelesis?

12 COMMISSIONER KELESIS: Yes, I do have couple
13 of questions. If the Commission could be patient with
14 me, I want to give a little bit of background why I'm
15 making those requests. I know you are familiar with it,
16 Mr. Chairman, as well as I know Ms. Crandall is familiar
17 with it. So, for my fellow Commissioners, I'm making
18 these requests, but let me give you a little context of
19 how it happened.

20 In December, when these licenses began to be
21 issued or notified, at least in Southern Nevada, there
22 was quite an uproar among a number of the companies,
23 individuals, whatever you want to call it, that owned the
24 marijuana establishments.

25 I placed a call to our Chairman. I asked him

1 if he was aware of what was happening. Our Chairman at
2 the time was not aware. And Mr. DeVolld started looking
3 into it. He spoke with Mr. Anderson, spoke with
4 Mr. Pupa.

5 At one point, it was my understanding we were
6 going to have an informational item set at this meeting
7 so at least the public can have an understanding of why
8 and what, in fact, happened in the course of all of this.
9 That was taken off, unbeknownst to me.

10 I found out after the fact -- which I
11 personally found distressing, because when I looked at
12 these items -- and there's an e-mail I sent to the
13 Chairman that I want to make part of the record so that
14 way, it's accessible to all of the Commissioners. That
15 way, if anybody wants to add something, add something,
16 don't add something. It's completely up to you, but it's
17 available to the public that way as well.

18 I found things that, you know, quite
19 honestly, smacked me in the face immediately:
20 Regulations that were applied beyond the scope of the
21 regulation, things that were changed that I know we did
22 not rule on as a Commission. This is public knowledge.
23 There's public information. Two companies were
24 announcing mergers in October and November with companies
25 that had applied. They received an inordinate amount of

1 licenses.

2 And my question is: On September 5th, when
3 the grading was closed, did they all put everybody on
4 notice that they were going to do this merger in mid
5 October-November?

6 They were Canadian companies. How did we
7 take into account the fact that in Canada, you can bank
8 marijuana and you can go to a banking institution. Was
9 that taken into account? Whereas the folks down here
10 can't bank it. They work off cash completely. Not just
11 what Dr. Spirtos said. I've heard that from other
12 people, people who I know have contributed to the
13 community, scored lower than a publicly-traded Canadian
14 company. It makes no sense to me what has been
15 happening.

16 I found probably one of the most distressing
17 parts -- and I don't know if the Commission is aware of
18 this or not, if you are aware of it. But our graders
19 were hired through Manpower.

20 Now, I checked the Manpower drop-down box.
21 And I'm telling you guys, nowhere in there does it say:
22 "Hire marijuana graders." It doesn't say it. So why are
23 we even going to Manpower? I know we budgeted so we
24 could have this Department handle these items. So who
25 trained these people in Manpower? Who oversaw these

1 people in Manpower?

2 In fact, were these scores aggregated? They
3 weren't supposed to be aggregated. The one regulation
4 clearly states County. That's it. That's the monopoly
5 provision. It doesn't say Las Vegas, North Las Vegas,
6 City of Henderson. Who made those changes? So I'm
7 troubled across the board with this whole thing.

8 So my request is this, Mr. Chairman: That we
9 have a special meeting as soon as possible, have this as
10 an action item so we can address these problems. And I
11 will give Paulina the e-mail so it can be distributed
12 among the Commissioners.

13 And just one last thing in closing. I've
14 been on this Commission probably the longest of
15 everybody. And I'll say this. We have successfully
16 prevailed in numerous, numerous court battles. I've
17 always believed the reason why we have been successful is
18 because the matter is brought to the Commission, and I'll
19 give you the example. Live entertainment tax. Cal
20 Anderson. I could go through them.

21 We have had extensive, detailed hearings, and
22 then we've gone -- and then if they wanted to appeal it,
23 they appeal it to the Court. Somewhere here though,
24 what's happening is people are denied licenses. And it's
25 just not these two people I heard it from. I've heard it

1 from the countless people down here. They're not being
2 provided their scores. They're not making these things
3 available to them. So how can they even exercise their
4 procedure or their substantive due process rights when we
5 don't even give them the information?

6 And we're going to go from the issuance of
7 the license directly to the court. It's like they're
8 skipping us. Somebody is under the distinct impression
9 that we, as a Commission, do not have jurisdiction over
10 this. I suggest they read 360 real close. We are the
11 head of the Department, and we are the head of the
12 Division, and it comes to us.

13 So that's why I'm asking for the action item
14 as soon as possible, not to wait, because it seems like
15 anytime -- and I am frustrated and disappointed. I'm
16 told we're going to have something. I don't even get the
17 courtesy of a phone call told we're taking it off. I got
18 to go find out myself. Well, you know, that's an insult.

