

**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

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Elizabeth A. Brown
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APPELLANTS' APPENDIX
VOLUME 1

CRAIG D. SLATER (SBN 8667)
LUH & ASSOCIATES
8987 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
702-367-8899
cslater@luhlaw.com
COUNSEL FOR APPELLANTS

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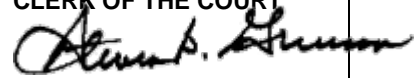
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COMP

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; and INYO FINE
CANNABIS DISPENSARY L.L.C., d/b/a INYO
FINE CANNABIS DISPENSARY, a Nevada
limited liability company,

Plaintiffs/Petitioners,

vs.

STATE EX REL. DEPARTMENT OF
TAXATION; STATE EX REL. NEVADA TAX

Case No. A-19-787035-C
Dept. No. Department 6

**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 Issue of Public Policy
- Action Seeking Equitable or Extraordinary Relief

COMMISSION; ESSENCE TROPICANA, LLC, a Nevada limited liability company; ESSENCE HENDERSON, LLC, a Nevada limited liability company; NEVADA ORGANIC REMEDIES LLC, a Nevada limited liability company; HELPING HANDS WELLNESS CENTER, INC., a Nevada corporation; CHEYENNE MEDICAL, LLC, a Nevada limited liability company; LONE MOUNTAIN PARTNERS, LLC, a Nevada limited liability company; GREENMART OF NEVADA NLV, LLC, a Nevada limited liability company; COMMERCE PARK MEDICAL L.L.C., a Nevada limited liability company; CLEAR RIVER, LLC, a Nevada limited liability company; WELLNESS CONNECTION OF NEVADA, LLC, a Nevada limited liability company; CIRCLE S FARMS, LLC, a Nevada limited liability company; TRNVP098 LLC, a Nevada limited liability company; GREEN THERAPEUTICS LLC, a Nevada limited liability company; POLARIS WELLNESS CENTER L.L.C., a Nevada limited liability company; PURE TONIC CONCENTRATES LLC, a Nevada limited liability company; DEEP ROOTS MEDICAL LLC, a Nevada limited liability company; EUREKA NEWGEN FARMS LLC, a Nevada limited liability company; and DOES 1-300.

Defendants/Respondents.

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. THE PARTIES

1. 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.

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

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

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

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

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

12 7. Defendant/Respondent Essence Tropicana, LLC is a Nevada limited liability
13 company.

14 8. Defendant/Respondent Essence Henderson, LLC is a Nevada limited liability
15 company.

16 9. Defendant/Respondent Nevada Organic Remedies LLC is a Nevada limited liability
17 company.

18 10. Defendant/Respondent Helping Hands Wellness Center, Inc. is a Nevada corporation.

19 11. Defendant/Respondent Cheyenne Medical, LLC is a Nevada limited liability
20 company.

21 12. Defendant/Respondent Lone Mountain Partners, LLC is a Nevada limited liability
22 company.

23 13. Defendant/Respondent Greenmart of Nevada NLV, LLC is a Nevada limited liability
24 company.

25 14. Defendant/Respondent Commerce Park Medical L.L.C. is a Nevada limited liability
26 company.

27 15. Defendant/Respondent Clear River, LLC is a Nevada limited liability company.
28

16. Defendant/Respondent Wellness Connection of Nevada, LLC is a Nevada limited liability company.

17. Defendant/Respondent Circle S Farms, LLC is a Nevada limited liability company.

18. Defendant/Respondent TRNVP098 LLC is a Nevada limited liability company.

19. Defendant/Respondent Green Therapeutics LLC is a Nevada limited liability company.

20. Defendant/Respondent Polaris Wellness Center L.L.C. is a Nevada limited liability company.

21. Defendant/Respondent Pure Tonic Concentrates LLC is a Nevada limited liability company.

22. Deep Roots Medical LLC is a Nevada limited liability company.

23. Eureka NewGen Farms LLC is a Nevada limited liability company.

24. Upon information and belief, Defendants/Respondents Essence Tropicana, LLC, Essence Henderson, LLC, Nevada Organic Remedies LLC, Helping Hands Wellness Center, Inc., Cheyenne Medical, LLC, Lone Mountain Partners, LLC, Greenmart of Nevada NLV, LLC, Commerce Park Medical L.L.C., Clear River, LLC, Wellness Connection of Nevada, LLC, Circle S Farms, LLC, TRNVP098 LLC, Green Therapeutics LLC, Polaris Wellness Center L.L.C., Pure Tonic Concentrates LLC, Deep Roots Medical LLC, and Eureka NewGen Farms LLC were granted conditional recreational retail marijuana establishment licenses by the Department on or after December 5, 2018.

25. On information and belief, DOES 1-300 are each Nevada individuals and residents or Nevada entities.

26. On information and belief, DOES 1-50 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 granted one or more conditional licenses on or after December 5, 2018 (collectively, with the Defendants/Respondents identified in paragraphs 7-23, the “Recipient Entities”). The identities of all of the applicants

1 awarded a license have not yet been publicly disclosed; therefore, the identities of DOES 1-50 are
 2 unknown. At such time as the identities of DOES 1-50 become known to Plaintiffs/Petitioners,
 3 leave of this Court will be sought to add them as Defendants/Respondents in this matter.

4 27. On information and belief, DOES 51-300 are natural persons or entities who are
 5 qualified holders of MME Certificates, who submitted an application to operate a recreational retail
 6 marijuana establishment to the Department between 8:00 a.m. on September 7, 2018 and 5:00 p.m.
 7 on September 20, 2018, and were denied a license on or after December 5, 2018 (collectively, the
 8 “Denied Entities”). The Department does not publicly disclose the identities of all of the applicants
 9 who were denied a license; therefore, the identities of DOES 51-300 are unknown. At such time as
 10 the identities of DOES 51-300 become known to Plaintiffs/Petitioners, leave of this Court will be
 11 sought to add them as Defendants/Respondents in this matter.

12 II. JURISDICTION AND VENUE

13 28. This Court has jurisdiction over this matter pursuant to NRS 233B.130, NRS 34.020,
 14 NRS 34.160, and NRS 34.330.

15 29. Venue is proper in that the aggrieved parties are businesses whose principal places of
 16 business are located in Clark County, Nevada, and the causes of action arose in Clark County,
 17 Nevada.

18 III. FACTUAL ALLEGATIONS

19 A. The Approved Regulations

20 30. Pursuant to Nevada law, the Commission shall prescribe regulations for carrying on
 21 the business of the Commission and of the Department.

22 31. During Nevada’s 2016 General Election, the voters approved an initiative petition to
 23 legalize the recreational use of marijuana by persons 21 years of age or older (“Regulation and
 24 Taxation of Marijuana Act”).

25 32. The Regulation and Taxation of Marijuana Act required the Department to adopt all
 26 regulations necessary or convenient to carry out the Act no later than January 1, 2018, including
 27 regulations that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a
 28

1 license to operate a marijuana establishment” and “[q]ualifications for licensure that are directly and
2 demonstrably related to the operation of a marijuana establishment.” NRS 453D.200(1)(a)-(b).

3 33. On or about May 8, 2017, the Department adopted temporary regulations that expired
4 on November 1, 2017.

5 34. Marijuana establishments became licensed under the temporary regulation to sell
6 adult-use marijuana starting July 1, 2017.

7 35. The Department drafted proposed regulations and held public workshops from July
8 24, 2017 through July 27, 2017 on proposed permanent regulations.

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

11 37. On December 16, 2017, the Commission gave notice of its intent to adopt final
12 marijuana regulations.

13 38. On January 16, 2018, the Commission unanimously approved the proposed
14 permanent regulations (“Approved Regulations”).

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

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

23 41. Pursuant to Subsection 3 of Section 76 of the Approved Regulations, the Department
24 will accept applications in response to such a request for applications “for 10 business days
25 beginning on the date which is 45 business days after the date on which the Department issued the
26 request for applications.”

1 42. Section 77 of the Approved Regulations provides the procedures for an existing
2 MME registration certificate holder to apply for one license, of the same type, for recreational
3 marijuana.

4 43. Section 78 of the Approved Regulations provides the procedures for an existing
5 MME registration certificate holder to apply for one or more licenses, of the same type or of a
6 different type, for recreational marijuana.

7 44. A license application submitted pursuant to Section 78 of the Approved Regulations
8 “must include,” among other things, the following:

- 9 a. The physical address where the proposed marijuana establishment will be located
10 (Section 78(1)(b)(5) of the Approved Regulations);
- 11 b. Documentation concerning the size of the proposed marijuana establishment,
12 including, without limitation, building and general floor plans with supporting
13 details (Section 78(1)(f) of the Approved Regulations);
- 14 c. Proof that the physical address of the prospective marijuana establishment is
15 owned by the applicant or that the applicant has the written permission of the
16 property owner to operate the proposed marijuana establishment on that property
17 (NRS 453D.210(5)(b); and
- 18 d. A response to and information which supports any other criteria the Department
19 determines to be relevant, which will be specified and requested by the
20 Department at the time the Department issues a request for applications which
21 includes the point values that will be allocated to the applicable portions of the
22 application pursuant to subsection 2 of Section 76 of the Approved Regulations
23 (Section 78(1)(l) of the Approved Regulations).

24 45. Section 80 of the Approved Regulations provides that when the Department receives
25 more than one complete and qualified application for a license for a retail marijuana store in
26 response to its request for applications, the Department will rank the applicants in order from first to
27 last based on numerous categories of information including, but not limited to:

28

- 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.

46. 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.

B. The Department's Request for License Applications

47. 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").

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

49. 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.

50. Pursuant to Subsection 2 of Section 76 of the Approved Regulations, the Original Application included the point values associated with various categories of requested information. For example, the Original Application assigned 60 points to: “The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member of the proposed marijuana establishment including the information provided pursuant to R092-17.”

51. 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.

52. 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”).

53. 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.

54. 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.

55. Neither the Approved Regulations nor NRS Chapter 453D were properly amended to reflect the 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).

56. Further, it is not detailed in NRS Chapter 453D, the Department’s Approved Regulations, the Original Application, or the Revised Application who will be reviewing the applications and awarding the point totals, whether more than one person is involved in scoring each application (or section of each application), how uniformity is ensured in the scoring process, or what specific information is considered for each criteria when awarding points.

57. For example, when assessing the proposed organizational structure of the proposed recreational retail marijuana establishment and information concerning each owner, officer, and board member (and, potentially, key personnel) of the proposed recreational retail marijuana establishment, how many points are awarded for diversity of the owners, officers, and board members? Are specific races, nationalities, or genders given more points than others?

58. Similarly, when assessing the proposed organizational structure of the proposed recreational retail marijuana establishment and information concerning each owner, officer, and board member (and, potentially, key personnel) of the proposed recreational retail marijuana establishment, how many points are awarded for the educational achievements of the owners, officers, and board members? Are the points based on the cumulative number of years of education of each owner, officer, and board member of the proposed recreational retail marijuana establishment or the highest level of education received by any one officer, owner, or board member of the proposed recreational retail marijuana establishment?

C. The Plaintiffs/Petitioners’ Applications

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

60. 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.

61. D.H. Flamingo, which currently holds a retail shop license in Unincorporated Clark County, submitted 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.

62. Inyo, which currently holds a retail shop license in Las Vegas, submitted 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.

63. NuVeda submitted applications for a combination of 10 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.

64. 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.

C. The Department's Decision

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

66. Upon information and belief, the Department awarded approximately 31 recreational retail marijuana store licenses for Clark County, Nevada.

67. The Department denied each of the Plaintiffs/Petitioners' applications.

68. 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.

69. 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.

70. 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.

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

- 4 a. Las Vegas– 189.68;
- 5 b. Unincorporated Clark County– 189.68;
- 6 c. North Las Vegas– 189.68;
- 7 d. Reno – 189.68.

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

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

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

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

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

22 77. Pursuant to Section 93(3) of the Department's Regulations, when the
23 Plaintiffs/Petitioners finally are able to meet with a Department employee to review their scoring
24 information, their meetings will be limited to no more than thirty (30) minutes in duration, and while
25 the Plaintiffs/Petitioners are permitted to take notes during the meeting, they cannot photocopy, scan,
26 record, photograph, or otherwise duplicate any of the records and information they review. They are
27 also not permitted to ask the Department's employee to comment on or otherwise discuss: (1) the
28

1 scores; (2) the Department's review of the application; or (3) the applications submitted by any other
2 applicants.

3 78. Neither NRS Chapter 453D nor the Department's Approved Regulations expressly
4 provide for an appeal or reconsideration of the Department's licensing determination.

5 79. Because the Department has failed to provide the Plaintiffs/Petitioners with written
6 notice of the specific reasons for the denial of their license application, will not even let them review
7 the scoring for their license application until after the time to appeal the licensing determination has
8 run (pursuant to NRS 233B.130), will not let them ask for any explanation as to how their scores for
9 each criterion was determined, and does not allow them to obtain copies of the scoring for their own
10 applications or the applications for any of the Recipient Entities or other Denied Entities, the
11 Department has attempted to deprive the Plaintiffs/Petitioners of any means to: (1) determine
12 whether the Department accurately scored their applications; (2) appeal the Department's licensing
13 determinations; or (3) obtain proper judicial review of the Department's administrative decisions.

14 80. Upon information and belief, the Department did not properly score the
15 Plaintiffs/Petitioners' license applications submitted between 8:00 a.m. on September 7, 2018 and
16 5:00 p.m. on September 20, 2018.

17 81. Upon information and belief, the Department's ranking and scoring process was
18 corrupted and the applications of the Recipient Entities were not fairly and accurately scored in
19 comparison to the Plaintiffs/Petitioners' applications.

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

22 83. Plaintiffs/Petitioners are each parties to a proceeding by the Department which
23 determined their rights, duties, and privileges; namely, the Department's scoring and ranking of
24 Plaintiffs/Petitioners' applications for a recreational retail marijuana establishment license and the
25 Department's refusal to issue a conditional license to Plaintiffs/Petitioners.

26 84. The Department's scoring and ranking process was marred by significant errors,
27 procedural flaws, and/or violations of Nevada law.
28

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

4 86. As such, the Department's scoring and ranking process and subsequent issuance of
5 conditional recreational retail marijuana establishment licenses was unlawful, arbitrary, capricious,
6 in excess of the Department's jurisdiction, and clearly erroneous.

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

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

17 89. Further, the Department's scoring and ranking of applications was arbitrary and
18 capricious because it was conducted by unknown persons whose qualifications have never been
19 made public.

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

25 91. Moreover, the Department's scoring and ranking was unlawful and in excess of its
26 jurisdiction because the process of scoring and ranking the license applications submitted between
27 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018 was corrupted and certain
28 application were favored over others.

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

6 93. Upon information and belief, a complete review of the record will show that the
7 Department's final scoring and ranking of the Plaintiffs/Petitioners', Denied Entities', and Recipient
8 Entities' applications was arbitrary, capricious, and clearly erroneous.

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

14 IV. CLAIMS FOR RELIEF

15 First Claim for Relief: Injunctive Relief Against the Department

16 95. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
17 in paragraphs 1-93, inclusive.

18 96. As set forth above, the Department's denial and award of licenses for recreational
19 retail marijuana establishments was unlawful, clearly erroneous, arbitrary, capricious, and in excess
20 of the Department's jurisdiction.

21 97. As a result of the Department's unlawful, erroneous, arbitrary, and capricious denial
22 of the Plaintiffs/Petitioners' applications for recreational retail marijuana establishment licenses, the
23 Plaintiffs/Petitioners have each suffered and continue to suffer irreparable harm with no adequate
24 remedy at law.

25 98. The Department will suffer no harm by: (1) releasing the record for the entire
26 application review, scoring, and ranking proceeding for the applications submitted by the
27 Plaintiffs/Petitioners, the Denied Entities, and the Recipient Entities; (2) releasing information about
28 the identity and qualifications of the individuals conducting the scoring and ranking of the

1 applications; (3) releasing information about the policies and procedures governing the scorers for
 2 the applications and ensuring uniformity in the scoring and ranking process; (4) providing applicants
 3 with specific reasons for the denial of their license applications in compliance with the Approved
 4 Regulations and NRS 453D.210(4)(b); and/or (5) conducting a review, scoring, and ranking of
 5 applications for recreational retail marijuana establishment licenses with qualified scorers who are
 6 governed by express, detailed policies and procedures which comply with the Approved Regulations
 7 and NRS Chapter 453D.

8 99. The Plaintiffs/Petitioners are likely to succeed on the merits in this litigation.

9 100. The public interest favors Plaintiffs/Petitioners because the actions and decisions of
 10 an agency of the State should comply with Nevada laws and regulations, should be free of any
 11 corruption, and should not be arbitrary and capricious.

12 101. After the Plaintiffs/Petitioners meet with Department employees to obtain any
 13 available information regarding the scoring of the applications and the specific reasons for the denial
 14 of their applications, the Plaintiffs/Petitioners intend to file a Motion for Preliminary Injunction.

15 102. Plaintiffs/Petitioners are entitled to preliminary injunctive relief, and after a trial on
 16 the merits, permanent injunctive relief, ordering the Department as follows:

- 17 a. To disclose all applications and scoring information for every applicant
 18 seeking a recreational retail marijuana establishment license between 8:00
 19 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
- 20 b. To disclose the identities and qualifications of the scorers for the applications
 21 for recreational retail marijuana establishment licenses submitted between
 22 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
- 23 c. To disclose the policies, procedures, guidelines, and/or regulations which
 24 governed how the scorers assessed points to each criterion in the license
 25 application and how uniformity was ensured in the scoring assessment process
 26 for the applications submitted between 8:00 a.m. on September 7, 2018 and
 27 5:00 p.m. on September 20, 2018;

- d. To cease issuing any conditional licenses to applicants whose applications were approved on December 5, 2018;
- e. To revoke any conditional licenses already issued on or after December 5, 2018; and
- f. To conduct the recreational retail marijuana establishment license application process again, with scoring and ranking to be consistent with the Approved Regulations, NRS Chapter 453D, and the new policies and procedures implemented for the scorers.

Second Claim for Relief: Declaratory Relief Against the Department

103. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-101, inclusive.

104. The Department has denied the Plaintiffs/Petitioners recreational retail marijuana establishment license applications.

105. The basis for the denial is unknown because the Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of the Approved Regulations and did not inform the Plaintiffs/Petitioners of the specific reasons for the denial of the license applications.

106. The Plaintiffs/Petitioners contend that the denial of their license applications was unlawful, arbitrary, capricious, clearly erroneous, and in excess of the jurisdiction of the Department.

107. The parties' dispute presents an actual justiciable controversy.

108. The Plaintiffs/Petitioners request a declaratory judgment that:

a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of the Approved Regulations; and

b. The Department's scoring and ranking of the applications submitted for recreational retail marijuana establishment 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.

Third Claim for Relief: Petition for Judicial Review

109. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-107, inclusive.

110. Plaintiff/Petitioners are parties to a proceeding at the Department—specifically, the review, scoring, and ranking of applications for and issuance of recreational retail marijuana establishment licenses—and have been aggrieved by what the Department claims is its final decision.

111. Under NRS 233B.010, *et seq.*, Plaintiffs/Petitioners are entitled to Judicial Review of the proceeding at the Division by which they were denied the rights and privileges afforded to them by Nevada law.

112. Accordingly, Plaintiffs/Petitioners petition this Court for Judicial Review of the proceeding at the Department whereby their applications for recreational retail marijuana establishment licenses were reviewed, scored, and ranked, and demand that the entire record of the proceeding (for each and every application submitted by the Plaintiffs/Petitioners, the Denied Entities, and the Recipient Entities) be transmitted in accordance with NRS 233B.131.

Fourth Claim for Relief: Petition for Writ of Certiorari

113. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-111, inclusive.

114. The Department has exceeded its jurisdiction to review, score, and rank applications for recreational retail marijuana establishment licenses and to issue recreational retail marijuana establishment licenses by, among other things, employing unqualified and improperly trained employees to conduct the review, scoring, and ranking of applications; by failing to ensure uniformity in the assessment of the applications and the assignment of scores to various categories of information in the applications; by allowing the license application process to be corrupted; by unfairly favoring certain applicants over others; by eliminating categories of information from the license application despite such categories being required under the Approved Regulations and/or NRS Chapter 453D; by adding a new category of information to the license application after issuing the Notice for license application submissions and without providing adequate notice to the license

1 applicants; and by failing to inform the Plaintiffs/Petitioners of the specific reasons for the denial of
2 their applications.