19 So, having said that, that's my request for a
20 special meeting. And I'll give Ms. Oliver the e-mail.

21 CHAIR DEVOLLD: Thank you, Commissioner
22 Kelesis. I believe I did call you, so we'll discuss that
23 later. I'll make sure that it's on a future agenda.
24 Thank you.

25 Is there any other items for future agendas?

1 Very good. The meeting is adjourned. We have a
2 non-meeting afterwards. So after both rooms have been
3 cleared, can you please let me know? Thank you.

4 MS. HUGHES: And just so the public is aware,
5 a non-meeting is an opportunity for attorneys to meet
6 with the Commission about ongoing litigation, and that's
7 what this meeting is about.

8 (The meeting concluded at 10:36 a.m.)

9 -o0o-

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1 STATE OF NEVADA)

2)

3 CARSON TOWNSHIP)

4
5
6 I, NICOLE J. HANSEN, Official Court Reporter for the
7 State of Nevada, Nevada Tax Commission Meeting, do hereby
8 Certify:

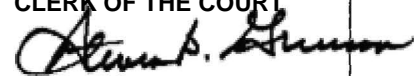
9
10 That on the 14th day of January, 2019, I was
11 present at said meeting for the purpose of reporting in
12 verbatim stenotype notes the within-entitled public
13 meeting;

14 That the foregoing transcript, consisting of pages 1
15 through 66, inclusive, includes a full, true and correct
16 transcription of my stenotype notes of said public
17 meeting.

18
19 Dated at Reno, Nevada, this 14th day of
20 January, 2019.

21
22
23 _____
NICOLE J. HANSEN, NV CCR #446

EXHIBIT 3



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant(s).

and

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

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

CLERK OF THE COURT

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

Intervenors.

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

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

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

PROCEDURAL POSTURE

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

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

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

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

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

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

8 ***PRELIMINARY STATEMENT***

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

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

19
20
21 ³ The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of
22 mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in
conjunction with this hearing include:

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

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

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

9 FINDINGS OF FACT

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

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

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

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

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

- 21 (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana
22 establishment;
- 23 (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana
24 establishment;
- 25 (c) Requirements for the security of marijuana establishments;
- 26 (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21
27 years of age;
- 28 (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-
resistant packaging;
- (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana
establishments including a numerical indication of potency based on the ratio of THC to the weight of a product
intended for oral consumption;
- (g) Requirements for record keeping by marijuana establishments;
- (h) Reasonable restrictions on signage, marketing, display, and advertising;
- (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
- (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another
qualified person and to enable a licensee to move the location of its establishment to another suitable location;
- (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and
marijuana establishments at the same location;
- (l) Procedures to establish the fair market value at wholesale of marijuana; and
- (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any
violation of the provisions of NRS 453D.300.

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

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

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

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

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

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

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

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

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

 (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;

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

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

5 NRS 453D.020(3).

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

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

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

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

17
18
19 ⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

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

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

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

27 The second recommendation of concern is:

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

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

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

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

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

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

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

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

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

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

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

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

⁹ Relevant portions of that provision require that application be made

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ¹⁴ That provision states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

9 62. In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a
10 constitutional violation may be difficult or impossible to remedy through money damages, such a
11 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d
12 1118, 1124 (2013).

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

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

19 ...

20 3. If the initiative petition proposes a statute or an amendment to a statute, the person who
21 intends to circulate it shall file a copy with the secretary of state before beginning circulation
22 and not earlier than January 1 of the year preceding the year in which a regular session of the
23 legislature is held. After its circulation, it shall be filed with the secretary of state not less than
24 30 days prior to any regular session of the legislature. The circulation of the petition shall cease
25 on the day the petition is filed with the secretary of state or such other date as may be prescribed
26 for the verification of the number of signatures affixed to the petition, whichever is earliest. The
27 secretary of state shall transmit such petition to the legislature as soon as the legislature
28 convenes and organizes. The petition shall take precedence over all other measures except
appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted
or rejected by the legislature without change or amendment within 40 days. If the proposed
statute or amendment to a statute is enacted by the legislature and approved by the governor in
the same manner as other statutes are enacted, such statute or amendment to a statute shall
become law, but shall be subject to referendum petition as provided in section 1 of this article.

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

7 (Emphasis added.)