3 115. There is no provision in NRS Chapter 453D or the Department's Regulations which
4 expressly allows for an administrative appeal of the Department's decision, and, therefore, apart
5 from injunctive relief, there is no plain, speedy, and adequate remedy for the Department's improper
6 actions.

7 116. Plaintiffs/Petitioners petition this Court for a writ of certiorari regarding the
8 Department's reviewing, scoring, and ranking of Plaintiffs/Petitioners' applications for recreational
9 retail marijuana establishment licenses, and the Plaintiffs/Petitioners intend to file an application for
10 a writ of certiorari after their upcoming meetings with Department employees regarding the scoring
11 of their applications.

12 117. Plaintiffs/Petitioners also request that the Court order the Department to provide the
13 complete record of the Department's proceeding with respect to the Plaintiffs/Petitioners'
14 applications for recreational retail marijuana establishment licenses (along with the complete record
15 of the Department's proceeding for each of the applications for the Denied Entities and the Recipient
16 Entities), and to restrain the Department from any further proceedings with respect to the issuance or
17 recognition of new conditional recreational retail marijuana establishment licenses.

18 **Fifth Claim for Relief: Petition for Writ of Mandamus**

19 118. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
20 in paragraphs 1-116, inclusive.

21 119. The Department has failed to perform an act which the law compels it to perform;
22 specifically, (1) to inform applicants for recreational retail marijuana establishment licenses of the
23 specific reasons for the denial of their license application, in accordance with NRS 453D.210(4)(b)
24 and Section 91(4) of the Department's Approved Regulations; and (2) to review license applications
25 and issue licenses in compliance with Nevada laws and regulations.

26 120. There is no plain, speedy, and adequate remedy in the ordinary course of law to
27 correct the Division's failure to perform the acts required by law.
28

1 121. The Plaintiffs/Petitioners therefore petition this Court to issue a writ of mandamus to
2 the Department compelling them to: (1) provide the Plaintiffs/Petitioners with the specific reasons
3 that their license applications were scored and ranked lower than other applications and why their
4 license applications were denied; and (2) issue a new Notice for recreational retail marijuana
5 establishment license applications and to conduct the scoring and ranking of such applications in
6 accordance with Nevada law and the Approved Regulations.

7 122. The Plaintiffs/Petitioners intend to file an application for this writ of mandamus after
8 their upcoming meetings with Department employees regarding the scoring of their applications.

9 **Sixth Claim for Relief: Petition for Writ of Prohibition**

10 123. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained
11 in paragraphs 1-121, inclusive.

12 124. The Department has issued conditional recreational retail marijuana establishment
13 licenses in excess of its jurisdiction by, among other things: (1) eliminating key categories of
14 information from the application (despite the Approved Regulations and NRS Chapter 453D
15 requiring that the Department consider such information); and (2) by adding a new category of
16 information to the application after it issued its Notice for license applications and failing to
17 adequately inform license applicants of this new category of information.

18 125. There is no plain, speedy, and adequate remedy in the ordinary course of law to
19 correct the Department's improper review, scoring, and ranking of the license applications or the
20 issuance of the conditional recreational retail marijuana establishment licenses.

21 126. Plaintiffs/Petitioners therefore petition the Court to issue a writ of prohibition which
22 prohibits the Department from issuing and/or recognizing any new recreational retail marijuana
23 establishment licenses for applicants who submitted a license application between 8:00 a.m. on
24 September 7, 2018 and 5:00 p.m. on September 20, 2018.

25 127. The Plaintiffs/Petitioners intend to file an application for a writ of prohibition after
26 their upcoming meetings with Department employees regarding the scoring of their applications.

WHEREFORE, Plaintiffs/Petitioners pray for the following relief:

1. For preliminary injunctive relief, and after a trial, permanent injunctive relief, ordering the Department:
 - a. To disclose all applications and scoring information for every applicant seeking a recreational retail marijuana establishment license between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
 - b. To disclose the identities and qualifications of the scorers for the applications for recreational retail marijuana establishment licenses submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
 - c. To disclose 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 applications submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018;
 - d. To cease issuing any conditional licenses to applicants whose applications were approved on December 5, 2018;
 - e. To revoke any conditional licenses already issued on or after December 5, 2018; and
 - f. To conduct the recreational retail marijuana establishment license application process again, with scoring and ranking to be consistent with the Approved Regulations, NRS Chapter 453D, and the new policies and procedures for the scorers.
2. For a declaratory judgment that:
 - a. The Department failed to comply with NRS 453D.210(4)(b) and Section 91(4) of the Approved Regulations; and
 - b. The Department's scoring and ranking of the applications submitted for recreational retail marijuana establishment 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.

3. Judicial Review of the Department's review, scoring, and ranking of applications for recreational retail marijuana establishment licenses submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018, and an order that the entire record of the Department's proceeding (for each and every application submitted by the Plaintiffs/Petitioners, the Denied Entities, and the Recipient Entities) be transmitted in accordance with NRS 233B.131.

4. A writ of certiorari ordering the review of the Department's review, scoring, and ranking of applications for recreational retail marijuana establishment licenses submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018; an order that the Department provide the complete record of the Department's proceeding with respect to the Plaintiffs/Petitioners' applications for recreational retail marijuana establishment licenses (along with the complete record of the Department's proceeding for all other applications submitted by the Denied Entities and the Recipient Entities); and an order restraining the Department from conducting any further proceedings with respect to the issuance or recognition of new conditional recreational retail marijuana establishment licenses.

5. A writ of mandamus compelling the Department to: (1) provide the Plaintiffs/Petitioners with the specific reasons that their license applications were scored and ranked lower than other applications and why their license applications were denied; and (2) issue a new Notice for recreational retail marijuana establishment license applications and to conduct the scoring and ranking of such applications in accordance with Nevada law and the Approved Regulations.

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6. A writ of prohibition barring the Department from issuing and/or recognizing any new recreational retail marijuana establishment licenses based on applications submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

DATED this 4th day of January, 2019.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

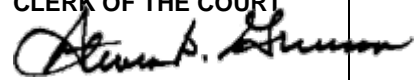
DENNIS L. KENNEDY

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



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**

1 Plaintiffs/Petitioners,

2 vs.

Issue of Public Policy

- **Action Seeking Equitable or Extraordinary Relief**

3 STATE EX REL. DEPARTMENT OF
 4 TAXATION; STATE EX REL. NEVADA TAX
 5 COMMISSION; 3AP INC., a Nevada limited
 6 liability company; 5SEAT INVESTMENTS
 7 LLC, a Nevada limited liability company;
 8 ACRES DISPENSARY LLC, a Nevada limited
 9 liability company; ACRES MEDICAL LLC, a
 10 Nevada limited liability company; AGUA
 11 STREET LLC, a Nevada limited liability
 12 company; ALTERNATIVE MEDICINE
 13 ASSOCIATION LC, a Nevada limited liability
 14 company; BIONEVA INNOVATIONS OF
 15 CARSON CITY LLC, a Nevada limited liability
 16 company; BLOSSUM GROUP LLC, a Nevada
 17 limited liability company; BLUE COYOTE
 18 RANCH LLC, a Nevada limited liability
 19 company; CARSON CITY AGENCY
 20 SOLUTIONS L.L.C., a Nevada limited liability
 21 company; CHEYENNE MEDICAL, LLC, a
 22 Nevada limited liability company; CIRCLE S
 23 FARMS LLC, a Nevada limited liability
 24 company; CLEAR RIVER, LLC, a Nevada
 25 limited liability company; CN LICENSECO I,
 26 Inc., a Nevada corporation; COMMERCE PARK
 27 MEDICAL L.L.C., a Nevada limited liability
 28 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

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

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

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

2. Defendants Who Were Denied Conditional Recreational Dispensary Licenses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46. Upon information and belief, Defendant/Respondent Euphoria Wellness LLC is a Nevada limited liability company doing business under the fictitious firm names Euphoria 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

148. However, Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent part, that “[a]n 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.”

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

C. The Approved Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. The physical address where the proposed marijuana establishment will be located (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	

- 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.

Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including:	40	90
<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. 		
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> • A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. • An operations manual that demonstrates compliance with the regulations of the Department. • An education plan which must include providing educational materials to the staff of the proposed establishment. • A plan to minimize the environmental impact of the proposed establishment. 	30	
A plan which includes: <ul style="list-style-type: none"> • A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. • A description of the inventory control system of the proposed marijuana establishment. 	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.

- a. NuVeda scored above average in 5 of the 6 disclosed categories.
- b. DH Flamingo scored above average in 3 of the 6 disclosed categories.
- c. 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**
 13 **to influence a reasonable person in the public officer’s or**
 14 **employee’s position to depart from the faithful and impartial**
 15 **discharge of the public officer’s or employee’s public duties.**
- 16 2. A public officer or employee shall not use the public officer’s or
 17 employee’s position in government to secure or grant
 18 unwarranted privileges, preferences, exemptions or advantages
 19 for the public officer or employee, any business entity in which
 20 the public officer or employee has a significant pecuniary interest
 21 or any person to whom the public officer or employee has a
 22 commitment in a private capacity. As used in this subsection,
 23 “unwarranted” means without justification or adequate reason.
- 24 3. A public officer or employee shall not participate as an agent of
 25 government in the negotiation or execution of a contract between
 26 the government and the public officer or employee, any business
 27 entity in which the public officer or employee has a significant
 28 pecuniary interest or any person to whom the public officer or
 employee has a commitment in a private capacity.
4. A public officer or employee shall not accept any salary, retainer,
 augmentation, expense allowance **or other compensation** from
 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

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

Just keep digging

....

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

....

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

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

2. Offers of Employment and Other Perks

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

///

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.

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

WHEREFORE, Plaintiffs/Petitioners pray for the following relief:

1. Judicial Review of the Department's decision denying Plaintiff's appeal;
2. A writ of certiorari ordering the review of the Department's review, scoring, and ranking of applications for recreational Dispensary licenses submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018; and order that the Department provide the complete record of the Department's proceeding (for each and every application submitted by Plaintiffs/Petitioners, the Denied Applicants, and the Successful Applicants). 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; and
 - 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. Communications related to 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)
 - e. Communications or other evidence of (1) invitations by any licensee to any Department Employee relating to social engagements or (3) any gift, gratuity, or 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

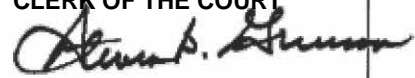
NuVEDA; CLARK NMSD LLC, d/b/a

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
kjc@kempjones.com

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

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 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

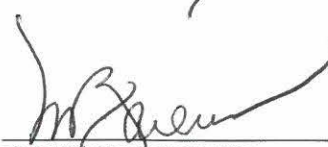
KEMP, JONES & COULTHARD, LLP
 3800 Howard Hughes Parkway
 Seventeenth Floor
 Las Vegas, Nevada 89169
 (702) 385-6000 • Fax (702) 385-6001
 kjc@kempjones.com

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

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

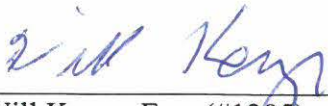
ORDERED that the State shall serve a copy of this Order upon Manpower within one business day of notice of entry of this Order.

DATED this 13th day of December, 2018


 DISTRICT JUDGE

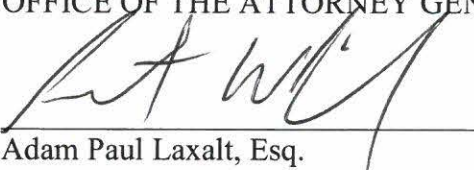
1 Respectfully Submitted by:

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*

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

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 JENNIFER CRANDELL,
OFFICE: Special Counsel

REPORTED BY: NICOLE J. HANSEN, CCR #446

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1) Oscars Auto Sales LLC (for possible action)

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(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

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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)

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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.)

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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

Steven D. Grierson

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

RECEIVED
AUG 23 2019

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

Intervenors.

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

¹ Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on 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.

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

PROCEDURAL POSTURE

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

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

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

² The findings made in this Order are preliminary in nature based upon the limited evidence presented after very 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.

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

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

PRELIMINARY STATEMENT

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

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

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

A786962-B Serenity: Serenity Plaintiffs' Motion for Preliminary Injunction filed 3/19/19 (Joinder to Motion by Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23); 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).

A785818-W MM Development: MM Plaintiffs' Motion for Preliminary Injunction or Writ of Mandamus filed 5/9/19 (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)).

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

FINDINGS OF FACT

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

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

... 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.

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

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

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

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

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

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

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

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

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

7. BQ2 specifically identified regulatory and public safety concerns:

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

- (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly controlled through State licensing and regulation;

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

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

NRS 453D.020(3).

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

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

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

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

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

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

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

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

The second recommendation of concern is:

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;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A resume.

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

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

28 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 19. The DoT posted the application on its website and released the application for
 20 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 BQ2.

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

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

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

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

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

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

...

3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the legislature is held. After its circulation, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The secretary of state shall transmit such petition to the legislature as soon as the legislature 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.**

(Emphasis added.)

7 64. The Nevada Supreme Court has recognized that “[i]nitiative petitions must be kept
8 substantively intact; otherwise, the people’s voice would be obstructed. . . [I]nitiative legislation is not
9 subject to judicial tampering-the substance of an initiative petition should reflect the unadulterated will
10 of the people and should proceed, if at all, as originally proposed and signed. For this reason, our
11 constitution prevents the Legislature from changing or amending a proposed initiative petition that is
12 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.

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

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

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

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

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

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

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

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

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

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

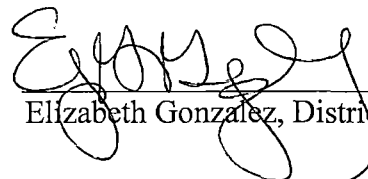
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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.

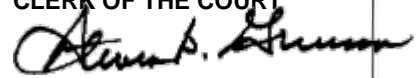

Elizabeth Gonzalez, District Court Judge

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.



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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

Case No. : A-19-787004-B

Dept. No.: XI

7 **CONSOLIDATED WITH:**

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

12 **TRIAL PROTOCOL**

13 Trial Date: April 20, 2020

14
15 The Court having met with counsel for the parties, and after consideration of the proposal for
16 Trial Protocol submitted by the parties, and hearing comments of counsel, the Court adopts the
17 following as its trial protocol:

18 **I. COURTROOM ETIQUETTE**

19 **A.** Pursuant to Administrative Order No. 06-05, this Court permits counsel and their
20 staff to use wireless communications; however, such devices shall be placed away from recording
21 devices and microphones and must be turned off or placed on airplane mode to ensure that no
22 sounds are emitted from the device that may interrupt the proceedings. If the Court determines a
23 particular device is interfering with the sound and/or recording equipment, the Court may order all
24 electronic devices turned off.

25 **B.** The Court expects counsel to be punctual for all proceedings.

26 **C.** Counsel will be civil to one another as well as to all parties, witnesses, and court
27 personnel at all times. Do not interrupt.

28 **D.** Opposing counsel should not engage in extended conversations with each other when

1 court is in session. The Court will allow counsel to have a private conversation if it is requested and
 2 efficient. Counsel should never argue with either opposing counsel or the Court.

3 **E.** Counsel will stand when addressing the Court or when examining witnesses.
 4 Counsel must stand near a microphone and may not crowd the witness.

5 **F.** Counsel may approach a witness with the permission of the Court. If counsel needs
 6 to approach the witness many times, the Court may instruct the attorney that he or she need not
 7 continue to ask. Nonetheless, once the attorney has accomplished his or her reason for approaching
 8 the witness (however many times), he or she should return to the place from which he or she is
 9 questioning.

10 **G.** The Court does not permit speaking objections. Counsel should give the basis for the
 11 objection in a word or phrase (e.g., "hearsay").

12 **H.** Counsel must state every objection for the record. Counsel may join an objection for
 13 purposes of the record. The Court does not permit continuing objections.

14 **I.** Counsel has the responsibility to advise their witnesses to comply with any orders
 15 granting motions in limine.

16 **J.** Counsel should advise all witnesses that they are not to begin any answer until the
 17 question has been completed. Department XI does not require counsel to use Court Call for
 18 telephonic appearances. Counsel must contact the Department one (1) day prior to the hearing to
 19 setup the telephonic appearance. If multiple counsel elect to appear telephonically, counsel shall set
 20 up a conference call number for use by all participating counsel

21 **K.** Counsel may appear by alternate means upon request.

22 **II. PRETRIAL MOTIONS**

23 All pretrial motions however styled will be filed in compliance with EDCR 2.20 and 2.27
 24 unless those requirements are specifically modified in this Order. Counsel should not anticipate
 25 that the Court will grant relief from the page limit requirement of EDCR 2.20(a). The Court will not
 26 sign an order shortening time unless extraordinary circumstances exist.

27 **A. Motions for Summary Judgment and Briefs under NRS 233B.133.**

28 **1.** On or before March 27, 2020 any motions for summary judgment or partial

1 summary judgment and briefs under NRS 233B.133 shall be filed.¹ All memorandum of points and
2 authorities, appendices, exhibits and affidavits or declarations must be filed at the same time as the
3 motion.

4 2. Any opposition will be due April 3, 2020. All memorandum of points and
5 authorities, appendices, exhibits and affidavits or declarations must be filed at the same time as the
6 opposition.

7 3. Any reply will be filed by April 10, 2020. All memorandum of points and
8 authorities, appendices, exhibits and affidavits or declarations must be filed at the same time as the
9 reply.

10 4. The hearing on motions for summary judgment and briefs under NRS
11 233B.133 will occur on April 17, 2020. By noon on April 14, 2020, moving counsel will provide
12 the Court with a notebook including all motions, oppositions, joinders, replies and supporting
13 documentation related to each motion for summary judgment filed. Following the Court's ruling at
14 the hearing prevailing counsel will prepare an appropriate order or Findings of Fact and Conclusions
15 of Law reflecting the Court's ruling.

16 **B. Motions in Limine**

17 1. On or before March 27, 2020, pursuant to EDCR 2.47, counsel will conduct
18 an in person conference with counsel for any other party that is anticipated to be impacted by a
19 potential motion in limine to determine if a stipulation or other agreement can be reached related to
20 the issue that is the subject matter of the proposed motion in limine. If an agreement is reached, that
21 agreement must be documented in a written stipulation and order or included as a part of the
22 executed joint pretrial memorandum.

23 2. On or before March 27, 2020, any motions in limine will be filed. All
24 memorandum of points and authorities, appendices, exhibits and affidavits or declarations must be
25 filed at the same time as the motion.

26 3. Any opposition will be due April 3, 2020. All memorandum of points and
27

28 ¹ This deadline does not apply to the 1983 action for which the motions to dismiss remain pending. A schedule
for that phase of the trial will be set following an answer, if required, in those matter.

1 authorities, appendices, exhibits and affidavits or declarations must be filed at the same time as the
2 opposition.

3 4. Any reply will be filed by April 10, 2020. All memorandum of points and
4 authorities, appendices, exhibits and affidavits or declarations must be filed at the same time as the
5 reply.

6 5. The hearing on motions in limine will commence on April 17, 2020. By noon
7 on April 14, 2020, moving counsel will provide the Court with a notebook including all motions,
8 oppositions, joinders, replies and supporting documentation related to each motion in limine filed.

9 6. Following the Court's ruling at the hearing prevailing counsel will prepare an
10 order specifically setting forth the evidentiary ruling.

11 **C. Motions for other Pretrial Rulings**

12 Any other motion for pretrial rulings must be filed by April 1, 2020 will follow a standard
13 briefing schedule.

14 **III. EXHIBITS**

15 **A.** The Parties shall prepare a joint list of exhibits, based upon the exhibits used during
16 any depositions and documents properly disclosed during discovery, which will be pre-marked with
17 an identification number in the range of 1-999. The Parties will create a joint list of potential trial
18 exhibits that may later be offered for admission at trial and create an electronic storage device for
19 each party and the Court containing these exhibits. The proposed trial exhibit list will mirror the
20 numbering of the deposition exhibits and any withdrawn deposition exhibit will have at the
21 corresponding number a reference to either "reserved" or "withdrawn." Prior to providing such trial
22 exhibits to the Court, the Parties will meet and identify exhibits that can be withdrawn or are
23 duplicates. If all Parties agree a deposition exhibit can be eliminated, it will be removed from the
24 preliminary trial exhibit list. If any party does not agree to eliminate a deposition exhibit, it will be
25 marked as a proposed trial exhibit.

26 **B.** For non-joint exhibits, the Parties will utilize the range of exhibit numbers assigned
27 to each party for identification of the exhibits. Each exhibit shall also bear the production number of
28 the document or item that was used during discovery to ensure that it is a properly, previously

1 produced document or other identifier that can be appropriately cross-referenced by the Parties. If
 2 during the course of discovery a document was produced with an alphanumeric designation, the
 3 discovery alphanumeric designation will be included on the exhibit list. If a party intends to use a
 4 document as an exhibit at trial that was not given an alphanumeric designation (that all Parties were
 5 previously provided access to), and was not utilized as an exhibit to a Court filing, the designating
 6 party must identify the document in a manner that enables other parties to verify the prior
 7 production and/or disclosure of the document and to locate such document.

8 **C.** The numbering system shall differentiate between evidentiary trial exhibits and
 9 illustrative aids/demonstrative exhibits, with the illustrative aids/demonstrative exhibit identification
 10 number containing the letter D preceding the identification number.

11 **D.** All exhibits shall be listed on a form used by Department XI to record such evidence
 12 attached hereto as Exhibit "1."

13 **E.** After numbering the joint exhibits, non-joint trial exhibit number ranges will be
 14 utilized by each side (ranges of 1,000 exhibits to each side). The numbering convention to be used
 15 for trial exhibits will be strictly numeric. Each side shall designate a representative to eliminate
 16 duplicate exhibits for the Plaintiffs and the Defendants, respectively. Each side is assigned a range
 17 of exhibit numbers for their own exhibits.

18 **1.** Joint Proposed Exhibits (including deposition exhibits) 1-999

19 **2.** Proposed Non-Joint Exhibit Ranges for Each Side:

20 **a)** Plaintiffs 1,000-1,999.

21 **b)** Defendants 2,000-2,999.

22 If any additional party, indicates an intention to participate in the trial by filing and serving a notice
 23 with a courtesy copy delivered to the Court on or before the calendar call on April 14, 2020, the
 24 Court will make a determination as to additional ranges of exhibit numbers.

25 **F.** Each party must make its pre-trial disclosures under NRCP 16.1(a)(3) on or before
 26 April 6, 2020. Each party's pre-trial disclosure must contain a list of their own proposed trial
 27 exhibits in Excel format (including columns with the bates number, date, description, will call, and
 28 may call) that can be integrated into a single Joint Exhibit List, and providing a complete set of the

1 exhibits to all the other Parties on an electronic storage device.

2 **G.** Each party will designate a paralegal and/or attorney to work together to coordinate
3 with HOLO on the production of the deposition exhibits and discovery documents to trial exhibits,
4 coordinate in the preparation of the Joint Trial Exhibit List, and ensure the Parties are complying
5 with the Court's requirements for marking exhibits for trial. The Parties' representative(s) should be
6 designated by March 31, 2020 so they can begin discussing Court's requirements for marking
7 exhibits and the Joint Exhibit List, and pricing and logistics with HOLO. The Parties' Joint Exhibit
8 List shall be finalized on or before April 15, 2020.

9 **H.** All received exhibits shall be stored in the custody of the Court. Charts, summaries
10 or calculations sought to be admitted into evidence under NRS 52.275, along with the originals of
11 the voluminous documents or electronic information, shall be made available to other Parties at the
12 calendar call prior to trial, or, if created during the course of trial, at least one (1) days prior to
13 offering or using said chart, summary or calculation.

14 **I.** Enlargements of any exhibits sought to be used at trial, shall be handled in the same
15 manner as other exhibits. Any exhibit may be enlarged and provided in a hard format if desired by a
16 Party but must contain the proposed trial exhibit number for reference.

17 **J.** The proposed electronic exhibits shall be submitted in portable document format
18 (.PDF).

19 **K.** Objections to each party's proposed pre-trial exhibits will be served pursuant to
20 NRCP 16.1(a)(3)(B) on or before April 12, 2020 to facilitate the creation of the Joint Exhibit List.
21 Counsel will be familiar with the basis for any objection made pursuant to NRCP 16.1(a)(3)(B) and
22 shall address the objections at the final pretrial conference. Objections not disclosed in accordance
23 with NRCP 16.1(a)(3), other than objections under NRS 48.025 and 48.035, shall be deemed waived
24 unless excused by the court for good cause shown.

25 **L.** All exhibits proposed for use in trial will be cross referenced to exhibits sought to be
26 introduced by all other parties and sides. Counsel shall eliminate duplicative exhibits.

27 **M.** All documents the Parties anticipate using at trial, but for rebuttal documents,
28 impeachment documents, and documents related to unanticipated issues, will be disclosed prior to

the start of trial. Documents that are not identified in pre-trial disclosures will be handled on a case by case basis with the understanding that a party seeking to use any document that was not identified in pre-trial disclosures must show good cause.

N. Certain documents and material, which the Parties shall have need to use and present to the Court, have been produced in this Action pursuant to the Confidentiality Agreement and Protective Order filed on December 20, 2019. Parties shall consult to redact, if appropriate, trial exhibits previously designated as confidential during discovery.

IV. FINAL PRETRIAL CONFERENCE

A. Pursuant to EDCR 2.67(a) counsel shall meet and discuss all issues required by the rule on or before April 10, 2020.

B. In accordance with NRCP 16.1(a)(3)(B)(i), the parties shall designate their trial witnesses on or before April 3, 2020.

C. Designations of Depositions to be Used in Lieu of Live Testimony

1. The Parties are discouraged from reading depositions at trial unless absolutely necessary.

2. The Parties anticipate a number of depositions or prior testimony from the preliminary injunction hearing will be utilized at trial in lieu of live testimony due to the unavailability of the witness or for any other permitted reason under NRCP 32. In accordance with NRCP 16.1(a)(3)(A)(ii), the Parties will identify testimony to be provided via deposition or transcript and provide initial transcript designations on or before April 3, 2020. Any party wishing to make a counter-designation will do so on or before April 8, 2020. Any rebuttal deposition designations are to be made on or before April 10, 2020. Objections to any deposition designation, counter-designation, or rebuttal designation will be made on April 14, 2020.

3. The Court will rule on any objections to the designations at the Final Pretrial Conference.

4. The Parties recognize that there may be a need to alter and/or amend depositions designations based on testimony provided during trial. Accordingly, any changes to deposition designations must be provided to the Parties and the Court no less than one (1) judicial

1 day before the deposition testimony is intended to be presented at trial unless good cause is shown
2 for the failure to do so. This procedure does not alter or change evidentiary limitations.

3 **5.** Any video deposition to be shown to the Court shall be edited to streamline
4 the presentation of evidence. The Parties can present excerpts in the order approved by the Court at
5 the Final Pretrial Conference. All portions of a video deposition used in lieu of live testimony
6 presented during a certain phase will be shown together.

7 **6.** For impeachment or rebuttal purposes, advance notice of the portions of the
8 deposition depicting inconsistent testimony is not required. Proposals for the presentation of
9 deposition transcripts are still subject to evidentiary limitations.

10 **7.** To avoid delays during trial, counsel will notify the clerk of any depositions
11 anticipated to be used prior to the start of the day's proceedings. Failure of counsel to do so may
12 result in the Court refusing to permit counsel to utilize a particular deposition.

13 **D. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14 **1.** At the commencement of each phase, counsel will file proposed findings of
15 fact and conclusions of law pertaining to that portion of the trial.

16 **E.** Pursuant to EDCR 2.67(b), on or before 4:00 p.m. on April 13, 2020, counsel shall
17 submit a joint pretrial memorandum executed by all counsel including all issues required by the rule.

18 **F. Final Pretrial Conference**

19 **1.** The Court will conduct the final pretrial conference on the date set at the
20 April 14, 2020 calendar call.

21 **2.** Counsel are required to bring all items (except 3, 4, and 6) identified in
22 EDCR 2.69(a) to the final pretrial conference and exchange all items identified in EDCR 2.69(a) by
23 April 12, 2020.

24 **3.** Exhibits will be pre-admitted to the extent practicable at the Final Pretrial
25 Conference. All documentary exhibits will be presented in electronic format in accordance with the
26 proposed Administrative Order Regarding Electronic Exhibits for Trial. Photographic evidence may
27 be presented in hard copy form but must also be submitted in electronic format. In accordance with
28 EDCR 2.67, counsel shall meet, review, and discuss exhibits.

1 4. Any planned demonstrative exhibits including data summaries, compilations
2 or exemplars anticipated to be used must be disclosed prior to the final Pre-Trial Conference.
3 Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or
4 make specific objections to individual proposed exhibits. Any additional demonstrative exhibits that
5 arise during trial shall be disclosed to all parties at least 24 hours in advance.

6 5. Any Power Point or computer animation anticipated to be used during the
7 presentation of evidence to illustrate a witness's testimony must be disclosed two (2) days prior to
8 the Final Pretrial Conference. At the time of the Final Pretrial Conference, the Court will rule on
9 any objections to the Power Point or computer animation. An electronic version of the Power Point
10 or computer animation must be presented to the Court at that time.

11 6. Unless impracticable to present evidence electronically, the Parties are
12 required to use trial presentation software to electronically and simultaneously display evidence to
13 everyone in the courtroom. The Parties will also be allowed to utilize traditional paper form
14 presentation of evidence as long as the other provisions are satisfied, i.e., the paper form
15 presentation of evidence has already been submitted electronically to the Court and other Parties, the
16 hard copy bears the same identifiers as the electronic copy, and hard copy documents of such
17 presentations are made available to the other Parties.

18 7. The Parties may hire an operator to provide, and upon the request of a party to
19 operate, the trial presentation software to avoid the complications of different systems, different
20 switching systems, and delays in presentation. All exhibits will be on one computer system with
21 traditional designations of potential exhibits and admitted exhibits. Each party is required to use the
22 software selected. A Party may contract with the provider for a person to operate the system during
23 trial or may take on the responsibility of hiring and training a person to operate the system for that
24 party during trial. Parties shall insure that non-admitted exhibits are blocked from viewing by the
25 Court until the Court directs the non-admitted exhibit to be disclosed for the Court's view.

26 8. Prior to the commencement of each phase, the Court will rule on any
27 objections to the deposition designations, counter-designations and editing of video deposition to be
28 used in lieu of live testimony. Any use of depositions will require publication of the original

transcript prior to reading or playing portions of the deposition.

V. TRIAL SCHEDULE

A. Days and Hours

1. All trial participants shall be punctual and prepared to proceed on schedule. To minimize interruptions, attorneys may be permitted to enter and leave the courtroom discretely during the proceedings.

2. Court sessions will be held from 9:30 a.m. to 5:00 p.m., with a morning break, a lunch recess, and an afternoon break, four days a week, Tuesday through Friday, unless there is a recognized judicial holiday as set forth below. If an issue arises that must be addressed prior to the commencement of the next day of trial, counsel will notify all parties. Counsel will report at 9:00 a.m. to resolve any issues that need to be addressed before the presentation of evidence and testimony.

3. The Court will recess on the following dates:

a) Memorial Day: May 29, 2020

B. Weekly Conferences During Trial

1. To expedite the trial, it is advisable to devote the trial day to the uninterrupted presentation of evidence. To the extent possible, objections (other than to a question asked a witness), motions, and other matters that may interrupt the presentation of evidence, should generally be raised at a time set aside by the Court. To the extent possible, objections, motions and other matters that must be raised during the presentation of evidence shall be stated briefly.

2. Any issues to be addressed will be addressed on Friday sessions at 8:30 a.m. The Court will permit counsel to communicate to the Court to plan the week's proceedings and fix the order of witnesses and exhibits, avoiding surprises and ensuring that the Parties will not run out of witnesses. These Weekly Conferences will also be utilized to hear written motions, to resolve other issues and the Court may hear offers of proof and arguments accordingly in order to resolve the same.

VI. CONDUCT OF TRIAL

The trial will be conducted in Phases as defined by the Court. This Order will apply to each

1 individual phase.

2 **A.** The use of trial briefs in this matter will be governed by EDCR Rule 7.27.

3 **B.** Opening Statements

4 1. Opening Statements, if any, shall commence on the first day of each phase.

5 2. The group of parties seeking affirmative relief in that phase shall be time
6 limited in Opening Statement to a total of three (3) hours. These parties shall agree among
7 themselves on the split of the time. If no agreement is reached the Court will allocate the time
8 among the group. No more than one attorney may address the Court during Opening Statement for
9 each party or similarly represented group of parties.

10 3. The group of parties participating in a phase not seeking affirmative relief in
11 that phase shall be time limited in Opening Statement to a total of three (3) hours. These parties
12 shall agree among themselves on the split of the time. If no agreement is reached the Court will
13 allocate the time among the group. No more than one attorney per party group represented by a
14 single team of counsel may address the Court during Opening Statement.

15 4. The Parties shall be allowed to deliver their Opening Statements in the order
16 of the presentation of the Parties' cases.

17 5. During Opening Statements, the Parties will be permitted to utilize charts and
18 other demonstrative aids not then in evidence; however, any such Power Points, charts or aids shall
19 be provided to opposing counsel at least one (1) judicial day prior to commencement of the
20 corresponding phase in order to allow any party to file any objection it may have to the same.

21 **C.** Presentation of Evidence

22 1. The Court, counsel and the witness shall be permitted to view a displayed
23 non-admitted exhibit prior to its formal admission.

24 2. Counsel shall advise the clerk prior to the commencement of the trial day of
25 any deposition transcripts anticipated to be used for publication.

26 3. Parties are encouraged to use trial aids such as glossaries, indexes, time lines,
27 graphics, charts, diagrams, and computer animations to permit the Court a better opportunity to
28 understand the evidence. To the extent practicable, the Parties shall endeavor to prepare joint

1 exhibits for glossaries, indexes, and time lines.

2 4. Each party shall electronically exchange lists of expected witnesses
3 (including any depositions to be used in lieu of live testimony) who will be called to testify on one
4 (1) day notice. This list shall estimate the length of direct examination for each witness. Any
5 objections shall be made within one (1) judicial day of service of the disclosure. For impeachment
6 or rebuttal purposes, advance notice of the portions of the deposition depicting inconsistent
7 testimony is not required.

8 5. Counsel shall give one (1) week notice of their intent to call an adverse party
9 or its employees to testify. If a party will not make an employee available to testify and that
10 employee is beyond the Court's subpoena power, any party may offer that witness's deposition for
11 any purpose, unless it appears that the absence of the witness was procured by the party offering the
12 deposition. Use of any such deposition is subject to the disclosure requirements and any evidentiary
13 limitations.

14 6. No more than one attorney per party group represented by a single team of
15 counsel may examine a witness or make objection during the examination of the witness.

16 7. If, for any reason, a break in the proceedings of any phase of more than a
17 week occurs, counsel for the Parties may make an interim statement to the Court prior to the
18 resumption of the presentation of evidence. No more than one attorney per party may make an
19 interim statement. Such interim statement may only be used to explain or summarize evidence and
20 testimony already presented to the Court during that phase.

21 **D. Closing Arguments**

22 1. Counsel should be prepared to begin closing arguments immediately
23 following the close of all evidence in the segment.

24 2. During Closing Arguments, the Parties will be permitted to utilize Power
25 Point, charts and other demonstrative aids; however, any such charts or aids shall be provided to
26 opposing counsel at least one (1) judicial days prior to Closing Argument in order to allow any party
27 to file any objection it may have to the same. An electronic copy of the Power Point, charts and
28 other demonstrative aids must be provided to the Court.

1 3. The group of parties seeking affirmative relief in that phase shall be time
2 limited in Closing Statement to a total of six (6) hours. These parties shall agree among themselves
3 on the split of the time. If no agreement is reached the Court will allocate the time among the group.

4 4. The group of parties participating in a phase not seeking affirmative relief in
5 that phase shall be time limited in Opening Statement to a total of six (6) hours. These parties shall
6 agree among themselves on the split of the time. If no agreement is reached the Court will allocate
7 the time among the group. No more than one attorney per party group represented by a single team
8 of counsel may address the Court during Closing Argument.

9 5. Each party with affirmative claims, will have two opportunities to address the
10 Court in closing arguments. Different attorneys may argue the first and second closing arguments
11 for each per party group represented by a single team of counsel. The total time will not be
12 increased.

13 **VII. Transcripts and Court Reporting**

14 A. The Parties agree to utilize the Court's JAVs Court Recording System which will be
15 the official record.

16 B. The Parties agree to equally split the cost of expedited daily transcripts from the
17 Official Court Recorder. Each party shall either commit or decline to receive expedited daily
18 transcripts at the beginning of each Phase of the trial, and costs will be split equally among the
19 Parties that choose to receive the expedited transcripts.

20 C. Additionally, to facilitate the ability of the Parties to view questions, objections and
21 testimony, the Parties agree to have the proceedings reported on a real-time basis. Each party shall
22 either commit or decline access to real-time court reporting at the beginning of each Phase of the
23 trial, and costs will be split equally among the Parties that choose to have real-time access.

24 D. Should the Parties desire to have real time reporting during any phase of the trial, the
25 parties are required to make their own arrangements with the real time court reporters. The details
26 of any arrangements shall also be provided to the Official Court Recorder, at 702-671-4374. Each
27 party will need to provide its own monitor, device or other equipment for real time reporting
28 viewing.

VIII. PHASES

The trial will be conducted in a series of phases presented to the same judge. The phases shall proceed seriatim, in the order set forth herein. Each phase may begin with an opening statement restricted to the issues to be litigated in that phase and may end with a closing statement. If all issues related to a particular phase have been resolved, the parties will proceed to the next phase with remaining issues.

A. First Phase – Petition for Judicial Review

1. Unless otherwise resolved on the briefing outlined above in Section II(A), the DH Flamingo Plaintiffs, Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center, LLC, MM Development Company, Inc., Livfree Wellness LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such claims will present their affirmative claims related to their claims for Petition for Judicial Review.

a) The Plaintiffs will have one (1) day to present oral arguments based upon the administrative record, unless good cause is shown to extend the time.

b) The administrative record shall be filed by the DOT and include, with appropriate redactions, if necessary, of all records related to the applications and DOT's granting or denial of applications.

2. The DOT and Defendants will present their defenses and affirmative claims, if any, related to the Plaintiffs' claims for petition for judicial review.

a) The DOT and Defendants will have one (1) day to present arguments based on the administrative record against the petitions for judicial review, unless good cause is shown to extend the time.

3. The Plaintiffs will present their rebuttal on their affirmative claims.

a) The Plaintiffs will have one day (1) to present oral arguments based on the administrative record in rebuttal on its claims for judicial review, unless good cause is shown to extend the time.

1 **4.** The Court will deliberate, review the evidence, and render a decision on the
2 claims raised in the First Phase.

3 **B.** Second Phase – Legality of the 2018 recreational marijuana application process
4 (claims for Equal Protection, Due Process, Declaratory Relief, Intentional Interference with
5 Prospective Economic Advantage, Intentional Interference with Contractual Relations, and
6 Permanent Injunction)

7 **1.** The Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center,
8 LLC, Qualcan, LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such
9 claims will present their affirmative claims related to legality of 2018 recreational marijuana
10 application process, including their claims for equal protection, due process, declaratory relief, and
11 permanent injunction.

12 **a)** The Plaintiffs will have six (6) weeks to present testimony and
13 evidence on their affirmative claims, unless good cause is shown to
14 extend the time.

15 **2.** The DOT and Defendants will present their defenses and affirmative claims,
16 if any, related to the claims by the plaintiffs.

17 **a)** The DOT and Defendants will have six (6) weeks to present testimony
18 and evidence their defenses and affirmative claims, if any, unless good cause
19 is shown to extend the time.

20 **3.** The Plaintiffs will present their rebuttal on their affirmative claims.

21 **a)** The Plaintiffs will have one (1) week to present testimony and
22 evidence in rebuttal on its affirmative claims, unless good cause is
23 shown to extend the time.

24 **4.** The Court will deliberate, review the evidence, and render a decision on the
25 claims raised in the Second Phase.

26 **C.** Third Phase – Writ of mandamus (Improper scoring of applications related to
27 calculation errors on the 2018 recreational marijuana application).