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

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

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

22 67. NRS 453D.200(1) provides that “the Department shall adopt all regulations necessary or
23 convenient to carry out the provisions of this chapter.” The Court finds that the words “necessary or
24 convenient” are susceptible to at least two reasonable interpretations. This limitation applies only to
25 Regulations adopted by the DoT.
26
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27
28 ¹⁷ The Court makes no determination as to the extent which the grading errors alleged by MM and Live Free may be
subject to other appropriate writ practice related to those individualized issues by the assigned department.

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

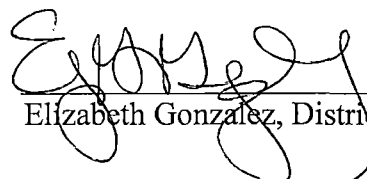
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

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

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

DATED this 23rd day of August 2019.


Elizabeth Gonzalez, District Court Judge

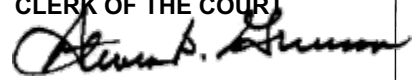
Certificate of Service

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


Dan Kutinac

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

EXHIBIT 2



1 **NOTC**
2 **BLACK & WADHAMS**
3 Rusty Graf, Esq.
4 Nevada Bar No. 6322
5 Brigid M. Higgins, Esq.
6 Nevada Bar No. 5990
7 10777 West Twain Avenue, 3rd Floor
8 Las Vegas, Nevada 89135
9 Telephone: (702) 869-8801
10 Facsimile: (702) 869-2669
11 E-mail: rgraf@blackwadhamslaw.com
12 *Attorneys for Defendant Intervenor*
13 *Clear River, LLC*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 In Re: DOT LITIGATION

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

18 **Consolidated with:** A-19-786962-B
19 A-19-787540-W
20 A-19-787035-C
21 A-18-785818-W
22 A-18-786357-W
23 A-19-78776-C
24 A-19-801416-B

25 **Dept. No. XI**

26 **NOTICE OF ENTRY OF ORDER DENYING IN PART AND GRANTING IN PART**
27 **THE TGIG PLAINTIFFS' MOTION TO RETAX AND SETTLE COSTS, AND**
28 **AWARDING COSTS TO CLEAR RIVER, LLC**

PLEASE TAKE NOTICE that an **ORDER DENYING IN PART AND GRANTING**
IN PART THE TGIG PLAINTIFFS' MOTION TO RETAX AND SETTLE COSTS,
AND AWARDING COSTS TO CLEAR RIVER, LLC a true and correct copy of which is

...

...

...

...

1 attached hereto, as entered to the Court on the 19th day of May 2023.

2 Dated this 19th day of May 2023.

3 **BLACK & WADHAMS**

4
5 /s/ Rusty Graf

6 Rusty Graf, Esq. (NSB 6322)
7 Brigid M. Higgins (NSB 5990)
8 10777 West Twain Avenue, Third Floor
9 Las Vegas, Nevada 89135
10 *Attorneys for Defendant Intervenor*
11 *Clear River, LLC*
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BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2023, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING IN PART AND GRANTING IN PART THE TGIG PLAINTIFFS' MOTION TO RETAX AND SETTLE COSTS, AND AWARDING COSTS TO CLEAR RIVER, LLC**, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Diane Meeter
An Employee of Black & Wadhams

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

ORDER
BLACK & WADHAMS
Rusty Graf, Esq.
Nevada Bar No. 6322
Brigid M. Higgins, Esq.
Nevada Bar No. 5990
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
Telephone: (702) 869-8801
Facsimile: (702) 869-2669
E-mail: rgraf@blackwadhams.law
Attorneys for Defendant Intervenor
Clear River, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: DOT LITIGATION

Case No. A-19-787004-B
Consolidated with: A-19-786962-B
A-19-787540-W
A-19-787035-C
A-18-785818-W
A-18-786357-W
A-19-78776-C
A-19-801416-B

Dept. No. XXXI

**ORDER DENYING IN PART AND GRANTING IN PART THE TGIG PLAINTIFFS'
MOTION TO RETAX AND SETTLE COSTS, AND AWARDING COSTS TO CLEAR
RIVER, LLC**

1. On August 8, 2022, Clear River, LLC ("Clear River, LLC ") filed its Verified Memorandum of Costs with supporting documentation (Doc ID# 2868) in the amount of \$37,194.47.

2. The Motion to Retax and Settle Costs (re: Memorandum of Costs of Clear River, LLC filed on August 8, 2022) of Plaintiffs TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC,

1 Medifarm, LLC, and Medifarm IV, LLC (the "TGIG Plaintiffs"), was filed August 11, 2022
2 (Doc ID# 2918) (the "Motion").