28 **1.** MM Development Company, Inc. and Livfree Wellness LLC and any other

1 Plaintiffs with mandamus claims will present their affirmative claims related to their writ of
2 mandamus claim based on the allegation of improper scoring of their applications due to calculation
3 errors.

4 a) The Plaintiffs will have three (3) days to present testimony and
5 evidence their affirmative claims, unless good cause is shown to
6 extend the time.

7 2. The DOT and Defendants will present their defense and affirmative claims, if
8 any, related to the claims by the MM Development Company, Inc. and Livfree Wellness LLC.

9 a) The DOT and Defendants will have one (1) day to present testimony
10 and evidence its defenses and affirmative claims, if any, unless good
11 cause is shown to extend the time.

12 3. The Plaintiffs will present their rebuttal on their affirmative claims.

13 a) The Plaintiffs will have one (1) day to present testimony and evidence
14 in rebuttal on its affirmative claims, unless good cause is shown to
15 extend the time.

16 4. The Court will deliberate, review the evidence, and render a decision on the
17 claims raised in the Third Phase.

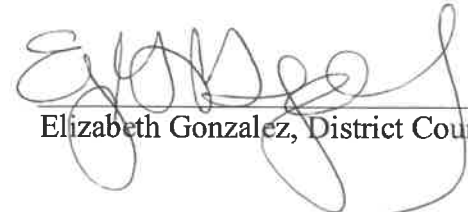
18 **D. Duplication of Testimony**

19 In order to avoid duplication of testimony, if any party desires to use testimony from any
20 phase in a subsequent phase, the party shall inform all parties and the Court of the testimony to be
21 offered via transcript, cite the portions of the transcript to be used, and provide all parties and the
22 Court a copy of the portions of transcript to be used at least three (3) judicial days before the
23 beginning of the phase in which the testimony will be used in lieu of live testimony.

1 **II. MISCELLANEOUS ISSUES**

2 The Court may amend this Order upon good cause shown. Any party, upon application to
3 the Court and a showing of good cause, may seek relief from the Court from any provision of this
4 Order.

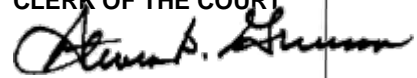
5 Dated this 13th day of March, 2020.

6
7
8 
9 Elizabeth Gonzalez, District Court Judge

10 **Certificate of Service**

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

14
15 
16 Dan Kutinac



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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

Case No. : A-19-787004-B
Dept. No.: XI

7 **CONSOLIDATED WITH:**

8 A-785818
9 A-786357
10 A-786962
11 A-787035
12 A-787540
13 A-787726
14 A-801416

12 **AMENDED TRIAL PROTOCOL NO. 1**

13 Trial Date: July 13, 2020

15 The Court having met with counsel for the parties, and after consideration of the proposal for
16 Trial Protocol submitted by the parties, the issues posed by the current public health emergency and
17 hearing comments of counsel, the Court adopts the following as its amended trial protocol:

18 **I. COURTROOM ETIQUETTE**

19 **A.** Pursuant to Administrative Order No. 06-05, this Court permits counsel and their
20 staff to use wireless communications; however, such devices shall be placed away from recording
21 devices and microphones and must be turned off or placed on airplane mode to ensure that no
22 sounds are emitted from the device that may interrupt the proceedings. If the Court determines a
23 particular device is interfering with the sound and/or recording equipment, the Court may order all
24 electronic devices turned off.

25 **B.** The Court expects counsel to be punctual for all proceedings.

26 **C.** Counsel will be civil to one another as well as to all parties, witnesses, and court
27 personnel at all times. Do not interrupt.

28 **D.** Opposing counsel should not engage in extended conversations with each other when

1 court is in session. The Court will allow counsel to have a private conversation if it is requested and
2 efficient. Counsel should never argue with either opposing counsel or the Court.

3 **E.** Counsel will stand when addressing the Court or when examining witnesses.
4 Counsel must stand near a microphone and may not crowd the witness.

5 **F.** Counsel may approach a witness with the permission of the Court. If counsel needs
6 to approach the witness many times, the Court may instruct the attorney that he or she need not
7 continue to ask. Nonetheless, once the attorney has accomplished his or her reason for approaching
8 the witness (however many times), he or she should return to the place from which he or she is
9 questioning.

10 **G.** The Court does not permit speaking objections. Counsel should give the basis for the
11 objection in a word or phrase (e.g., "hearsay").

12 **H.** Counsel must state every objection for the record. Counsel may join an objection for
13 purposes of the record. The Court does not permit continuing objections.

14 **I.** Counsel has the responsibility to advise their witnesses to comply with any orders
15 granting motions in limine.

16 **J.** Counsel should advise all witnesses that they are not to begin any answer until the
17 question has been completed. Department XI does not require counsel to use Court Call for
18 telephonic appearances. Counsel must contact the Department one (1) day prior to the hearing to
19 setup the telephonic appearance. If multiple counsel elect to appear telephonically, counsel shall set
20 up a conference call number for use by all participating counsel

21 **K.** Counsel may appear by alternate means upon request.

22 **L.** All counsel will comply with Administrative Order 20-17 related to face coverings
23 and social distancing. Screening requirements by marshal(s) will be posted and enforced. Given the
24 large number of participants, this proceeding will be conducted off-site in a location provided by the
25 Court that allows compliance with social distancing requirements and provides only those amenities
26 which are identified as Court critical for conduct of the proceedings.

27 **M.** Given the suspension of proceedings referenced in Administrative order 20-17 and its
28 predecessors, many of the items referenced to be completed under the original trial protocol were

1 near completion. As a result the Court has compressed the final deadlines for the completion of
2 those items.

3 **II. PRETRIAL MOTIONS**

4 COMPLETED

5 **III. EXHIBITS**

6 A. The Parties shall prepare a joint list of exhibits, based upon the exhibits used during
7 any depositions and documents properly disclosed during discovery, which will be pre-marked with
8 an identification number in the range of 1-999. The Parties will create a joint list of potential trial
9 exhibits that may later be offered for admission at trial and create an electronic storage device for
10 each party and the Court containing these exhibits. The proposed trial exhibit list will mirror the
11 numbering of the deposition exhibits and any withdrawn deposition exhibit will have at the
12 corresponding number a reference to either "reserved" or "withdrawn." Prior to providing such trial
13 exhibits to the Court, the Parties will meet and identify exhibits that can be withdrawn or are
14 duplicates. If all Parties agree a deposition exhibit can be eliminated, it will be removed from the
15 preliminary trial exhibit list. If any party does not agree to eliminate a deposition exhibit, it will be
16 marked as a proposed trial exhibit.

17 B. For non-joint exhibits, the Parties will utilize the range of exhibit numbers assigned
18 to each party for identification of the exhibits. Each exhibit shall also bear the production number of
19 the document or item that was used during discovery to ensure that it is a properly, previously
20 produced document or other identifier that can be appropriately cross-referenced by the Parties. If
21 during the course of discovery a document was produced with an alphanumeric designation, the
22 discovery alphanumeric designation will be included on the exhibit list. If a party intends to use a
23 document as an exhibit at trial that was not given an alphanumeric designation (that all Parties were
24 previously provided access to), and was not utilized as an exhibit to a Court filing, the designating
25 party must identify the document in a manner that enables other parties to verify the prior
26 production and/or disclosure of the document and to locate such document.

27 C. The numbering system shall differentiate between evidentiary trial exhibits and
28 illustrative aids/demonstrative exhibits, with the illustrative aids/demonstrative exhibit identification

1 number containing the letter D preceding the identification number.

2 **D.** All exhibits shall be listed on a form used by Department XI to record such evidence
3 attached hereto as Exhibit "1."

4 **E.** After numbering the joint exhibits, non-joint trial exhibit number ranges will be
5 utilized by each side (ranges of 1,000 exhibits to each side). The numbering convention to be used
6 for trial exhibits will be strictly numeric. Each side shall designate a representative to eliminate
7 duplicate exhibits for the Plaintiffs and the Defendants, respectively. Each side is assigned a range
8 of exhibit numbers for their own exhibits.

9 1. Joint Proposed Exhibits (including deposition exhibits) 1-999

10 2. Proposed Non-Joint Exhibit Ranges for Each Side:

11 a) Plaintiffs 1,000-1,999.

12 b) Defendants 2,000-2,999.

13 If any additional party indicates an intention to participate in the trial by filing and serving a notice
14 with a courtesy copy delivered to the Court before the final pretrial conference on July 10, 2020, the
15 Court will make a determination as to additional ranges of exhibit numbers.

16 **F.** Each party must make its pre-trial disclosures under NRCP 16.1(a)(3) on or before
17 June 26, 2020. Each party's pre-trial disclosure must contain a list of their own proposed trial
18 exhibits in Excel format (including columns with the bates number, date, description, will call, and
19 may call) that can be integrated into a single Joint Exhibit List, and providing a complete set of the
20 exhibits to all the other Parties on an electronic storage device.

21 **G.** Each party will designate a paralegal and/or attorney to work together to coordinate
22 with HOLO on the production of the deposition exhibits and discovery documents to trial exhibits,
23 coordinate in the preparation of the Joint Trial Exhibit List, and ensure the Parties are complying
24 with the Court's requirements for marking exhibits for trial. The Parties' representative(s) should be
25 designated by June 29, 2020 so they can begin discussing Court's requirements for marking exhibits
26 and the Joint Exhibit List, and pricing and logistics with HOLO. The Parties' Joint Exhibit List shall
27 be finalized on or before July 2, 2020.

28 **H.** Given Administrative Order 20-17, the electronic exhibit protocol attached as Exhibit

1 “1” will be utilized by the parties.

2 **I.** All received exhibits shall be stored in the custody of the Court. Charts, summaries
3 or calculations sought to be admitted into evidence under NRS 52.275, along with the originals of
4 the voluminous documents or electronic information, shall be made available to other Parties at the
5 calendar call prior to trial, or, if created during the course of trial, at least one (1) days prior to
6 offering or using said chart, summary or calculation.

7 **J.** Enlargements of any exhibits sought to be used at trial, shall be handled in the same
8 manner as other exhibits. Any exhibit may be enlarged and utilized in a hard format if desired by a
9 Party but must contain the proposed trial exhibit number for reference.

10 **K.** The proposed electronic exhibits shall be submitted in portable document format
11 (.PDF).

12 **L.** Objections to each party’s proposed pre-trial exhibits will be served pursuant to
13 NRCP 16.1(a)(3)(B) on or before July 1, 2020 to facilitate the creation of the Joint Exhibit List.
14 Counsel will be familiar with the basis for any objection made pursuant to NRCP 16.1(a)(3)(B) and
15 shall address the objections at the final pretrial conference. Objections not disclosed in accordance
16 with NRCP 16.1(a)(3), other than objections under NRS 48.025 and 48.035, shall be deemed waived
17 unless excused by the court for good cause shown.

18 **M.** All exhibits proposed for use in trial will be cross referenced to exhibits sought to be
19 introduced by all other parties and sides. Counsel shall eliminate duplicative exhibits.

20 **N.** All documents the Parties anticipate using at trial, but for rebuttal documents,
21 impeachment documents, and documents related to unanticipated issues, will be disclosed prior to
22 the start of trial. Documents that are not identified in pre-trial disclosures will be handled on a case
23 by case basis with the understanding that a party seeking to use any document that was not
24 identified in pre-trial disclosures must show good cause.

25 **O.** Certain documents and material, which the Parties shall have need to use and present
26 to the Court, have been produced in this Action pursuant to the Confidentiality Agreement and
27 Protective Order filed on December 20, 2019. Parties shall consult to redact, if appropriate, trial
28 exhibits previously designated as confidential during discovery.

1 **IV. FINAL PRETRIAL CONFERENCE**

2 **A.** Pursuant to EDCR 2.67(a) counsel shall meet and discuss all issues required by the
3 rule on or before July 9, 2020.

4 **B.** In accordance with NRCP 16.1(a)(3)(B)(i), the parties shall designate their trial
5 witnesses on or before July 2, 2020.

6 **C. Designations of Depositions to be Used in Lieu of Live Testimony**

7 **1.** The Parties are discouraged from reading depositions at trial unless absolutely
8 necessary.

9 **2.** The Parties anticipate a number of depositions or prior testimony from the
10 preliminary injunction hearing will be utilized at trial in lieu of live testimony due to the
11 unavailability of the witness or for any other permitted reason under NRCP 32. In accordance with
12 NRCP 16.1(a)(3)(A)(ii), the Parties will identify testimony to be provided via deposition or
13 transcript and provide initial transcript designations on or before June 29, 2020. Any party wishing
14 to make a counter-designation will do so on or before July 2, 2020. Any rebuttal deposition
15 designations are to be made on or before July 6, 2020. Objections to any deposition designation,
16 counter-designation, or rebuttal designation will be made on July 8, 2020.

17 **3.** The Court will rule on any objections to the designations at the Final Pretrial
18 Conference.

19 **4.** The Parties recognize that there may be a need to alter and/or amend
20 depositions designations based on testimony provided during trial. Accordingly, any changes to
21 deposition designations must be provided to the Parties and the Court no less than one (1) judicial
22 day before the deposition testimony is intended to be presented at trial unless good cause is shown
23 for the failure to do so. This procedure does not alter or change evidentiary limitations.

24 **5.** Any video deposition to be shown to the Court shall be edited to streamline
25 the presentation of evidence. The Parties can present excerpts in the order approved by the Court at
26 the Final Pretrial Conference. All portions of a video deposition used in lieu of live testimony
27 presented during a certain phase will be shown together.

28 **6.** For impeachment or rebuttal purposes, advance notice of the portions of the

1 deposition depicting inconsistent testimony is not required. Proposals for the presentation of
2 deposition transcripts are still subject to evidentiary limitations.

3 7. To avoid delays during trial, counsel will notify the clerk of any depositions
4 anticipated to be used prior to the start of the day's proceedings. Failure of counsel to do so may
5 result in the Court refusing to permit counsel to utilize a particular deposition.

6 **D. Proposed Findings of Fact and Conclusions of Law**

7 1. At the commencement of each phase, counsel will file proposed findings of
8 fact and conclusions of law pertaining to that portion of the trial.

9 2. A copy of the proposed findings of fact and conclusions of law will be
10 emailed to the Court in Word format at the time of filing.

11 **E.** Pursuant to EDCR 2.67(b), on or before 4:00 p.m. on July 9, 2020, counsel shall
12 submit a joint pretrial memorandum executed by all counsel including all issues required by the rule.

13 **F. Final Pretrial Conference**

14 1. The Court will conduct the final pretrial conference on July 10, 2020 at 9 a.m.

15 2. Counsel are required to bring all items identified in EDCR 2.69(a) to the final
16 pretrial conference and exchange all items identified in EDCR 2.69(a) by July 8, 2020.

17 3. Exhibits will be pre-admitted to the extent practicable at the Final Pretrial
18 Conference. All documentary exhibits will be presented in electronic format in accordance with
19 Exhibit "1". Photographic evidence may be presented in hard copy form but must also be submitted
20 in electronic format. In accordance with EDCR 2.67, counsel shall meet, review, and discuss
21 exhibits.

22 4. Any planned demonstrative exhibits including data summaries, compilations
23 or exemplars anticipated to be used must be disclosed prior to the final Pre-Trial Conference.
24 Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or
25 make specific objections to individual proposed exhibits. Any additional demonstrative exhibits that
26 arise during trial shall be disclosed to all parties at least 24 hours in advance.

27 5. Any Power Point or computer animation anticipated to be used during the
28 presentation of evidence to illustrate a witness's testimony must be disclosed two (2) days prior to

1 the Final Pretrial Conference. At the time of the Final Pretrial Conference, the Court will rule on
2 any objections to the Power Point or computer animation. An electronic version of the Power Point
3 or computer animation must be presented to the Court at that time.

4 6. Unless impracticable to present evidence electronically, the Parties are
5 required to use trial presentation software to electronically and simultaneously display evidence to
6 everyone in the courtroom. The Parties will also be allowed to utilize traditional paper form
7 presentation of evidence as long as the other provisions are satisfied, i.e., the paper form
8 presentation of evidence has already been submitted electronically to the Court and other Parties, the
9 hard copy bears the same identifiers as the electronic copy, and hard copy documents of such
10 presentations are made available to the other Parties.

11 7. The Parties may hire an operator to provide, and upon the request of a party to
12 operate, the trial presentation software to avoid the complications of different systems, different
13 switching systems, and delays in presentation. All exhibits will be on one computer system with
14 traditional designations of potential exhibits and admitted exhibits. Each party is required to use the
15 software selected. A Party may contract with the provider for a person to operate the system during
16 trial or may take on the responsibility of hiring and training a person to operate the system for that
17 party during trial. Parties shall insure that non-admitted exhibits are blocked from viewing by the
18 Court until the Court directs the non-admitted exhibit to be disclosed for the Court's view.

19 8. Prior to the commencement of each phase, the Court will rule on any
20 objections to the deposition designations, counter-designations and editing of video deposition to be
21 used in lieu of live testimony. Any use of depositions will require publication of the original
22 transcript prior to reading or playing portions of the deposition.

23 **V. TRIAL SCHEDULE**

24 **A. Days and Hours**

25 1. All trial participants shall be punctual and prepared to proceed on schedule.
26 To minimize interruptions, attorneys may be permitted to enter and leave the courtroom discreetly
27 during the proceedings.

28 2. Court sessions will be held from 8:30 a.m. to 5:00 p.m., with a morning

1 break, a lunch recess, and an afternoon break, Monday through Friday, unless there is a recognized
2 judicial holiday as set forth below. If an issue arises that must be addressed prior to the
3 commencement of the next day of trial, counsel will notify all parties. Counsel will report at 8:00
4 a.m. to resolve any issues that need to be addressed before the presentation of evidence and
5 testimony.

6 **3.** The Court will recess on the following dates:

7 a) August 13-14, 2020.

8 b) September 7, 2020.

9 **B.** Weekly Conferences During Trial

10 **1.** To expedite the trial, it is advisable to devote the entire trial day to the
11 uninterrupted presentation of evidence. To the extent possible, objections (other than to a question
12 asked a witness), motions, and other matters that may interrupt the presentation of evidence, should
13 be raised at a time set aside by the Court. To the extent possible, objections, motions and other
14 matters that must be raised during the presentation of evidence shall be stated briefly.

15 **2.** Any issues to be addressed will be addressed on Friday sessions at 8:00 a.m.
16 The Court will permit counsel to communicate to the Court to plan the week's proceedings and fix
17 the order of witnesses and exhibits, avoiding surprises and ensuring that the Parties will not run out
18 of witnesses. These Weekly Conferences will also be utilized to hear written motions, to resolve
19 other issues and the Court may hear offers of proof and arguments accordingly in order to resolve
20 the same.

21 **VI. CONDUCT OF TRIAL**

22 The trial will be conducted in Phases as defined by the Court. This Order will apply to each
23 individual phase.

24 **A.** The use of trial briefs in this matter will be governed by EDCR Rule 7.27.

25 **B.** Opening Statements

26 **1.** Opening Statements, if any, shall commence on the first day of each phase.

27 **2.** The group of parties seeking affirmative relief in that phase shall be time
28 limited in Opening Statement to a total of three (3) hours. These parties shall agree among

1 themselves on the split of the time. If no agreement is reached the Court will allocate the time
 2 among the group. No more than one attorney may address the Court during Opening Statement for
 3 each party or similarly represented group of parties.¹

4 3. The group of parties participating in a phase not seeking affirmative relief in
 5 that phase shall be time limited in Opening Statement to a total of three (3) hours. These parties
 6 shall agree among themselves on the split of the time. If no agreement is reached the Court will
 7 allocate the time among the group. No more than one attorney per party group represented by a
 8 single team of counsel may address the Court during Opening Statement.

9 4. The Parties shall be allowed to deliver their Opening Statements in the order
 10 of the presentation of the Parties' cases.

11 5. During Opening Statements, the Parties will be permitted to utilize charts and
 12 other demonstrative aids not then in evidence; however, any such Power Points, charts or aids shall
 13 be provided to opposing counsel at least one (1) judicial day prior to commencement of the
 14 corresponding phase in order to allow any party to file any objection it may have to the same.

15 C. Presentation of Evidence

16 1. The Court, counsel and the witness shall be permitted to view a displayed
 17 non-admitted exhibit prior to its formal admission.

18 2. Counsel shall advise the clerk prior to the commencement of the trial day of
 19 any deposition transcripts anticipated to be used for publication.

20 3. Parties are encouraged to use trial aids such as glossaries, indexes, time lines,
 21 graphics, charts, diagrams, and computer animations to permit the Court a better opportunity to
 22 understand the evidence. To the extent practicable, the Parties shall endeavor to prepare joint
 23 exhibits for glossaries, indexes, and time lines. Any trial aids will be submitted to the Court
 24 electronically.

25 4. Each party shall electronically exchange lists of expected witnesses
 26 (including any depositions to be used in lieu of live testimony) who will be called to testify on one

27
 28 ¹ The Court has modified and lengthened the trial week to accommodate the needs of completing this matter in the time frames permitted for use of the offsite location.

1 (1) day notice. This list shall estimate the length of direct examination for each witness. Any
2 objections shall be made within one (1) judicial day of service of the disclosure. For impeachment
3 or rebuttal purposes, advance notice of the portions of the deposition depicting inconsistent
4 testimony is not required.

5 **5.** Counsel shall give one (1) week notice of their intent to call an adverse party
6 or its employees to testify. If a party will not make an employee available to testify and that
7 employee is beyond the Court's subpoena power, any party may offer that witness's deposition for
8 any purpose, unless it appears that the absence of the witness was procured by the party offering the
9 deposition. Use of any such deposition is subject to the disclosure requirements and any evidentiary
10 limitations.

11 **6.** No more than one attorney per party group represented by a single team of
12 counsel may examine a witness or make objection during the examination of the witness.

13 **7.** If, for any reason, a break in the proceedings of any phase of more than a
14 week occurs, counsel for the Parties may make an interim statement to the Court prior to the
15 resumption of the presentation of evidence. No more than one attorney per party may make an
16 interim statement. Such interim statement may only be used to explain or summarize evidence and
17 testimony already presented to the Court during that phase.

18 **D. Closing Arguments**

19 **1.** Counsel should be prepared to begin closing arguments immediately
20 following the close of all evidence in the phase.

21 **2.** During Closing Arguments, the Parties will be permitted to utilize Power
22 Point, charts and other demonstrative aids; however, any such charts or aids shall be provided to
23 opposing counsel at least one (1) judicial days prior to Closing Argument in order to allow any party
24 to file any objection it may have to the same. An electronic copy of the Power Point, charts and
25 other demonstrative aids must be provided to the Court.

26 **3.** The group of parties seeking affirmative relief in that phase shall be time
27 limited in Closing Statement to a total of six (6) hours. These parties shall agree among themselves
28 on the split of the time. If no agreement is reached the Court will allocate the time among the group.

1 4. The group of parties participating in a phase not seeking affirmative relief in
2 that phase shall be time limited in Opening Statement to a total of six (6) hours. These parties shall
3 agree among themselves on the split of the time. If no agreement is reached the Court will allocate
4 the time among the group. No more than one attorney per party group represented by a single team
5 of counsel may address the Court during Closing Argument.

6 5. Each party with affirmative claims, will have two opportunities to address the
7 Court in closing arguments. Different attorneys may argue the first and second closing arguments
8 for each per party group represented by a single team of counsel. The total time will not be
9 increased.

10 **VII. TRANSCRIPTS AND COURT REPORTING**

11 A. The Parties agree to utilize the Court's JAVs Court Recording System which will be
12 the official record.

13 B. The Parties agree to equally split the cost of expedited daily transcripts from the
14 Official Court Recorder. Each party shall either commit or decline to receive expedited daily
15 transcripts at the beginning of each Phase of the trial, and costs will be split equally among the
16 Parties that choose to receive the expedited transcripts.

17 C. Additionally, to facilitate the ability of the Parties to view questions, objections and
18 testimony, the Parties agree to have the proceedings reported on a real-time basis at their own
19 expense. Each party shall either commit or decline access to real-time court reporting at the
20 beginning of each Phase of the trial, and costs will be split equally among the Parties that choose to
21 have real-time access.

22 D. Should the Parties desire to have real time reporting during any phase of the trial, the
23 parties are required to make their own arrangements with the real time court reporters. The details
24 of any arrangements shall also be provided to the Official Court Recorder, at 702-671-4374. Each
25 party will need to provide its own monitor, device or other equipment for real time reporting
26 viewing.

27 **VIII. PHASES**

28 The trial will be conducted in a series of phases presented to the same judge. The phases

shall proceed seriatim, in the order set forth herein. Each phase may begin with an opening statement restricted to the issues to be litigated in that phase and may end with a closing statement. If all issues related to a particular phase have been resolved, the parties will proceed to the next phase with remaining issues.

A. First Phase – Petition for Judicial Review²

1. Unless otherwise resolved on the briefing outlined above in Section II, the DH Flamingo Plaintiffs, Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center, LLC, MM Development Company, Inc., Livfree Wellness LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such claims will present their affirmative claims related to their claims for Petition for Judicial Review.

a) The Plaintiffs will have one (1) day to present oral arguments based upon the administrative record, unless good cause is shown to extend the time.

b) The administrative record shall be filed by the DOT and include, with appropriate redactions, if necessary, of all records related to the applications and DOT's granting or denial of applications.

2. The DOT and Defendants will present their defenses and affirmative claims, if any, related to the Plaintiffs' claims for petition for judicial review.

a) The DOT and Defendants will have one (1) day to present arguments based on the administrative record against the petitions for judicial review, unless good cause is shown to extend the time.

3. The Plaintiffs will present their rebuttal on their affirmative claims.

a) The Plaintiffs will have one day (1) to present oral arguments based on the administrative record in rebuttal on its claims for judicial review, unless good cause is shown to extend the time.

4. The Court will deliberate, review the evidence, and render a decision on the

² This phase will follow the presentation of Phase 2.

1 claims raised in the First Phase.

2 **B. Second Phase³** – Legality of the 2018 recreational marijuana application process
3 (claims for Equal Protection, Due Process, Declaratory Relief, Intentional Interference with
4 Prospective Economic Advantage, Intentional Interference with Contractual Relations, and
5 Permanent Injunction)⁴

6 **1.** The Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center,
7 LLC, Qualcan, LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such
8 claims will present their affirmative claims related to legality of 2018 recreational marijuana
9 application process, including their claims for equal protection, due process, declaratory relief, and
10 permanent injunction.

11 **a)** The Plaintiffs will have two (2) weeks to present testimony and
12 evidence on their affirmative claims, unless good cause is shown to
13 extend the time.

14 **2.** The DOT and Defendants will present their defenses and affirmative claims,
15 if any, related to the claims by the plaintiffs.

16 **a)** The DOT and Defendants will have two (2) weeks to present
17 testimony and evidence their defenses and affirmative claims, if any, unless
18 good cause is shown to extend the time.

19 **3.** The Plaintiffs will present their rebuttal on their affirmative claims.

20 **a)** The Plaintiffs will have one (1) week to present testimony and
21 evidence in rebuttal on its affirmative claims, unless good cause is
22 shown to extend the time.

23 **4.** The Court will deliberate, review the evidence, and render a decision on the
24 claims raised in the Second Phase.

26 ³ This phase will begin on July 13, 2020.

27 ⁴ Given the modification to the trial week, the Court has adjusted the time permitted to accommodate use of the offsite
28 facility.

1 **C.** Third Phase⁵ – Writ of mandamus (Improper scoring of applications related to
2 calculation errors on the 2018 recreational marijuana application).

3 1. MM Development Company, Inc. and Livfree Wellness LLC and any other
4 Plaintiffs with mandamus claims will present their affirmative claims related to their writ of
5 mandamus claim based on the allegation of improper scoring of their applications due to calculation
6 errors.

7 a) The Plaintiffs will have three (3) days to present testimony and
8 evidence their affirmative claims, unless good cause is shown to
9 extend the time.

10 2. The DOT and Defendants will present their defense and affirmative claims, if
11 any, related to the claims by the MM Development Company, Inc. and Livfree Wellness LLC.

12 a) The DOT and Defendants will have one (1) day to present testimony
13 and evidence its defenses and affirmative claims, if any, unless good
14 cause is shown to extend the time.

15 3. The Plaintiffs will present their rebuttal on their affirmative claims.

16 a) The Plaintiffs will have one (1) day to present testimony and evidence
17 in rebuttal on its affirmative claims, unless good cause is shown to
18 extend the time.

19 4. The Court will deliberate, review the evidence, and render a decision on the
20 claims raised in the Third Phase.

21 **D.** Duplication of Testimony

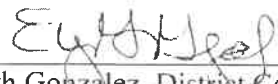
22 In order to avoid duplication of testimony, if any party desires to use testimony from any
23 phase in a subsequent phase, the party shall inform all parties and the Court of the testimony to be
24 offered via transcript, cite the portions of the transcript to be used, and provide all parties and the
25 Court a copy of the portions of transcript to be used at least three (3) judicial days before the
26 beginning of the phase in which the testimony will be used in lieu of live testimony.

27 _____
28 ⁵ This phase has been partially resolved by motion practice. Any remaining issues will be presented following Phase 1.

1 **IX. MISCELLANEOUS ISSUES**

2 The Court may amend this Order upon good cause shown. Any party, upon application to
3 the Court and a showing of good cause, may seek relief from the Court from any provision of this
4 Order.

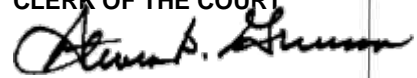
5 Dated this 23rd day of June, 2020.

6
7
8 
9 Elizabeth Gonzalez, District Court Judge

10
11
12 **Certificate of Service**

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

16
17 
18 Jill Hawkins



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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

Case No. : A-19-787004-B

Dept. No.: XI

7 **CONSOLIDATED WITH:**

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

12 **AMENDED TRIAL PROTOCOL NO. 2**

13 Trial Date: July 13, 2020

14
15 The Court having met with counsel for the parties, and after consideration of the proposal for
16 Trial Protocol submitted by the parties, the written status reports provided by counsel, the issues
17 posed by the current public health emergency and hearing comments of counsel, the Court adopts
18 the following as its amended trial protocol:

19 **I. COURTROOM ETIQUETTE**

20 **A.** Pursuant to Administrative Order No. 06-05, this Court permits counsel and their
21 staff to use wireless communications; however, such devices shall be placed away from recording
22 devices and microphones and must be turned off or placed on airplane mode to ensure that no
23 sounds are emitted from the device that may interrupt the proceedings. If the Court determines a
24 particular device is interfering with the sound and/or recording equipment, the Court may order all
25 electronic devices turned off.

26 **B.** The Court expects counsel to be punctual for all proceedings.

27 **C.** Counsel will be civil to one another as well as to all parties, witnesses, and court
28 personnel at all times. Do not interrupt.

1 **D.** Opposing counsel should not engage in extended conversations with each other when
2 court is in session. The Court will allow counsel to have a private conversation if it is requested and
3 efficient. Counsel should never argue with either opposing counsel or the Court.

4 **E.** Counsel will stand when addressing the Court or when examining witnesses.
5 Counsel must stand near a microphone and may not crowd the witness.

6 **F.** Counsel may approach a witness with the permission of the Court. If counsel needs
7 to approach the witness many times, the Court may instruct the attorney that he or she need not
8 continue to ask. Nonetheless, once the attorney has accomplished his or her reason for approaching
9 the witness (however many times), he or she should return to the place from which he or she is
10 questioning.

11 **G.** The Court does not permit speaking objections. Counsel should give the basis for the
12 objection in a word or phrase (e.g., “hearsay”).

13 **H.** Counsel must state every objection for the record. Counsel may join an objection for
14 purposes of the record. The Court does not permit continuing objections.

15 **I.** Counsel has the responsibility to advise their witnesses to comply with any orders
16 granting motions in limine.

17 **J.** Counsel should advise all witnesses that they are not to begin any answer until the
18 question has been completed. Department XI does not require counsel to use Court Call for
19 telephonic appearances. Counsel must contact the Department one (1) day prior to the hearing to
20 setup the telephonic appearance. If multiple counsel elect to appear telephonically, counsel shall set
21 up a conference call number for use by all participating counsel

22 **K.** Counsel may appear by alternate means upon request.

23 **L.** All counsel will comply with Administrative Order 20-17 related to face coverings
24 and social distancing. Screening requirements by marshal(s) will be posted and enforced. Given the
25 large number of participants, this proceeding will be conducted off-site in a location provided by the
26 Court that allows compliance with social distancing requirements and provides only those amenities
27 which are identified as Court critical for conduct of the proceedings.

28 **M.** Given the suspension of proceedings referenced in Administrative order 20-17 and its

predecessors, many of the items referenced to be completed under the original trial protocol were near completion. As a result the Court has compressed the final deadlines for the completion of those items.

II. PRETRIAL MOTIONS

COMPLETED

III. EXHIBITS

A. The Parties shall prepare a joint list of exhibits, based upon the exhibits used during any depositions and documents properly disclosed during discovery, which will be pre-marked with an identification number in the range of 1-999. The Parties will create a joint list of potential trial exhibits that may later be offered for admission at trial and create an electronic storage device for each party and the Court containing these exhibits. The proposed trial exhibit list will mirror the numbering of the deposition exhibits and any withdrawn deposition exhibit will have at the corresponding number a reference to either “reserved” or “withdrawn.” Prior to providing such trial exhibits to the Court, the Parties will meet and identify exhibits that can be withdrawn or are duplicates. If all Parties agree a deposition exhibit can be eliminated, it will be removed from the preliminary trial exhibit list. If any party does not agree to eliminate a deposition exhibit, it will be marked as a proposed trial exhibit.

B. For non-joint exhibits, the Parties will utilize the range of exhibit numbers assigned to each party for identification of the exhibits. Each exhibit shall also bear the production number of the document or item that was used during discovery to ensure that it is a properly, previously produced document or other identifier that can be appropriately cross-referenced by the Parties. If during the course of discovery a document was produced with an alphanumeric designation, the discovery alphanumeric designation will be included on the exhibit list. If a party intends to use a document as an exhibit at trial that was not given an alphanumeric designation (that all Parties were previously provided access to), and was not utilized as an exhibit to a Court filing, the designating party must identify the document in a manner that enables other parties to verify the prior production and/or disclosure of the document and to locate such document.

C. The numbering system shall differentiate between evidentiary trial exhibits and

illustrative aids/demonstrative exhibits, with the illustrative aids/demonstrative exhibit identification number containing the letter D preceding the identification number.

D. All exhibits shall be listed on a form used by Department XI to record such evidence attached hereto as Exhibit “1.”

E. After numbering the joint exhibits, non-joint trial exhibit number ranges will be utilized by each side (ranges of 1,000 exhibits to each side). The numbering convention to be used for trial exhibits will be strictly numeric. Each side shall designate a representative to eliminate duplicate exhibits for the Plaintiffs and the Defendants, respectively. Each side is assigned a range of exhibit numbers for their own exhibits.

1. Joint Proposed Exhibits (including deposition exhibits) 1-999

2. Proposed Non-Joint Exhibit Ranges for Each Side:

a) Plaintiffs 1,000-1,999.

b) Defendants 2,000-2,999.

If any additional party indicates an intention to participate in the trial by filing and serving a notice with a courtesy copy delivered to the Court before the final pretrial conference on July 10, 2020, the Court will make a determination as to additional ranges of exhibit numbers.

F. Each party must make its pre-trial disclosures under NRCP 16.1(a)(3) on or before June 26, 2020. Each party’s pre-trial disclosure must contain a list of their own proposed trial exhibits in Excel format (including columns with the bates number, date, description, will call, and may call) that can be integrated into a single Joint Exhibit List, and providing a complete set of the exhibits to all the other Parties on an electronic storage device.

G. Each party will designate a paralegal and/or attorney to work together to coordinate with the vendor on the production of the deposition exhibits and discovery documents to trial exhibits, coordinate in the preparation of the Joint Trial Exhibit List, and ensure the Parties are complying with the Court’s requirements for marking exhibits for trial. The Parties’ representative(s) should be designated by June 29, 2020 so they can begin discussing Court’s requirements for marking exhibits and the Joint Exhibit List, and pricing and logistics with the vendor. The Parties’ Joint Exhibit List shall be finalized on or before July 2, 2020.

1 **H.** Given Administrative Order 20-17, the electronic exhibit protocol attached as Exhibit
2 “2” will be utilized by the parties.

3 **I.** All received exhibits shall be stored in the custody of the Court. Charts, summaries
4 or calculations sought to be admitted into evidence under NRS 52.275, along with the originals of
5 the voluminous documents or electronic information, shall be made available to other Parties at the
6 calendar call prior to trial, or, if created during the course of trial, at least one (1) days prior to
7 offering or using said chart, summary or calculation.

8 **J.** Enlargements of any exhibits sought to be used at trial, shall be handled in the same
9 manner as other exhibits. Any exhibit may be enlarged and utilized in a hard format if desired by a
10 Party but must contain the proposed trial exhibit number for reference.

11 **K.** The proposed electronic exhibits shall be submitted in portable document format
12 (.PDF).

13 **L.** Objections to each party’s proposed pre-trial exhibits will be served pursuant to
14 NRCPP 16.1(a)(3)(B) on or before July 1, 2020 to facilitate the creation of the Joint Exhibit List.
15 Counsel will be familiar with the basis for any objection made pursuant to NRCPP 16.1(a)(3)(B) and
16 shall address the objections at the final pretrial conference. Objections not disclosed in accordance
17 with NRCPP 16.1(a)(3), other than objections under NRS 48.025 and 48.035, shall be deemed waived
18 unless excused by the court for good cause shown.

19 **M.** All exhibits proposed for use in trial will be cross referenced to exhibits sought to be
20 introduced by all other parties and sides. Counsel shall eliminate duplicative exhibits.

21 **N.** All documents the Parties anticipate using at trial, but for rebuttal documents,
22 impeachment documents, and documents related to unanticipated issues, will be disclosed prior to
23 the start of trial. Documents that are not identified in pre-trial disclosures will be handled on a case
24 by case basis with the understanding that a party seeking to use any document that was not
25 identified in pre-trial disclosures must show good cause.

26 **O.** Certain documents and material, which the Parties shall have need to use and present
27 to the Court, have been produced in this Action pursuant to the Confidentiality Agreement and
28 Protective Order filed on December 20, 2019. Parties shall consult to redact, if appropriate, trial

1 exhibits previously designated as confidential during discovery.

2 **IV. FINAL PRETRIAL CONFERENCE**

3 **A.** Pursuant to EDCR 2.67(a) counsel shall meet and discuss all issues required by the
4 rule on or before July 9, 2020.

5 **B.** In accordance with NRCP 16.1(a)(3)(B)(i), the parties shall designate their trial
6 witnesses on or before July 2, 2020.

7 **C. Designations of Depositions to be Used in Lieu of Live Testimony**

8 **1.** The Parties are discouraged from reading depositions at trial unless absolutely
9 necessary.

10 **2.** The Parties anticipate a number of depositions or prior testimony from the
11 preliminary injunction hearing will be utilized at trial in lieu of live testimony due to the
12 unavailability of the witness or for any other permitted reason under NRCP 32. In accordance with
13 NRCP 16.1(a)(3)(A)(ii), the Parties will identify testimony to be provided via deposition or
14 transcript and provide initial transcript designations on or before June 29, 2020. Any party wishing
15 to make a counter-designation will do so on or before July 2, 2020. Any rebuttal deposition
16 designations are to be made on or before July 6, 2020. Objections to any deposition designation,
17 counter-designation, or rebuttal designation will be made on July 8, 2020.

18 **3.** The Court will rule on any objections to the designations at the Final Pretrial
19 Conference.

20 **4.** The Parties recognize that there may be a need to alter and/or amend
21 depositions designations based on testimony provided during trial. Accordingly, any changes to
22 deposition designations must be provided to the Parties and the Court no less than one (1) judicial
23 day before the deposition testimony is intended to be presented at trial unless good cause is shown
24 for the failure to do so. This procedure does not alter or change evidentiary limitations.

25 **5.** Any video deposition to be shown to the Court shall be edited to streamline
26 the presentation of evidence. The Parties can present excerpts in the order approved by the Court at
27 the Final Pretrial Conference. All portions of a video deposition used in lieu of live testimony
28 presented during a certain phase will be shown together.

1 6. For impeachment or rebuttal purposes, advance notice of the portions of the
2 deposition depicting inconsistent testimony is not required. Proposals for the presentation of
3 deposition transcripts are still subject to evidentiary limitations.