3 3. Several Plaintiffs filed joinders to the TGIG Plaintiffs' Motion (collectively the
4 "Joinders") as follows:

5 NON-SETTLING Plaintiff's Green Leaf Farms Holdings LLC, Green Therapeutics
6 LLC, NevCann LLC and Red Earth LLC's Joinder to Motions to Retax and Settle Costs, filed
7 August 11, 2022 (Doc ID# 2927),

8 NON-SETTLING Plaintiff Rural Remedies LLC's Joinder to Motions to Retax and
9 Settle Costs, filed August 12, 2022 (Doc ID# 2929),

10 NON-SETTLING Plaintiffs THC Nevada, LLC and Herbal Choice, Inc.'s Joinder to
11 Motion to Relax and Settle Costs, filed August 12, 2022 (Doc ID# 2932),

12
13 SETTLING Plaintiffs Clark Natural Medicinal Solutions LLC, Nye Natural
14 Medicinal Solutions LLC, Clark NMSD LLC and Inyo Fina Cannabis Dispensary LLC's
15 Omnibus Joinder and Supplement to Motions to Retax, filed August 23, 2022 (Doc ID# 2934).
16 Each of the joining Plaintiffs are collectively the "Joinder Plaintiffs." The claims and
17 arguments made by the other Plaintiffs have been and will be ruled upon in the other Orders
18 governing Motions to Retax Clear River's costs by the Settling Plaintiffs, with "Settling
19 Plaintiffs" referring to ETW Management Group LLC, Global Harmony LLC, Just Quality,
20 LLC, Libra Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, Zion
21 Gardens LLC, MM Development Company, Inc., LivFree Wellness, LLC, Natural Medicine
22 LLC, Nevada Wellness Center, LLC, and Qualcan, LLC.

23 4. Costs must be allowed of course to the prevailing party against any adverse party
24 against whom judgment is rendered. NRS 18.020. The term "prevailing party" is construed,
25 and encompasses any party to the litigation who achieves its intended benefit. *Valley Elec.*
26 *Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005); see also *Las Vegas Metro.*
27 *Police Dept. v. Blackjack Bonding, Inc.*, 131 Nev. 80, 343 P.3d 608 (2015).
28

1 5. Under *NRS 18.110(1)*, "[t]he party in whose favor judgment is rendered, and
2 who claims costs, must file with the clerk, and serve a copy upon the adverse party, within 5
3 days after the entry of judgment... a memorandum of the items of the costs in the action
4 or proceeding, which memorandum must be verified by the oath of the party, or the
5 party's attorney or agent, or by the clerk of the party's attorney, stating that to the best of his
6 or her knowledge and belief the items are correct, and that the costs have been necessarily
7 incurred in the action or proceeding."
8

9 6. The allowable costs are set forth in *NRS 18.005* to include:

- 10 1. Clerks' fees.
- 11 2. Reporters' fees for depositions, including a reporter's fee for one copy of each
12 deposition.
- 13 3. Jurors' fees and expenses, together with reasonable compensation of an
14 officer appointed to act in accordance with *NRS 16.120*.
- 15 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the
16 court finds that the witness was called at the instance of the prevailing party
17 without reason or necessity.
- 18 5. Reasonable fees of not more than five expert witnesses in an amount of not
19 more than \$1,500 for each witness, unless the court allows a larger fee after
20 determining that the circumstances surrounding the expert's testimony were of
21 such necessity as to require the larger fee.
- 22 6. Reasonable fees of necessary interpreters.
- 23 7. The fee of any sheriff or licensed process server for the delivery or service of
24 any summons or subpoena used in the action, unless the court determines that
25 the service was not necessary.
- 26 8. Compensation for the official reporter or reporter pro tempore.
- 27 9. Reasonable costs for any bond or undertaking required as part of the action.
- 28 10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and
 conducting discovery.
16. Fees charged pursuant to *NRS 19.0335*.
17. Any other reasonable and necessary expense incurred in connection with the
 action, including reasonable and necessary expenses for computerized
 services for legal research.

 7. "Within 3 days after service of a copy of the memorandum, the adverse
party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which

1 motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of
2 the motion the court or judge shall settle the costs." *NRS 18.110(4)*.