4 7. To avoid delays during trial, counsel will notify the clerk of any depositions
5 anticipated to be used prior to the start of the day's proceedings. Failure of counsel to do so may
6 result in the Court refusing to permit counsel to utilize a particular deposition.

7 **D. Proposed Findings of Fact and Conclusions of Law**

8 1. At the commencement of each phase, counsel will file proposed findings of
9 fact and conclusions of law pertaining to that portion of the trial.

10 2. A copy of the proposed findings of fact and conclusions of law will be
11 emailed to the Court in Word format at the time of filing.

12 E. Pursuant to EDCR 2.67(b), on or before 4:00 p.m. on July 9, 2020, counsel shall
13 submit a joint pretrial memorandum executed by all counsel including all issues required by the rule.

14 **F. Final Pretrial Conference**

15 1. The Court will conduct the final pretrial conference on July 10, 2020 at 9 a.m.

16 2. Counsel are required to bring all items identified in EDCR 2.69(a) to the final
17 pretrial conference and exchange all items identified in EDCR 2.69(a) by July 8, 2020.

18 3. Exhibits will be pre-admitted to the extent practicable at the Final Pretrial
19 Conference. All documentary exhibits will be presented in electronic format in accordance with
20 Exhibit "1". Photographic evidence may be presented in hard copy form but must also be submitted
21 in electronic format. In accordance with EDCR 2.67, counsel shall meet, review, and discuss
22 exhibits.

23 4. Any planned demonstrative exhibits including data summaries, compilations
24 or exemplars anticipated to be used must be disclosed prior to the final Pre-Trial Conference.
25 Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or
26 make specific objections to individual proposed exhibits. Any additional demonstrative exhibits that
27 arise during trial shall be disclosed to all parties at least 24 hours in advance.

28 5. Any Power Point or computer animation anticipated to be used during the

1 presentation of evidence to illustrate a witness's testimony must be disclosed two (2) days prior to
2 the Final Pretrial Conference. At the time of the Final Pretrial Conference, the Court will rule on
3 any objections to the Power Point or computer animation. An electronic version of the Power Point
4 or computer animation must be presented to the Court at that time.

5 6. Unless impracticable to present evidence electronically, the Parties are
6 required to use trial presentation software to electronically and simultaneously display evidence to
7 everyone in the courtroom. The Parties will also be allowed to utilize traditional paper form
8 presentation of evidence as long as the other provisions are satisfied, i.e., the paper form
9 presentation of evidence has already been submitted electronically to the Court and other Parties, the
10 hard copy bears the same identifiers as the electronic copy, and hard copy documents of such
11 presentations are made available to the other Parties.

12 7. The Parties may hire an operator to provide, and upon the request of a party to
13 operate, the trial presentation software to avoid the complications of different systems, different
14 switching systems, and delays in presentation. All exhibits will be on one computer system with
15 traditional designations of potential exhibits and admitted exhibits. Each party is required to use the
16 software selected. A Party may contract with the provider for a person to operate the system during
17 trial or may take on the responsibility of hiring and training a person to operate the system for that
18 party during trial. Parties shall insure that non-admitted exhibits are blocked from viewing by the
19 Court until the Court directs the non-admitted exhibit to be disclosed for the Court's view.

20 8. Prior to the commencement of each phase, the Court will rule on any
21 objections to the deposition designations, counter-designations and editing of video deposition to be
22 used in lieu of live testimony. Any use of depositions will require publication of the original
23 transcript prior to reading or playing portions of the deposition.

24 **V. TRIAL SCHEDULE**

25 **A. Days and Hours**

26 1. All trial participants shall be punctual and prepared to proceed on schedule.
27 To minimize interruptions, attorneys may be permitted to enter and leave the courtroom discreetly
28 during the proceedings.

2. Court sessions will be held from 8:30 a.m. to 5:00 p.m., with a morning break, a lunch recess, and an afternoon break, Monday through Friday, unless there is a recognized judicial holiday as set forth below. If an issue arises that must be addressed prior to the commencement of the next day of trial, counsel will notify all parties. Counsel will report at 8:00 a.m. to resolve any issues that need to be addressed before the presentation of evidence and testimony.

3. The Court will recess on the following dates:

a) August 13-14, 2020.

b) September 7, 2020.

B. Weekly Conferences During Trial

1. To expedite the trial, it is advisable to devote the entire trial day to the uninterrupted presentation of evidence. To the extent possible, objections (other than to a question asked a witness), motions, and other matters that may interrupt the presentation of evidence, should be raised at a time set aside by the Court. To the extent possible, objections, motions and other matters that must be raised during the presentation of evidence shall be stated briefly.

2. Any issues to be addressed will be addressed on Friday sessions at 8:00 a.m. The Court will permit counsel to communicate to the Court to plan the week's proceedings and fix the order of witnesses and exhibits, avoiding surprises and ensuring that the Parties will not run out of witnesses. These Weekly Conferences will also be utilized to hear written motions, to resolve other issues and the Court may hear offers of proof and arguments accordingly in order to resolve the same.

VI. CONDUCT OF TRIAL

The trial will be conducted in Phases as defined by the Court. This Order will apply to each individual phase.

A. The use of trial briefs in this matter will be governed by EDCR Rule 7.27.

B. Opening Statements

1. Opening Statements, if any, shall commence on the first day of each phase.

2. The group of parties seeking affirmative relief in that phase shall be time

1 limited in Opening Statement to a total of three (3) hours. These parties shall agree among
 2 themselves on the split of the time. If no agreement is reached the Court will allocate the time
 3 among the group. No more than one attorney may address the Court during Opening Statement for
 4 each party or similarly represented group of parties.¹

5 **3.** The group of parties participating in a phase not seeking affirmative relief in
 6 that phase shall be time limited in Opening Statement to a total of three (3) hours. These parties
 7 shall agree among themselves on the split of the time. If no agreement is reached the Court will
 8 allocate the time among the group. No more than one attorney per party group represented by a
 9 single team of counsel may address the Court during Opening Statement.

10 **4.** The Parties shall be allowed to deliver their Opening Statements in the order
 11 of the presentation of the Parties' cases.

12 **5.** During Opening Statements, the Parties will be permitted to utilize charts and
 13 other demonstrative aids not then in evidence; however, any such Power Points, charts or aids shall
 14 be provided to opposing counsel at least one (1) judicial day prior to commencement of the
 15 corresponding phase in order to allow any party to file any objection it may have to the same.

16 **C. Presentation of Evidence**

17 **1.** The Court, counsel and the witness shall be permitted to view a displayed
 18 non-admitted exhibit prior to its formal admission.

19 **2.** Counsel shall advise the clerk prior to the commencement of the trial day of
 20 any deposition transcripts anticipated to be used for publication.

21 **3.** Parties are encouraged to use trial aids such as glossaries, indexes, time lines,
 22 graphics, charts, diagrams, and computer animations to permit the Court a better opportunity to
 23 understand the evidence. To the extent practicable, the Parties shall endeavor to prepare joint
 24 exhibits for glossaries, indexes, and time lines. Any trial aids will be submitted to the Court
 25 electronically.

26 **4.** Each party shall electronically exchange lists of expected witnesses
 27

28 ¹ The Court has modified and lengthened the trial week to accommodate the needs of completing this matter in
 the time frames permitted for use of the offsite location.

(including any depositions to be used in lieu of live testimony) who will be called to testify on one (1) day notice. This list shall estimate the length of direct examination for each witness. Any objections shall be made within one (1) judicial day of service of the disclosure. For impeachment or rebuttal purposes, advance notice of the portions of the deposition depicting inconsistent testimony is not required.

5. Counsel shall give one (1) week notice of their intent to call an adverse party or its employees to testify. If a party will not make an employee available to testify and that employee is beyond the Court's subpoena power, any party may offer that witness's deposition for any purpose, unless it appears that the absence of the witness was procured by the party offering the deposition. Use of any such deposition is subject to the disclosure requirements and any evidentiary limitations.

6. No more than one attorney per party group represented by a single team of counsel may examine a witness or make objection during the examination of the witness.

7. If, for any reason, a break in the proceedings of any phase of more than a week occurs, counsel for the Parties may make an interim statement to the Court prior to the resumption of the presentation of evidence. No more than one attorney per party may make an interim statement. Such interim statement may only be used to explain or summarize evidence and testimony already presented to the Court during that phase.

D. Closing Arguments

1. Counsel should be prepared to begin closing arguments immediately following the close of all evidence in the phase.

2. During Closing Arguments, the Parties will be permitted to utilize Power Point, charts and other demonstrative aids; however, any such charts or aids shall be provided to opposing counsel at least one (1) judicial days prior to Closing Argument in order to allow any party to file any objection it may have to the same. An electronic copy of the Power Point, charts and other demonstrative aids must be provided to the Court.

3. The group of parties seeking affirmative relief in that phase shall be time limited in Closing Statement to a total of six (6) hours. These parties shall agree among themselves

1 on the split of the time. If no agreement is reached the Court will allocate the time among the group.

2 4. The group of parties participating in a phase not seeking affirmative relief in
3 that phase shall be time limited in Opening Statement to a total of six (6) hours. These parties shall
4 agree among themselves on the split of the time. If no agreement is reached the Court will allocate
5 the time among the group. No more than one attorney per party group represented by a single team
6 of counsel may address the Court during Closing Argument.

7 5. Each party with affirmative claims, will have two opportunities to address the
8 Court in closing arguments. Different attorneys may argue the first and second closing arguments
9 for each per party group represented by a single team of counsel. The total time will not be
10 increased.

11 **VII. TRANSCRIPTS AND COURT REPORTING**

12 A. The Parties agree to utilize the Court's JAVs Court Recording System which will be
13 the official record.

14 B. The Parties agree to equally split the cost of expedited daily transcripts from the
15 Official Court Recorder. Each party shall either commit or decline to receive expedited daily
16 transcripts at the beginning of each Phase of the trial, and costs will be split equally among the
17 Parties that choose to receive the expedited transcripts.

18 C. Additionally, to facilitate the ability of the Parties to view questions, objections and
19 testimony, the Parties agree to have the proceedings reported on a real-time basis at their own
20 expense. Each party shall either commit or decline access to real-time court reporting at the
21 beginning of each Phase of the trial, and costs will be split equally among the Parties that choose to
22 have real-time access.

23 D. Should the Parties desire to have real time reporting during any phase of the trial, the
24 parties are required to make their own arrangements with the real time court reporters. The details
25 of any arrangements shall also be provided to the Official Court Recorder, at 702-671-4374. Each
26 party will need to provide its own monitor, device or other equipment for real time reporting
27 viewing.
28

VIII. PHASES

The trial will be conducted in a series of phases presented to the same judge. The phases shall proceed seriatim, in the order set forth herein. Each phase may begin with an opening statement restricted to the issues to be litigated in that phase and may end with a closing statement. If all issues related to a particular phase have been resolved, the parties will proceed to the next phase with remaining issues.

A. First Phase – Petition for Judicial Review²

1. Unless otherwise resolved on the briefing outlined above in Section II, the DH Flamingo Plaintiffs, Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center, LLC, MM Development Company, Inc., Livfree Wellness LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such claims will present their affirmative claims related to their claims for Petition for Judicial Review.

a) The Plaintiffs will have one (1) day to present oral arguments based upon the administrative record, unless good cause is shown to extend the time.

b) The administrative record shall be filed by the DOT and include, with appropriate redactions, if necessary, of all records related to the applications and DOT's granting or denial of applications.

2. The DOT and Defendants will present their defenses and affirmative claims, if any, related to the Plaintiffs' claims for petition for judicial review.

a) The DOT and Defendants will have one (1) day to present arguments based on the administrative record against the petitions for judicial review, unless good cause is shown to extend the time.

3. The Plaintiffs will present their rebuttal on their affirmative claims.

a) The Plaintiffs will have one day (1) to present oral arguments based on the administrative record in rebuttal on its claims for judicial

² This phase will follow the presentation of Phase 2.

review, unless good cause is shown to extend the time.

4. The Court will deliberate, review the evidence, and render a decision on the claims raised in the First Phase.

B. Second Phase³ – Legality of the 2018 recreational marijuana application process (claims for Equal Protection, Due Process, Declaratory Relief, Intentional Interference with Prospective Economic Advantage, Intentional Interference with Contractual Relations, and Permanent Injunction)⁴

1. The Serenity Wellness Plaintiffs, ETW Plaintiffs, Nevada Wellness Center, LLC, Qualcan, LLC and Compassionate Team of Las Vegas, LLC and any other Plaintiffs with such claims will present their affirmative claims related to legality of 2018 recreational marijuana application process, including their claims for equal protection, due process, declaratory relief, and permanent injunction.

a) The Plaintiffs will have four (4) weeks to present testimony and evidence on their affirmative claims, unless good cause is shown to extend the time.

2. The DOT and Defendants will present their defenses and affirmative claims, if any, related to the claims by the plaintiffs.

a) The DOT and Defendants will have four (4) weeks to present testimony and evidence their defenses and affirmative claims, if any, unless good cause is shown to extend the time.

3. The Plaintiffs will present their rebuttal on their affirmative claims.

a) The Plaintiffs will have one (1) week to present testimony and evidence in rebuttal on its affirmative claims, unless good cause is shown to extend the time.

4. The Court will deliberate, review the evidence, and render a decision on the

³ This phase will begin on July 13, 2020.

⁴ Given the modification to the trial week, the Court has adjusted the time permitted to accommodate use of the offsite facility.

1 claims raised in the Second Phase.

2 **C. Third Phase⁵ – Writ of mandamus (Improper scoring of applications related to**
3 calculation errors on the 2018 recreational marijuana application).

4 **1.** MM Development Company, Inc. and Livfree Wellness LLC and any other
5 Plaintiffs with mandamus claims will present their affirmative claims related to their writ of
6 mandamus claim based on the allegation of improper scoring of their applications due to calculation
7 errors.

8 **a)** The Plaintiffs will have three (3) days to present testimony and
9 evidence their affirmative claims, unless good cause is shown to
10 extend the time.

11 **2.** The DOT and Defendants will present their defense and affirmative claims, if
12 any, related to the claims by the MM Development Company, Inc. and Livfree Wellness LLC.

13 **a)** The DOT and Defendants will have one (1) day to present testimony
14 and evidence its defenses and affirmative claims, if any, unless good
15 cause is shown to extend the time.

16 **3.** The Plaintiffs will present their rebuttal on their affirmative claims.

17 **a)** The Plaintiffs will have one (1) day to present testimony and evidence
18 in rebuttal on its affirmative claims, unless good cause is shown to
19 extend the time.

20 **4.** The Court will deliberate, review the evidence, and render a decision on the
21 claims raised in the Third Phase.

22 **D. Duplication of Testimony**

23 In order to avoid duplication of testimony, if any party desires to use testimony from any
24 phase in a subsequent phase, the party shall inform all parties and the Court of the testimony to be
25 offered via transcript, cite the portions of the transcript to be used, and provide all parties and the
26 Court a copy of the portions of transcript to be used at least three (3) judicial days before the


27
28 ⁵ This phase has been partially resolved by motion practice. Any remaining issues will be presented following Phase 1.

1 beginning of the phase in which the testimony will be used in lieu of live testimony.

2 **IX. MISCELLANEOUS ISSUES**

3 The Court may amend this Order upon good cause shown. Any party, upon application to
4 the Court and a showing of good cause, may seek relief from the Court from any provision of this
5 Order.

6 Dated this 2nd day of July, 2020.

7
8 
9 Elizabeth Gonzalez, District Court Judge
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11
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13

14 **Certificate of Service**

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

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19 Jill Hawkins
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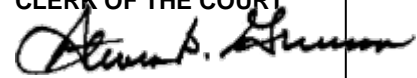
EXHIBIT 1

EXHIBIT 2

Proposed Administrative Order Regarding Electronic Exhibits for Trial

1. Whenever a party determines and the Court orders that the submission of documentary and/or photographic evidence will be made in electronic format in a particular case, the submission of the proposed exhibits will be made pursuant to this order.
2. The proposed electronic exhibits shall be submitted in portable document format (.PDF).
3. Photographs must have at least a 1 inch border at the top of the page for the clerk to be able to affix the indicator documenting the admission of the photo. If the court deems the quality of the photograph is not of sufficient quality for demonstrative purposes, the photo shall be re-submitted in traditional format.
4. Prior to trial each party will be assigned a range of exhibit numbers for use in naming exhibits. The file name for each proposed electronic exhibit shall be numerical, i.e. 1047.pdf. Each page within the proposed exhibit will be internally and sequentially numbered beginning with the trial exhibit number and the page number will be placed on each page of the proposed electronic exhibit in the lower right hand corner in the following format "1047-001". No letters will be used as exhibit numbers for identifying proposed electronic exhibits.
5. The proposed electronic exhibits shall be submitted on a single electronic storage device, except when the integrity of the proposed electronic exhibit would be corrupted by being on a single electronic storage device or the volume of the proposed electronic exhibit(s) cannot practically be stored on a single electronic storage device. The electronic storage device must have space available for additional storage of electronic data in at least an amount equal to the storage required for the proposed electronic exhibit(s). External hard drives must have a minimum read speed of 33 MBps and minimum write speed of 25 MBps.
6. An exhibit list in substantially the same form as the attachment hereto shall be provided in paper form as well as electronic in Excel format. The electronic (Excel) version of the exhibit list is to be named "Exhibit List" and is to be located on the master electronic storage device only. The font size shall be 12 and the font style to be used is Times New Roman. The list must include the following information in tabular format for each proposed electronic exhibit (please note that traditional "physical" evidence is not to be listed on the electronic exhibit list and should be submitted on a separate exhibit list):
 - a. The exhibit number for the proposed electronic exhibit consistent with paragraph 4 above
 - b. The identification of the electronic storage device on which the proposed exhibit is stored or a space for the clerk to make notation in the event the Exhibit was submitted in traditional form
 - c. A description of the proposed electronic exhibit
 - d. Any numeric or alphanumeric designation used on the proposed electronic exhibit during discovery or other pretrial proceedings

- e. Whether a stipulation to the admission of the proposed electronic exhibit exists
 - f. A space for the clerk to make notation on the date the proposed electronic exhibits is offered
 - g. A space for the clerk to make notation on objections made to the proposed electronic exhibits at the time it is offered for admission
 - h. A space for the clerk to make notation on the admission of the proposed electronic exhibits
7. Absent good cause shown, no exhibits not included in the proffered electronic storage device will be accepted electronically.
 8. The proposed electronic exhibit shall exactly match the admitted electronic exhibit. Any change between the proposed electronic exhibit and the admitted electronic exhibit will require the submission of the exhibit as a supplemental proposed electronic exhibit by offering counsel with a new proposed exhibit number in conformance with paragraph 4.
 9. The party offering the proposed electronic exhibits shall provide the clerk with two identical sets of the proposed electronic exhibits on separate electronic storage devices. In the event of a jury trial, an additional blank electronic storage device will be required to copy all of the admitted electronic exhibits onto for use by the jury (see paragraph 12). The clerk will maintain one of the electronic storage devices as a master without modification.
 10. Prior to the clerk admitting the electronic storage devices, the clerk will perform a virus check on each device in the presence of counsel or their designee.
 11. Following admission of a proposed electronic exhibit, the clerk will electronically move the admitted electronic exhibit to a subfolder for all admitted exhibits wherein the clerk will electronically affix an indicator documenting the admission of the proposed electronic exhibit in the case and identifying the case number and date of admission. The admitted electronic exhibit will be protected from any additional attempts to modify the admitted electronic exhibit.
 12. Prior to the commencement of deliberations by a jury, if the trial is a jury trial, the party proffering the electronic exhibits will provide a laptop computer and additional monitor with only an operating system and associated programs, an adobe program to permit viewing of the admitted exhibits, and no internet or other research capability. The laptop will be subject to inspection by Court I.T. staff and counsel for compliance prior to it being provided to the deliberating jury.
 13. Upon completion of the trial, the clerk will transmit the electronic storage device to the vault for retention in accordance with Part XI of the Supreme Court Rules.



FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation

Case No. A-19-787004-B

Consolidated with:

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787035-C

A-19-787540-W

A-19-787726-C

A-19-801416-B

Dept. No. XI

FINDINGS OF FACT, CONCLUSION OF LAW AND PERMANENT INJUNCTION

This matter having come before the Court for a non-jury trial on Phase 2 pursuant to the Trial Protocol¹ beginning on July 17, 2020², and occurring day to day thereafter until its completion on August 18, 2020. The following counsel and party representatives participated in this Phase of the Trial:³

The Plaintiffs

Dominic P. Gentile, Esq., John A. Hunt, Esq., Mark S. Dzarnoski, Esq. and Ross J. Miller, Esq., of the law firm Clark Hill, appeared on behalf of TGIG, LLC; Nevada Holistic Medicine, LLC; GBS

¹ Phase 2 as outlined in the Trial protocol includes:

Legality of the 2018 recreational marijuana application process (claims for Equal Protection, Due Process, Declaratory Relief, Intentional Interference with Prospective Economic Advantage, Intentional Interference with Contractual Relations, and Permanent Injunction).

² Prior to the commencement of trial the Court commenced an evidentiary hearing relief to Nevada Wellness motion for case terminating sanctions filed 6/26/2020. The decision in 136 NAO 42 raised issues which caused the Court to suspend that hearing and consolidate it with the merits of the trial. As a result of the evidence presented during trial the motion is granted in part.

³ Given the social distancing requirements many representatives attended telephonically for at least a portion of the proceedings.

1 Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm,
2 LLC; and Medifarm IV, LLC; (Case No. A786962-B) (the “TGIG Plaintiffs”) Demetri Kouretas
3 appeared as the representative for TGIG, LLC; Scott Sibley appeared as the representative for Nevada
4 Holistic Medicine, LLC; Michael Viellion appeared as the representative for GBS Nevada Partners,
5 LLC; Michael Sullivan appeared as the representative for Gravitas Nevada, LLC; David Thomas
6 appeared as the representative for Nevada Pure, LLC; and, Mike Nahass appeared as the representative
7 for Medifarm, LLC and Medifarm IV, LLC;
8

9 Adam K. Bult, Esq., and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber
10 Schreck, LLP, appeared on behalf of ETW Management Group, LLC; Global Harmony, LLC; Just
11 Quality, LLC; Libra Wellness Center, LLC; Rombough Real Estate Inc. dba Mother Herb; and Zion
12 Gardens, LLC; (Case No. A787004-B) (the “ETW Plaintiffs”) Paul Thomas appeared as the
13 representative for ETW Management Group, LLC; John Heishman appeared as the representative for
14 Global Harmony, LLC; Ronald Memo appeared as the representative for Just Quality, LLC; Erik Nord
15 appeared as the representative for Libra Wellness Center, LLC; Craig Rombough appeared as the
16 representative for Rombough Real Estate Inc. dba Mother Herb; and, Judah Zakalik appeared as the
17 representative for Zion Gardens, LLC;
18

19 William S. Kemp, Esq., and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones & Coulthard,
20 LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness, LLC; (Case No.
21 A785818-W) (the “MM Plaintiffs”); Leighton Koehler appeared as the representative for MM
22 Development Company, Inc.; and Tim Harris appeared as the representative for LivFree Wellness,
23 LLC;
24

25 Theodore Parker III, Esq., and Mahogany A. Turfley, Esq., of the law firm Parker Nelson &
26 Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W) and Frank
27 Hawkins appeared as the representative for Nevada Wellness Center;
28

1 Peter S. Christiansen, Esq., and Whitney Barrett, Esq., of the law firm Christiansen Law
2 Offices, appeared on behalf of Qualcan LLC and Lorenzo Barracco appeared as the representative for
3 Qualcan LLC;

4 James W. Puzey, Esq., of the law firm Holley, Driggs, Walch, Fine, Puzey, Stein & Thompson,
5 appeared on behalf of High Sierra Holistics, LLC and Russ Ernst appeared as the representative for
6 High Sierra Holistics, LLC;

7 Amy L. Sugden, Esq., of Sugden Law, appeared on behalf of THC Nevada, LLC and Allen
8 Puliz appeared as the representative for THC Nevada, LLC;

9 Sigal Chattah, Esq., of the law firm Chattah Law Group, appeared on behalf of Herbal Choice,
10 Inc. and Ron Doumani appeared as the representative for Herbal Choice, Inc.;

11 Nicolas R. Donath, Esq., of the law firm N.R. Donath & Associates, PLLC, appeared on behalf
12 of Green Leaf Farms Holdings, LLC; Green Therapeutics, LLC; NevCann, LLC; and Red Earth, LLC
13 and Mark Bradley appeared as the representative for Green Leaf Farms Holdings, LLC; Green
14 Therapeutics, LLC; NevCann, LLC; and Red Earth, LLC;

15 Stephanie J. Smith, Esq., of Bendavid Law, appeared on behalf of Natural Medicine, LLC and
16 Endalkachew “Andy” Mersha appeared as the representative for Natural Medicine, LLC;

17 Craig D. Slater, Esq., of the law firm Luh & Associates, appeared on behalf of Clark Natural
18 Medicinal Solutions, LLC; NYE Natural Medicinal Solutions, LLC; Clark NMSD, LLC; and Inyo Fine
19 Cannabis Dispensary, LLC; Pejman Bady appeared as the representative for Clark Natural Medicinal
20 Solutions, LLC; NYE Natural Medicinal Solutions, LLC; and Clark NMSD, LLC; and David
21 Goldwater appeared as the representative Inyo Fine Cannabis Dispensary, LLC;⁴

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⁴ Although Rural Remedies, LLC claims were severed for this phase, Clarence E. Gamble, Esq., of the law firm
28 Ramos Law participated on its behalf by phone.

The State

Diane L. Welch, Esq. of the law firm McDonald Carano, LLP, appeared on behalf of Jorge Pupo (“Pupo”);

Steven G. Shevorski, Esq., and Akke Levin, Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada, Department of Taxation (“DoT”) and Cannabis Compliance Board⁵ (“CCB”) (collectively “the State”) and Karalin Cronkhite appeared as the representative for the DoT and CCB;

The Industry Defendants

David R. Koch, Esq., and Brody Wight, Esq., of the law firm Koch & Scow, LLC, appeared on behalf of Nevada Organic Remedies, LLC (“NOR”) and Kent Kiffner appeared as the representative for Nevada Organic Remedies, LLC;

Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm Black & Lobello, appeared on behalf of Clear River, LLC and Tisha Black appeared as the representative for Clear River, LLC;

Eric D. Hone, Esq., and Joel Schwarz, Esq., of the law firm H1 Law Group, appeared on behalf of Lone Mountain Partners, LLC;

Alina M. Shell, Esq., Cayla Witty, Esq., and Leo Wolpert, Esq., of the law firm McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC;

Jared Kahn, Esq., of the law firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc. and Alfred Terteryan appeared as the representative for Helping Hands Wellness Center, Inc.;

Rick R. Hsu, Esq., of the law firm Maupin, Cox & LeGoy, appeared on behalf of Pure Tonic Concentrates, LLC;

⁵ The CCB was added based upon motion practice as a result of the transfer of responsibility for the Marijuana Enforcement Division effective on July 1, 2020.

1 Jennifer Braster, Esq., and Andrew J. Sharples, Esq., of the law firm Naylor & Braster,
2 appeared on behalf of Circle S Farms, LLC;

3 Christopher Rose, Esq., and Kirill Mikhaylov, Esq., of the law firm Howard and Howard,
4 appeared on behalf of Wellness Connection of Nevada, LLC and Matt McClure appeared as the
5 representative for Wellness Connection of Nevada, LLC;

6 Richard D. Williamson, Esq., and Anthony G. Arger, Esq., of the law firm Robertson, Johnson,
7 Miller & Williamson, appeared on behalf of Deep Roots Medical, LLC and Keith Capurro appeared as
8 the representative for Deep Roots Medical, LLC;

9 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Dennis Prince,
10 Esq., of the Prince Law Group, appeared on behalf of CPCM Holdings, LLC d/b/a Thrive Cannabis
11 Marketplace; Commerce Park Medical, LLC; and Cheyenne Medical, LLC (“Thrive”) and Phil
12 Peckman appeared as the representative for on behalf of CPCM Holdings, LLC d/b/a Thrive Cannabis
13 Marketplace; Commerce Park Medical, LLC; and Cheyenne Medical, LLC (“Thrive”);

14 Todd L. Bice, Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice, appeared on
15 behalf of Integral Associates, LLC d/b/a Essence Cannabis Dispensaries; Essence Tropicana, LLC;
16 Essence Henderson, LLC; (“Essence”) (collectively the “Industry Defendants”).

17 Having read and considered the pleadings filed by the parties, having reviewed the evidence
18 admitted during this phase of the trial⁶, and having heard and carefully considered the testimony of the
19 witnesses called to testify, having considered the oral and written arguments of counsel, and with the
20 intent of deciding the remaining issues⁷ related to Legality of the 2018 recreational marijuana
21 application process only⁸, the Court makes the following findings of fact and conclusions of law:
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25 ⁶ Due to the limited amount of discovery conducted prior to the Preliminary Injunction hearing and the large volume
26 of evidence admitted during that 20-day evidentiary hearing, the Court required parties to reoffer evidence previously
utilized during that hearing.

27 ⁷ The Court granted partial summary judgment on the sole issue previously enjoined. The order entered 8/17/2020
28 states:

PROCEDURAL POSTURE

Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive, licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout the state. Defendant is the DoT, which was the administrative agency responsible for issuing the licenses at the times subject to these complaints. Some successful applicants for licensure intervened as Defendants.

The Attorney General's Office was forced to deal with a significant impediment at the early stages of the litigation. This inability to disclose certain information was outside of its control because of confidentiality requirements that have now been slightly modified by SB 32. Although the parties stipulated to a protective order on May 24, 2019, many documents produced in preparation for the trial and for discovery purposes were heavily redacted or produced as attorney's eyes only because of the highly competitive nature of the industry and sensitive financial and commercial information involved. Many admitted exhibits are heavily redacted and were not provided to the Court in unredacted form.

After Judge Bailus issued the preservation order in A785818 on December 13, 2018, the Attorney General's Office sent a preservation letter to the DoT. Pupo, Deputy Director of the DoT, testified he was not told to preserve his personal cellular phone heavily utilized for work purposes. He not only deleted text messages from the phone after the date of the preservation order but also was unable to produce his phone for a forensic examination and extraction of discoverable materials. The Court finds evidence has been irretrievably lost as a result of his actions.

While case terminating sanctions and/or an irrebuttable presumption were requested, after evaluation of the Ribiero factors, given the production of certain text messages with Pupo by some

[T]he DoT acted beyond the scope of its authority by replacing the requirement for a background check of each prospective owner with the 5 percent or greater standard in NAC 453D.255(1).

The entry of these findings will convert the preliminary injunction on this issue to a permanent injunction.

⁸ While several plaintiffs have reached a resolution of their claims with the State and certain Industry Defendants, the claims of the remaining plaintiffs remain virtually the same. At the time of the issuance of this decision, the following plaintiffs have advised the Court they have reached a resolution with the State and certain Industry Defendants:

ETW Management Group, LLC; Libra Wellness Center, LLC; Rombough Real Estate, Inc. dba Mother Herb; Just Quality, LLC; Zion Gardens, LLC; Global Harmony, LLC; MM Development, LLC; LivFree Wellness, LLC; Nevada Wellness Center, LLC; Qualcan, LLC; High Sierra Holistics, LLC; Natural Medicine, LLC.

Industry Defendants and their attorney Amanda Connor, the impact of the loss of evidence was limited. As a result, the Court imposes an evidentiary sanction in connection with the Sanctions ruling that the evidence on Pupo's phone, if produced, would have been adverse to the DoT.⁹

PRELIMINARY STATEMENT

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

The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to modify¹⁰), those provisions with which the DoT was granted some discretion in implementation¹¹, and

⁹ Given the text messages produced by certain Industry Defendants and Amanda Connor, any presumption is superfluous given the substance of the messages produced.

¹⁰ Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

... 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.

¹¹ NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those regulations would include:

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

- (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;
- (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
- (c) Requirements for the security of marijuana establishments;
- (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;
- (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;
- (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;
- (g) Requirements for record keeping by marijuana establishments;
- (h) Reasonable restrictions on signage, marketing, display, and advertising;
- (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
- (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;

the inherent discretion of an administrative agency to implement regulations to carry out its statutory duties. The Court must give great deference to those activities that fall within the discretionary functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2 or were arbitrary and capricious.

FINDINGS OF FACT

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

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

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

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

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

Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the

(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 regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and
2 retailers; and provide for certain criminal penalties?

3 6. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.¹²

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

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

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

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

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

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

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

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

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

17 NRS 453D.020(3).

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

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

23 10. The Nevada Tax Commission adopted temporary regulations allowing the state to issue
24 recreational marijuana licenses by July 1, 2017 (the “Early Start Program”). Only medical marijuana
25 establishments that were already in operation could apply to function as recreational retailers during the
26 early start period. The establishments were required to be in good standing and were required to pay a
27 one-time, nonrefundable application fee as well as a specific licensing fee. The establishment also was
28 required to provide written confirmation of compliance with their municipality’s zoning and location
requirements.

¹² As the provisions of BQ2 and the sections of NRS 453D in effect at the time of the application process (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature during the 2017 session in NRS 453D.

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

6 12. During the 2017 legislative session, Assembly Bill 422 transferred responsibility for the
7 registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of
8 Public and Behavioral Health to the DoT.¹³

9
10 13. On February 27, 2018, the DoT adopted regulations governing the issuance, suspension,
11 or revocation of retail recreational marijuana licenses in LCB File No. R092-17, which were codified in
12 NAC 453D (the “Regulations”).

13 14. The Regulations for licensing were to be “directly and demonstrably related to the
14 operation of a marijuana establishment.” NRS 453D.200(1)(b). The phrase “directly and demonstrably
15 related to the operation of a marijuana establishment” is subject to more than one interpretation.
16

17 15. Each of the Plaintiffs were issued marijuana establishment licenses involving the
18 cultivation, production and/or sale of medicinal marijuana in or about 2014.
19
20
21

22 ¹³ Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:
23

24 1. When conducting a background check pursuant to subsection 6 of [NRS 453D.200](#), the Department may
25 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.

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of [NRS](#)
27 [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.
28

16. 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.268.¹⁴

¹⁴ 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;

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

17. NAC 453D.272(1) provides the procedure for when the DoT receives more than one “complete” application for a single county. Under this provision the DoT will determine if the

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

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

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

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

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

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

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

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

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

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

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

(c) A resume.

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

7. The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or delivery plan and procedures to ensure adequate security measures, including, without limitation, building security 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 “application is complete and in compliance with this chapter and Chapter 453D of NRS, the
2 Department will rank the applications . . . in order from first to last based on the compliance with the
3 provisions of this chapter and Chapter 453D of NRS and on the content of the applications relating
4 to . . .” several enumerated factors. NAC 453D.272(1).

5 18. The factors set forth in NAC 453D.272(1) that are used to rank competing applications
6 received for a single county (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.

19. 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.”

20. Pupo met with several of the applicants’ agent, Amanda Conner, Esq., numerous times
for meals in the Las Vegas Valley. Pupo also met with representatives of several of the applicants in
person. These meetings appeared to relate to regulatory, disciplinary and application issues.

21. The DoT posted the application on its website and released the application for recreational marijuana establishment licenses on July 6, 2018.¹⁵

22. The DoT used a Listserv¹⁶ to communicate with prospective applicants.

23. While every medical marijuana certificate holder was required to have a contact person with information provided to the DoT for purposes of communication, not every marijuana establishment maintained a current email or checked their listed email address regularly, and some of the applicants contend that they were not aware of the revised application.

24. Applications were accepted from September 7, 2018 through September 20, 2018.

25. The DoT elected to utilize a bright line standard for evaluating the factor “operating such an establishment in compliance” of whether the applicant was suspended or revoked.¹⁷ If an applicant was suspended or revoked they were not qualified to apply. This information was communicated in the cover letter with the application.¹⁸ This decision was within the discretion of the DoT.

¹⁵ 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.

¹⁶ According to Dictionary.com, the term “Listserv” is used to refer to online mailing list. When capitalized it refers to a proprietary software.

¹⁷ The method by which certain disciplinary matters (self-reported or not) were resolved by the DoT would not affect the grading process.

¹⁸ The cover letter reads in part:

All applicants are required to be in compliance with the following:

All licenses, certificates, and fees are current and paid;

Applicant is not delinquent in the payment of any tax administered by the Department or is not in default on payment required pursuant to a written agreement with the Department; or is not otherwise liable to the Department for the payment of money;

No citations for illegal activity or criminal conduct; and

Plans of correction are complete and on time, or are in progress within the required 10 business days.

1 26. 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 DoT, and that information was not further disseminated by the DoT to other applicants.¹⁹

4 27. The cover letter with the application advised potential applicants of the process for
5 questions:

6 Do not call the division seeking application clarification or guidance.

7 Email questions to marijuana@tax.state.nv.us

8 28. No statutory or regulatory requirement for a single point of contact process required the
9 DoT to adopt this procedure.

10 29. As the individual responsible for answering the emailed questions stated:

11 Jorge Pupo is the MED deputy Director. Steve Gilbert is program manager and reports to Jorge.
12 I report to Steve. Steve prefers to not have the world know our structure. He likes industry folks
13 knowing though and addressing them. He has all questions come to me. One's I can't answer,
14 he fields and has me respond, then if he can't then Jorge gets them and Jorge has me respond.
That's the goal anyway. ☺

15 Ky Plaskon text to Rebecca Gaska 9/18/2018, Exhibit 1051.

16 30. Some applicants abided by this procedure.

17 31. The DoT did not post the questions and answers so that all potential applicants would be
18 aware of the process

19 32. The DoT made no effort to ensure that the applicants received the same answers
20 regardless of which employee of the DoT the applicant asked.

21 33. On July 9, 2018, at 4:06 pm, Amanda Connor sent a text to Pupo:

22 List of things for us to talk about when you can call me:

23 Attachment E

24 Attachment I

25 Requirement for a location or physical address

26 Attachment F

 Requirement for initial licensing fee

27

¹⁹ This single point of contact process had been used in the 2014 medical marijuana establishment application period.
28 The questions and answers were posted to the department's website for all potential applicants to review and remain there to
this day. Exhibit 2038.

1 Transfers of ownership

2
3 Exhibit 1588-052.

4 34. Although Pupo tried to direct Amanda Connor to Steve Gilbert, she texted him that she
5 would wait rather than speak to someone else.

6 35. On the morning of July 11, 2018, Pupo and Amanda Connor spoke for twenty-nine
7 minutes and forty-five seconds.²⁰

8
9 36. Despite the single point of contact process being established, the DoT departed from this
10 procedure. By allowing certain applicants and their representatives to personally contact the DoT
11 employee about the application process, the DoT violated its own established procedures for the
12 application process.

13 37. After the posting of the application on July 6, 2018, Pupo decided to eliminate the
14 physical location requirement outlined in NRS 453D.210(5) and NAC 453D.265(b)(3).²¹

15
16 38. The DoT published a revised application on July 30, 2018. This revised application was
17 sent to all participants via the DoT's Listserv. The revised application modified physical address
18 requirements. For example, a sentence on Attachment A of the application, prior to this revision, the
19 sentence had read, "Marijuana Establishment's proposed physical address (this must be a Nevada
20 address and cannot be a P.O. Box)." The revised application on July 30, 2018, read: "Marijuana
21 Establishment's proposed physical address if the applicant owns property or has secured a lease or
22 other property agreement (this must be a Nevada address and not a P.O. Box). Otherwise, the
23 applications are virtually identical.
24

25
26
27 ²⁰ Exhibit 1809-054.

28 ²¹ It is unclear whether Pupo had communications similar to those with Amanda Connor with other potential applicants or their agents as Pupo did not preserve the data from his cell phone.

1 39. The DoT sent a copy of the revised application through the Listserv used by the DoT.
2 Not all Plaintiffs' correct emails were included on this list.

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

6 41. The identified criteria consisted of organizational structure of the applicant (60 points);
7 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
8 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
9 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

10 42. The non-identified criteria²² all consisted of documentation concerning the integrated
11 plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from
12 seed to sale (40 points); evidence that the applicant has a plan to staff, educate and manage the
13 proposed recreational marijuana establishment on a daily basis (30 points); a plan describing operating
14 procedures for the electronic verification system of the proposed marijuana establishment and
15 describing the proposed establishment's inventory control system (20 points); building plans showing
16 the proposed establishment's adequacy to serve the needs of its customers (20 points); and a proposal
17 explaining likely impact of the proposed marijuana establishment in the community and how it will
18 meet customer needs (15 points).