3 8. Clear River, LLC timely filed its verified Memorandum of Costs with
4 supporting documentation. As set forth in the Memorandum of Costs, Clear River, LLC
5 claimed that it incurred and sought recovery of taxable costs in the amount of \$37,194.47.
6

7 9. Clear River, LLC is a prevailing party as against the TGIG Plaintiffs. Clear
8 River, LLC prevailed on all claims and defenses to retain its licenses, which the TGIG
9 Plaintiffs variously sought to revoke or impair through their requested forms of relief
10 and arguments. Clear River, LLC 's licenses were not lost or impaired by the litigation. Clear
11 River, LLC prevailed on all issues against all Plaintiffs, and this makes Clear River, LLC a
12 prevailing party. See *Golightly & Varnah, PLLC v. TJ Allen, LLC*, 132 Nev. 416,422,373
13 P.3d 103, 107 (2016).
14

15 10. The Court finds that the way in which Clear River, LLC was named as a
16 defendant in this action, and the manner in which the various Plaintiffs' cases were
17 consolidated and tried, do not preclude Clear River, LLC from being considered a prevailing
18 party against any Plaintiff.
19

20 11. This was a special proceeding in which declaratory relief was sought in
21 addition to other claims, and the value of the property, i.e., the licenses at stake and
22 Plaintiffs' alleged damages and purported loss of market share exceeded \$2,500. See *NRS*
23 *18.020*.
24

25 12. Clear River, LLC 's costs fall within *NRS 18.005*'s allowable categories
26 and are properly awardable under *NRS 18.020*.
27

28 13. The TGIG Plaintiffs challenged Clear River, LLC 's Memorandum of Costs
only on the basis that Clear River, LLC was not a prevailing party and that costs cannot

1 be awarded in suites involving petitions for judicial review. *See Motion, and Joinders, with*
2 *Case Docket entry #s above.* As set forth above, Clear River, LLC is a prevailing party.
3 Further, TGIG argued Clear River's Memorandum of Costs does not seek costs solely
4 relating to judicial review proceedings.
5

6 14. The TGIG Plaintiffs did not challenge Clear River, LLC's Memorandum of
7 Costs on the basis that any costs were unreasonable, unnecessary, incorrect, not actually
8 incurred, or otherwise unsupported. The Motion to Retax did not set forth arguments
9 or points and authorities challenging Clear River, LLC's Memorandum of Costs and did not
10 claim or set forth any itemization that any cost categories, either specifically or
11 generally, were unreasonable, unnecessary, or should not be awarded. As such, as to the
12 nature, amount, and reasonableness of the costs Clear River, LLC seeks, the TGIG Plaintiffs
13 did not oppose such costs and waived any right to challenge or contest the individual
14 amount of costs set forth in Clear River, LLC's Memorandum of Costs.
15

16 15. The Court finds that because the costs set forth in Clear River, LLC's
17 Memorandum of Costs were not opposed as to reasonableness, then they are reasonable,
18 necessary, justifiable, actually incurred, and are supported by a declaration of counsel and
19 documentation.
20

21 16. Notwithstanding the above and foregoing, as to the issue of the date from
22 which a prevailing party may recover costs, the Court finds and determines that costs
23 should be awarded only from the date of the filing of the answer by the party seeking costs.
24

25 17. Clear River, LLC answered the TGIG Plaintiffs' Second Amended
26 Complaint and became a party as to the TGIG Plaintiffs for the purposes of recovering costs
27 on February 12, 2020.
28

18. Clear River, LLC 's Memorandum of Costs evidence that a total of \$11,125.38 in costs sought to be recovered by Clear River, LLC were incurred prior to February 12, 2020, and should be disallowed.

19. Thus, Clear River, LLC request for costs in the amount of \$37,194.47 must be reduced by the amount of \$11,125.38 which are costs incurred prior to February 12, 2020.

Based on the above findings,

IT IS HEREBY ORDERED that the TGIG Plaintiffs' Motion be, and hereby is, denied, in part, and granted, in part, and that Clear River, LLC be awarded costs of \$26,069.09 against TGIG Plaintiffs, and each of them jointly and severally;

IT IS FURTHER ORDERED that the Joinders of the NON-SETTLING Joinder Plaintiffs be, and hereby are, granted in part and denied in part as stated in the Settling Plaintiffs' Order granting in part and denying in part;

IT IS FURTHER ORDRED that Clear River is entitled to an award of any allowable interest on the amount of costs, which interest shall accrue until costs are paid in full.

IT IS SO ORDERED.

Dated this 19th day of May, 2023



13C 67C 9BC6 7147
Joanna S. Kishner
District Court Judge

BLACK & WADHAMS

/s/ Rusty Graf

Rusty Graf, Esq. (NSB 6322)
Brigid M. Higgins (NSB 5990)
10777 West Twain Avenue, Third Floor
Las Vegas, Nevada 89135
Attorneys for Defendant Intervenor
Clear River, LLC

Approved as to Form and Content

/s/ Richard Williamson

ROBERTSON, JOHNSON, MILLER
WILLIAMSON
50 W. Liberty St., Suite 600
Reno, Nevada 89501
Deep Roots Harvest, Inc.

/s/ Nicolas Donath

N.R. DONATH & ASSOCIATES
871 Coronado Center Dr. Suite 200
Henderson, Nevada 89052
Green Leaf Farms Holdings, LLC, Green
Therapeutics, LLC, Nevcan LLC and Red
Earth LLC's

SIGDENLAW

/s/ Amy Sugden

Amy Sugden Law
9728 Gillespie Street
Las Vegas, Nevada 89183
THC Nevada, LLC

No Response

NORBERTO MADRIGAL
Resident Agent; Borghese Legal Ltd.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Herbal Choice Inc.

/s/ Mark S. Dzarnoski

CLARK HILL, PLLC
Dominic Pl Gentile, Esq.
John A. Hunt Esq.
Mark S. Dzarnoski, Esq.
William Maupin, Esq.
3800 Howard Hughes Pkwy, \$500
Las Vegas, NV 89169
TGIG

/s/ Clarence Gamble

RAMOS LAW
10190 Bannock St., Suite 200
Northglenn, CO 80260
Rural Remedies, LLC

/s/ Chris Slater

LUH & ASSOCIATES
8987 W. Flamingo Rd., #100
Las Vegas, Nevada 89147
Clark Natural Medicinal Solutions LLC, Ney
Natural Medicinal Solutions, LLC, Clark
NMSD, LLC and Inyo Fine Cannabis
Dispensary LLC.s

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of May 2023, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing **ORDER DENYING IN PART AND GRANTING IN PART THE TGIG PLAINTIFFS' MOTION TO RETAX AND SETTLE COSTS, AND AWARDING COSTS TO CLEAR RIVER, LLC** in District Court Consolidated Case No. A-19-787004-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Diane Meeter
An Employee of Black & Wadhams

Diane Meeter

From: Amy Sugden <amy@sugdenlaw.com>
Sent: Wednesday, May 17, 2023 12:39 PM
To: Diane Meeter; JDelCarmen@pnalaw.net; n.rulis@kempjones.com; jag@mgalaw.com; clarence@ramoslaw.com; jschwarz@hone.law; jbendavid@bendavidfirm.com; wbarrett@christiansenlaw.com; jkahn@jk-legalconsulting.com; rich@nvlawyers.com; jon@nvlawyers.com; ehone@hone.law; Sbarra@pnalaw.net; maggie@nvlitigation.com; ssmith@bendavidfirm.com; anthony@nvlawyers.com; jzimmerman@hone.law; lcr@h2law.com; kvm@h2law.com; jbraster@nblawnv.com; asharples@nblawnv.com; mdzarnoski@clarkhill.com; JTS@pisanellibice.com; cnewby@ag.nv.gov; Monica Davis
Cc: Rusty Graf; Brigid Higgins; e61469820+matter1234564084@maildrop.clio.com
Subject: Re: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

Approved as to form and content on behalf of THC Nevada, LLC.

Thanks,

Amy Sugden

From: Diane Meeter <dmeeter@blackwadhams.law>
Date: Wednesday, May 17, 2023 at 10:19 AM
To: JDelCarmen@pnalaw.net <JDelCarmen@pnalaw.net>, n.rulis@kempjones.com <n.rulis@kempjones.com>, jag@mgalaw.com <jag@mgalaw.com>, clarence@ramoslaw.com <clarence@ramoslaw.com>, jschwarz@hone.law <jschwarz@hone.law>, jbendavid@bendavidfirm.com <jbendavid@bendavidfirm.com>, wbarrett@christiansenlaw.com <wbarrett@christiansenlaw.com>, jkahn@jk-legalconsulting.com <jkahn@jk-legalconsulting.com>, rich@nvlawyers.com <rich@nvlawyers.com>, jon@nvlawyers.com <jon@nvlawyers.com>, ehone@hone.law <ehone@hone.law>, Sbarra@pnalaw.net <Sbarra@pnalaw.net>, maggie@nvlitigation.com <maggie@nvlitigation.com>, Amy Sugden <amy@sugdenlaw.com>, ssmith@bendavidfirm.com <:ssmith@bendavidfirm.com>, anthony@nvlawyers.com <anthony@nvlawyers.com>, jzimmerman@hone.law <jzimmerman@hone.law>, lcr@h2law.com <lcr@h2law.com>, kvm@h2law.com <kvm@h2law.com>, jbraster@nblawnv.com <jbraster@nblawnv.com>, asharples@nblawnv.com <asharples@nblawnv.com>, mdzarnoski@clarkhill.com <mdzarnoski@clarkhill.com>, lcr@h2law.com <lcr@h2law.com>, JTS@pisanellibice.com <JTS@pisanellibice.com>, cnewby@ag.nv.gov <cnewby@ag.nv.gov>, Diane Meeter <dmeeter@blackwadhams.law>, Monica Davis <mdavis@blackwadhams.law>
Cc: Rusty Graf <rgraf@blackwadhams.law>, Brigid Higgins <bhiggins@blackwadhams.law>, e61469820+matter1234564084@maildrop.clio.com <e61469820+matter1234564084@maildrop.clio.com>
Subject: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

Counsel:

Pursuant to the Court's instruction in the Status Check this morning, we are re-submitting Clear River's Order Denying in Part and Granting in Part TGIG's Motion to Retax and Settle Costs re: Clear River, LLC. The Court requested that you sign if you agree and if you do not, please indicate that you will be submitting a competing Order. This needs to be submitted to the Court by Friday.

Diane Meeter

From: Clarence Gamble <clarence@ramoslaw.com>
Sent: Wednesday, May 17, 2023 12:40 PM
To: Dzarnoski, Mark; Diane Meeter; JDelCarmen@pnalaw.net; n.rulis@kempjones.com; jag@mgalaw.com; jschwarz@hone.law; jbendavid@bendavidfirm.com; wbarrett@christiansenlaw.com; jkahn@jk-legalconsulting.com; rich@nvlawyers.com; jon@nvlawyers.com; ehone@hone.law; Silbarra@pnalaw.net; maggie@nvlitigation.com; amy@sugdenlaw.com; ssmith@bendavidfirm.com; anthony@nvlawyers.com; jzimmerman@hone.law; lcr@h2law.com; kvm@h2law.com; jbraster@nblawnv.com; asharple@nblawnv.com; lcr@h2law.com; JTS@pisanellibice.com; cnewby@ag.nv.gov; Monica Davis
Cc: Rusty Graf; Brigid Higgins; e61469820+matter1234564084@maildrop.clio.com
Subject: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

You have my authority to affix my e-signature to the order as well.

Sincerely,

d: 720.536.4380
o: 303.733.6353
f: 303.865.5666

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Clarence Gamble
Attorney

10190 Bannock St Suite 200
Northglenn, CO 80260
www.ramoslaw.com <<https://www.ramoslaw.com/>>
Attorneys Licensed in 22 States

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Diane Meeter

From: Rich Williamson <rich@nvlawyers.com>
Sent: Thursday, May 18, 2023 8:50 AM
To: Clarence Gamble; Dzarnoski, Mark; Diane Meeter; JDelCarmen@pnalaw.net; n.rulis@kempjones.com; jag@mgalaw.com; jschwarz@hone.law; jbendavid@bendavidfirm.com; wbarrett@christiansenlaw.com; jkahn@jk-legalconsulting.com; Jon Tew; ehone@hone.law; Slbarra@pnalaw.net; maggie@nvlitigation.com; amy@sugdenlaw.com; ssmith@bendavidfirm.com; Anthony Arger; jzimmerman@hone.law; lcr@h2law.com; kvm@h2law.com; jbraster@nblawnv.com; asharples@nblawnv.com; lcr@h2law.com; JTS@pisanellibice.com; cnewby@ag.nv.gov; Monica Davis
Cc: Rusty Graf; Brigid Higgins; e61469820+matter1234564084@maildrop.clio.com; Briana Collings
Subject: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

You have my approval to affix my electronic signature.

Thanks,

Rich

Richard D. Williamson, Esq.
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
Email: Rich@NVLawyers.com
Please visit our Website at: www.nvlawyers.com

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From: Clarence Gamble <clarence@ramoslaw.com>
Sent: Wednesday, May 17, 2023 12:40 PM

Diane Meeter

From: Craig Slater <cslater@luhlaw.com>
Sent: Thursday, May 18, 2023 12:06 PM
To: Diane Meeter; nick@nrdarelaw.co; 'Mark Borghese (Other)'
Cc: Rusty Graf; Brigid Higgins
Subject: RE: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

Diane,

You have my permission to affix my e-signature.

Craig

Craig D. Slater, Esq.
Luh & Associates
8987 W. Flamingo Road, Suite 100
Las Vegas, NV 89147
T: (702) 367-8899 F: (702) 384-8899
cslater@luhlaw.com

From: Diane Meeter <dmeeter@blackwadhamslaw>
Sent: Thursday, May 18, 2023 10:34 AM
To: Craig Slater (Other) <cslater@luhlaw.com>; nick@nrdarelaw.co; Mark Borghese (Other) <contact@borgheselegal.com>
Cc: Rusty Graf <rgraf@blackwadhamslaw>; Brigid Higgins <bhiggins@blackwadhamslaw>
Subject: FW: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23
Importance: High

Counsel:

Don't believe you were included the email that was sent yesterday. The Court requested that you sign if you agree and if you do not, please indicate that you will be submitting a competing Order. This needs to be submitted to the Court by Friday.

Diane Meeter
Legal Assistant to Rusty Graf, Esq.
Legal Assistant to Chris Yergensen, Esq.



p: (702)869-8801
f: (702)869-2669
a: 10777 W. Twain Avenue, Suite 300
Las Vegas, NV 89135
w: www.blackwadhamslaw e: dmeeter@blackwadhamslaw

Diane Meeter

From: Nicolas Donath <nick@nrdarelaw.com>
Sent: Thursday, May 18, 2023 4:33 PM
To: Diane Meeter
Subject: RE: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

Agreed. You may affix my e-signature.

Nicolas Donath, Esq.

Attorney at Law
N.R. Donath & Associates



702-460-0718 (direct)
702-446-8063 (fax)
871 Coronado Center Drive Suite 200
Henderson, NV 89052
nick@nrdarelaw.com

<http://www.nrdarelaw.com>

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From: Diane Meeter <dmeeter@blackwadhams.law>
Sent: Thursday, May 18, 2023 10:40 AM
To: Nicolas Donath <nick@nrdarelaw.com>
Subject: FW: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23
Importance: High

Counsel:

Don't believe you were included in the email that was sent yesterday. The Court requested that you sign if you agree and if you do not, please indicate that you will be submitting a competing Order. This needs to be submitted to the Court by Friday.

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 was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 5/19/2023

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 Connors eileen@nvlawyers.com

25 Jonathan Crain jcrain@christiansenlaw.com
26
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	D. Neal Tomlinson	neal@hyperionlegal.com
14	Michael Becker	Michael@702defense.com
15	Rory Vohwinkel	rory@vohwinkellaw.com
16	Lee Iglody	lee@iglody.com
17	Jennifer DelCarmen	jdelcarmen@pnalaw.net
18	Judah Zakalik	jz@pandalawfirm.com
19	Eric Hone	ehone@hone.law
20	Jamie Zimmerman	jzimmerman@hone.law
21	James Pisanelli	lit@pisanellibice.com
22	Logan Willson	Logan@jfnvlaw.com
23	Jordan Smith	jts@pisanellibice.com

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	Rick Hsu	rhsu@mcllawfirm.com
23	Clarence Gamble	Clarence@ramoslaw.com
24		
25		
26		
27		
28		

1	Jeffrey Whittemore	chase@sandelawgroup.com
2	Ben Ross	ben@litigationservices.com
3	Depository LIT	Depository@litigationservices.com
4	Craig Slater	efile@luhlaw.com
5	Alicia Vega	avega@litigationservices.com
6	James Beckstrom	jb@beckstromlaw.com
7	Suzanne Boggs	sb@beckstromlaw.com
8	Clarissa Reyes	creyes@clarkhill.com
9	Kelsey Fusco	kfusco@nevadafirm.com
10	Katherine Rodriguez	krodriguez@nevadafirm.com
11	April Allen	aallen@kskdlaw.com
12	James Beckstrom	JB@Beckstromlaw.com
13	Suzanne Boggs	SB@Beckstromlaw.com
14	Susan Matejko - Administrative Assistant	smatejko@nevadafirm.com
15	Candice Mata	lawclerk@hone.law
16	L. Christopher Rose	lcr@h2law.com
17	Sabrena Clinton	sclinton@ag.nv.gov
18	Kiel Ireland	kireland@ag.nv.gov
19	Karson Bright	kdb@h2law.com
20	Vernon Nelson	vnelson@nelsonlawfirm.lv.com
21	Sigal Chattah	Chattahlaw@gmail.com
22	Ben Lehavi	Ben@Benslaw.com
23	Amy Sugden	amy@sugdenlaw.com
24		
25		
26		
27		
28		

1	Anthony Arger	anthony@nvlawyers.com
2	Rusty Graf	rgraf@blackwadhams.law
3	Brigid Higgins	bhiggins@blackwadhams.law
4	Diane Meeter	dmeeter@blackwadhams.law
5	Marsha Stallsworth	mstallsworth@blackwadhams.law
6	Nicolas Donath	Nick@nrdarelaw.com
7	Anedra Wylie	Anedra@Benslaw.com
8	Staci Ibarra	sibarra@pnalaw.net
9	Benjamin Gordon	bgordon@nblawnv.com
10	Misty Janati	misty@jfnvlaw.com
11	James Beckstrom	James@Benslaw.com
12	Amanda Laub	amanda@benslaw.com
13	Mary Pizzariello	MPizzariello@ag.nv.gov
14	Kelly McGee	kom@h2law.com
15	Susan Messina	smessina@ag.nv.gov
16		
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