19 43. An applicant was permitted to submit a single application for all jurisdictions in which it
20 was applying, and the application would be scored at the same time.
21
22
23
24
25
26

27 ²² About two weeks into the grading process the Independent Contractors were advised by certain DoT employees
28 that if an identifier was included in the nonidentified section points should be deducted. It is unclear from the testimony
 whether adjustments were made to the scores of those applications graded prior to this change in procedure being
 established.

1 44. Although the amended application changed the language related to a physical address,
2 there was still confusion.²³

3 45. Amanda Connor corresponded with Pupo by email requesting clarification on August
4 22, 2018.²⁴

5 46. Although the DoT had used certain DoT personnel to grade applications for medical
6 marijuana establishment applications in White Pine County shortly before the recreational applications
7 were graded, the DoT made a decision for resource and staff reasons that non DoT employees hired on
8 a temporary basis would be used to grade the recreational medical marijuana applications.
9

10 47. Prior to the close of the application evaluation process, Pupo discussed with a
11 representative of the Essence Entities the timing of closing a deal involving the purchase of the entities
12 by a publicly traded company.

13 48. By September 20, 2018, the DoT received a total of 462 applications.
14

15 ²³ One plaintiff was advised by counsel (not Amanda Conner) that, despite the information related to the change for
16 physical address, the revised application appeared to conflict with the statute's physical address requirement and that
therefore a physical address was required.

17 ²⁴ The email thread reads:
18 On Aug 22 at 6:17 pm Amanda Connor wrote
19 Jorge –
20 I know the regulations make clear that land use or the property will not be considered in the application and having a
21 location secured is not required, but there seems to be some inconsistency in the application. Can you please confirm that a
location is not required and documentation about a location will not be considered or no points will be granted for having a
location?

22 On Aug 22 at 8:15 pm Pupo wrote:
23 That is correct. If you have a lease or own property than (sic) put those plans. If you dont (sic) then tell us what will the
24 floorplan be like etc etc
25 On Aug 22 at 8:24 pm Amanda Connor wrote
26 But a person who has a lease or owns the property will not get more points simply for having the property secured, correct?

27 On Aug 22 at 8:27 pm Pupo wrote:
28 Nope. LOCATION IS NOT SCORED DAMN IT!
Exhibit 2064.

1 49. In order to grade and rank the applications, the DoT posted notices that it was seeking to
2 hire individuals with specified qualifications necessary to evaluate applications. Certain DoT
3 employees also reached out to recent State retirees who might have relevant experience as part of their
4 recruitment efforts. The DoT interviewed applicants and made decisions on individuals to hire for each
5 position.

6 50. When decisions were made on who to hire, the individuals were notified that they would
7 need to register with “Manpower” under a preexisting contract between the DoT and that company.
8 Individuals would be paid through Manpower, as their application-grading work would be of a
9 temporary nature.
10

11 51. The DoT identified, hired, and provided some training to eight individuals hired to
12 grade the applications, including three to grade the identified portions of the applications, three to grade
13 the non-identified portions of the applications, and one administrative assistant for each group of
14 graders (collectively the “Independent Contractors”).
15

16 52. Based upon the testimony at trial, it remains unclear how the DoT trained the Temporary
17 Employees. While portions of the training materials from PowerPoint decks were introduced into
18 evidence, it is unclear which slides from the PowerPoint decks were used. Testimony regarding the
19 oral training based upon example applications and practice grading of prior medical marijuana
20 establishment applications was insufficient for the Court to determine the nature and extent of the
21 training of the Independent Contractors.
22

23 53. Based on the evidence adduced, the Court finds that the lack of training for the graders
24 affected the graders’ ability to evaluate the applications objectively and impartially.

25 54. NAC 453D.272(1) required the DoT to determine that an Application is “complete and
26 in compliance” with the provisions of NAC 453D in order to properly apply the licensing criteria set
27 forth therein and the provisions of the Ballot Initiative and the enabling statute.
28

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

4 56. For purposes of grading the applicant’s organizational structure²⁵ and diversity, if an
5 applicant’s disclosure in its application of its owners, officers, and board members did not match the
6 DoT’s own records, the DoT did not penalize the applicant. Rather, the DoT permitted the grading, and
7 in some cases, awarded a conditional license to an applicant under such circumstances and dealt with
8 the issue by simply informing the winning applicant that its application would have to be brought into
9 conformity with DoT records.
10

11 57. The DoT announced the award of conditional licenses in December 2018.

12 58. The DoT did not comply with BQ2 by requiring applicants to provide information for
13 each prospective owner, officer and board member or verify the ownership of applicants applying for
14 retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who
15 did not identify each prospective owner, officer and board member.
16

17 59. Some of the Industry Defendants and their agent Ms. Connor, produced text messages
18 forensically extracted from their cell phones revealing the extent of contact and substance of
19 communications between them and Pupo. Additionally, phone records of Pupo identifying telephone
20 numbers communicated with and length of communication (but not content) were obtained from
21 Pupo’s cellular service provider. This evidence reinforces the presumption related to Pupo’s failure to
22 preserve evidence and reflects the preferential access and treatment provided.²⁶
23
24

25 ²⁵ The use of Advisory Boards by many applicants who were LLCs has been criticized. The DoT provided no
26 guidance to the potential applicants or the Temporary Employees of the manner by which these “Boards” should be
evaluated. As this applied equally to all applicants, it is not a basis for relief.

27 ²⁶ TGIG also was represented by Amanda Conner and had communications with Pupo. TGIG did not provide its
28 communications with Pupo.

1 60. The DoT's late decision to delete the physical address requirement on some application
2 forms while not modifying those portions of the application that were dependent on a physical location
3 (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated
4 communications by an applicant's agent, not effectively communicating the revision, and leaving the
5 original version of the application on the website is evidence of a lack of a fair process.

6 61. The DoT's departure from its stated single point of contact and the degree of direct
7 personal contact outside the single point of contact process provided unequal, advantageous and
8 supplemental information to some applicants and is evidence of a lack of a fair process.

9 62. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
10 would not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
11 inspection of their marijuana establishment.²⁷

12 63. The DoT's lack of compliance with the established single point of contact and the
13 pervasive communications, meetings with Pupo, and preferential information provided to certain
14 applicants creates an uneven playing field because of the unequal information available to potential
15 applicants. This conduct created an unfair process for which injunctive relief may be appropriate.

16 64. The only direct action attributed to Pupo during the evaluation and grading process
17 related to the determination related to the monopolistic practices. Based upon the testimony adduced at
18 trial, Pupo's reliance upon advice of counsel from Deputy Attorney General Werbicky in making this
19 decision removes it from an arbitrary and capricious exercise of discretion.

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

22 66. In 2019, more than three years from the passage of Ballot Question 2, Nevada's
23 legislature repealed NRS 453D.200. 2019 Statutes of Nevada, Page 3896.

24
25
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27
28 ²⁷ The DoT has agreed to extend this deadline due to these proceedings and the public health emergency. Some of
the conditional licenses not enjoined under the preliminary injunction have now received final approval.

1 67. With its repeal, NRS 453D.200 was no longer effective as of July 1, 2020.

2 68. Nevada’s legislature also enacted statutes setting forth general qualifications for
3 licensure and registration of persons who have applied to receive marijuana establishment licenses.
4 NRS 678B.200.

5 69. The CCB was formed by the legislature and is now the government entity that oversees
6 and regulates the cannabis industry in the State of Nevada. By statute, the CCB now determines if the
7 “person is qualified to receive a license...” NRS 678B.200(1).

8 70. There are an extremely limited number of licenses available for the sale of recreational
9 marijuana.
10

11 71. The number of licenses available was set by BQ2 and is contained in NRS
12 453D.210(5)(d).

13 72. The secondary market for the transfer of licenses is limited.²⁸

14 73. Although there has been little tourism demand for legal marijuana sales due to the public
15 health emergency and as a result growth in legal marijuana sales has declined, the market is not
16 currently saturated. With the anticipated return of tourism after the abatement of the current public
17 health emergency, significant growth in legal marijuana sales is anticipated. Given the number of
18 variables related to new licenses, the claim for loss of market share is too speculative for relief.
19

20 74. Since the Court does not have authority to order additional licenses in particular
21 jurisdictions and because there are a limited number of licenses that are available in certain
22 jurisdictions, injunctive relief may be necessary to permit the Plaintiffs, if successful in the NRS
23 453D.210(6) process, to actually obtain a license with respect to the issues on which partial summary
24 judgment was granted.
25

26
27
28 ²⁸ Multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BQ2.

75. The remaining Plaintiffs²⁹(excluding TGIG) (the “Untainted Plaintiffs”) have not identified by a preponderance of the evidence, that if a single point of contact was followed by the DoT and equal information provided to all applicants, as was done for the medical marijuana application process, that there is a substantial likelihood they would have been successful in the ranking process.

76. After balancing the equities among the parties, the Court determines that the balance of equities does not weigh in favor of the Untainted Plaintiffs on the relief beyond that previously granted in conjunction with the partial summary judgment order entered on August 17, 2020.

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

CONCLUSIONS OF LAW

78. This Court has previously held that the 5 percent rule found in NAC 453D.255(1) was an impermissible deviation from the background check requirement of NRS 453D.200(6) as applied to that statute.

79. “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.

80. 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).

81. The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination. . . .” *Sioux City Bridge Co. v. Dakota Cty., Neb.*, 260 U.S. 441, 445 (1923). If a suspect class or fundamental right is not implicated, then the law or regulation promulgated by the state will be upheld “so long as it bears

²⁹ TGIG’s employment of Amanda Connor and direct contact with Pupo were of the same degree as the Industry Defendants who were clients of Amanda Connor.

1 a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631 (1996). When the state
2 or federal government arbitrarily and irrationally treats groups of citizens differently, such unequal
3 treatment runs afoul the Equal Protection Clause. *Engquist v. Oregon Dep’t of Agr.*, 553 U.S. 591, 601
4 (2008). Where an individual or group were treated differently but are not associated with any distinct
5 class, Plaintiffs must show that they were “intentionally treated differently from others similarly
6 situated and that there is no rational basis for the difference in treatment.” *Vill. of Willowbrook v.*
7 *Olech*, 528 U.S. 562, 564 (2000).

8
9 82. The Nevada Constitution also demands equal protection of the laws under Article 4,
10 Section 21 of the Nevada Constitution. *See Doe v. State*, 133 Nev. 763, 767, 406 P.3d 482, 486 (2017).

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

15
16 84. Plaintiffs have the burden to demonstrate that the DoT’s conduct, if allowed to continue,
17 will result in irreparable harm for which compensatory damages is an inadequate remedy.

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

24
25 86. BQ2 provides, “the Department shall adopt all regulations necessary or convenient to
26 carry out the provisions of this chapter.” NRS 453D.200(1). This language does not confer upon the
27 DoT unfettered or unbridled authority to do whatever it wishes without constraint. The DoT was not
28

1 delegated the power to legislate amendments because this is initiative legislation. The Legislature itself
2 has no such authority with regard to NRS 453D until three years after its enactment under the
3 prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.

4 87. Where, as here, amendment of a voter-initiated law is temporally precluded from
5 amendment for three years, the administrative agency may not modify the law.³⁰

6 88. An agency's action in interpreting and executing a statute it is tasked with interpreting is
7 entitled to deference "unless it conflicts with the constitution or other statutes, exceeds the agency's
8 powers, or is otherwise arbitrary and capricious." *Nuleaf CLV Dispensary, LLC v. State Dept. of Health*
9 *and Human Services, Div. of Pub. and Behavioral Health*, 414 P.3d 305, 308 (Nev. 2018) (quoting
10 *Cable v. State ex rel. Emp'rs Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006)).

11 89. NRS 453D.200(1) provides that "the Department shall adopt all regulations necessary or
12 convenient to carry out the provisions of this chapter." The Court finds that the words "necessary or
13 convenient" are susceptible to at least two reasonable interpretations. This limitation applies only to
14 Regulations adopted by the DoT.
15

16 90. While the category of diversity is not specifically included in the language of BQ2, the
17 evidence presented in the hearing demonstrates that a rational basis existed for the inclusion of this
18 category in the Factors and the application.
19

20 91. The DoT's inclusion of the diversity category was implemented in a way that created a
21 process which was partial and subject to manipulation by applicants.
22

23 92. NAC 453D.272 contains what is commonly referred to as the Regulations' "anti-
24 monopoly" provision. It forbids the DoT from issuing to any person, group of persons, or entity, in a
25 county whose population is 100,000 or more, the greater of one license to operate a retail marijuana
26 store or more than 10 percent of the retail marijuana licenses allocable for the county.
27

28 ³⁰ The Court notes that the Legislature has now modified certain provisions of BQ2. The Court relies on those statutes and regulations in effect at the time of the application process.

1 93. Although not required to use a single point of contact process for questions related to the
2 application, once DoT adopted that process and published the appropriate process to all potential
3 applicants, the DoT was bound to follow that process.

4 94. The DoT employees provided various applicants with different information as to
5 diversity and what would be utilized from this category and whether it would be used merely as a
6 tiebreaker or as a substantive category.

7 95. The DoT selectively discussed with applicants or their agents the modification of the
8 application related to physical address as well as other information contained in the application.
9

10 96. The process was impacted by personal relationships in decisions related to the
11 requirements of the application and the ownership structures of competing applicants.

12 97. The intentional and repeated violations of the single point of contact process in favor of
13 only a select group of applicants was an arbitrary and capricious act and served to contaminate the
14 process. These repeated violations adversely affected applicants who were not members of that select
15 group. These violations are in and of themselves insufficient to void the process as urged by some of
16 the Plaintiffs.
17

18 98. The DoT disseminated various versions of the 2018 Retail Marijuana Application, one
19 of which was published on the DoT's website and required the applicant to provide an actual physical
20 Nevada address for the proposed marijuana establishment, and not a P.O. Box, and an alternative
21 version of the DoT's application form, which was distributed to some, but not all, of the potential
22 applicants via a DoT Listserv, which deleted the requirement that applicants disclose an actual physical
23 address for their proposed marijuana establishment.
24

25 99. 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.

3 100. By selectively eliminating the requirement to disclose an actual physical address for
4 each and every proposed retail recreational marijuana establishment, the DoT limited the ability of the
5 Independent Contractors to adequately assess graded criteria such as (i) prohibited proximity to schools
6 and certain other public facilities, (ii) impact on the community, (iii) security, (iv) building plans, and
7 (v) other material considerations prescribed by the Regulations.

8
9 101. The hiring of Independent Contractors was well within the DoT's discretionary power.

10 102. The evidence establishes that the DoT failed to properly train the Independent
11 Contractors. The DoT failed to establish any quality assurance or quality control of the grading done
12 by Independent Contractors.³¹ This is not an appropriate basis for the requested relief as the DoT
13 treated all applicants the same in the grading process. The DoT's failures in training the Independent
14 Contractors applied equally to all applicants.

15
16 103. The DoT made licensure conditional for one year based on the grant of power to create
17 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a
18 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's
19 discretion.

20 104. Certain of DoT's actions related to the licensing process were nondiscretionary
21 modifications of BQ2's mandatory requirements.³² The evidence establishes DoT's deviations
22 constituted arbitrary and capricious conduct without any rational basis for the deviation.

23
24 105. The DoT's decision to not require disclosure on the application and to not conduct
25 background checks of persons owning less than 5 percent prior to award of a conditional license is an
26

27 ³¹ The only QA/QC process was done by the Temporary Employees apparently with no oversight by the DoT.

28 ³² These are contained in the order entered August 17, 2020.

1 impermissible deviation from the mandatory language of BQ2, which mandated “a background check
2 of each prospective owner, officer, and board member of a marijuana establishment license applicant.”
3 NRS 453D.200(6).

4 106. Under the circumstances presented here, the Court concludes that certain of the
5 Regulations created by the DoT are unreasonable, inconsistent with BQ2, and outside of any discretion
6 permitted to the DoT.

7 107. The DoT acted beyond its scope of authority when it arbitrarily and capriciously
8 replaced the mandatory requirement of BQ2, for the background check of each prospective owner,
9 officer and board member with the 5 percent or greater standard in NAC 453.255(1). This decision by
10 the DoT was not one they were permitted to make as it resulted in a modification of BQ2 in violation of
11 Article 19, Section 2(3) of the Nevada Constitution.
12

13 108. The balance of equities weighs in favor of Plaintiffs on the issue for which partial
14 summary judgment has been granted.³³
15

16 109. The DoT stands to suffer no appreciable losses and will suffer only minimal harm as a
17 result of an injunction related to the August 17, 2020, partial summary judgment.

18 110. The bond previously posted for the preliminary injunction is released to those parties
19 who posted the bond.³⁴

20 111. If any conclusions of law are properly findings of fact, they shall be treated as if
21 appropriately identified and designated.
22
23
24

25 ³³ The order concludes:

26 [A]s a matter of law, the DoT acted beyond the scope of its authority by replacing the requirement for
27 a background check of each prospective owner with the 5 percent or greater standard in NAC 453D.255(1).

28 ³⁴ Any objections to the release of the bond must be made within five judicial days of entry of this order. If no
objections are made, the Court will sign an order submitted by Plaintiffs. If an objection is made, the Court will set a
hearing for further argument on this issue.

ORDER**IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

The claim for declaratory relief is granted. The Court declares:

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

The claim for equal protection is granted in part:

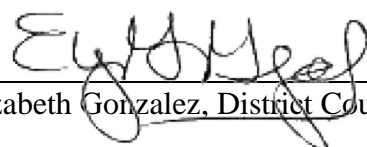
With respect to the decision by the DoT to arbitrarily and capriciously replace the mandatory requirement of BQ2, for the background check of each prospective owner, officer and board member with the 5 percent or greater standard in NAC 453.255(1), the DoT created an unfair process. No monetary damages are awarded given the speculative nature of the potential loss of market share.

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

The Court declines to issue an extraordinary writ unless violation of the permanent injunction occurs.

All remaining claims for relief raised by the parties in this Phase are denied.

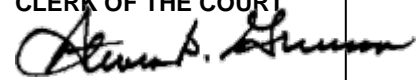
DATED this 3rd day of September 2020.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, these Findings of Fact, Conclusion of Law and Permanent Injunction were electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ Dan Kutinac
Dan Kutinac, JEA Dept XI



FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation

Case No. A-19-787004-B

Consolidated with:

A-18-785818-W

A-18-786357-W

A-19-786962-B

A-19-787035-C

A-19-787540-W

A-19-787726-C

A-19-801416-B

Dept. No. XI

FINDINGS OF FACT, CONCLUSION OF LAW AND PERMANENT INJUNCTION

This matter having come before the Court for a non-jury trial on Phase 1 pursuant to the Trial Protocol¹ on September 8, 2020². The following counsel and party representatives participated in this Phase of the Trial:³

The Plaintiffs

Mark S. Dzarnoski, Esq. of the law firm Clark Hill, appeared on behalf of TGIG, LLC; Nevada Holistic Medicine, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; Medifarm, LLC; and Medifarm IV, LLC; (Case No. A786962-B) (the "TGIG Plaintiffs");

¹ Phase 1 of the Trial as outlined in the Trial Protocol includes all claims related to the petitions for judicial review filed by various Plaintiffs. Many of the Plaintiffs who filed Petitions for Judicial Review have now resolved their claims with the State and certain Industry Defendants.

² Prior to the commencement of Phase 1 of Trial, the Court completed the Trial of Phase 2 and issued a written decision on September 3, 2020. That decision included declaratory and injunctive relief related to many of the same issues raised by Plaintiffs in argument during this Phase. The Court previously limited the petition for judicial review process in this phase to the scoring and ranking of plaintiffs' applications. See Order entered November 7, 2019.

³ Given the public health emergency Phase 1 of the Trial was conducted entirely by remote means.

1 Adam K. Bult, Esq. and Maximilien D. Fetaz, Esq. of the law firm Brownstein Hyatt Farber
2 Schreck, LLP, appeared on behalf of ETW Management Group, LLC; Global Harmony, LLC; Just
3 Quality, LLC; Libra Wellness Center, LLC; Rombough Real Estate Inc. dba Mother Herb; and Zion
4 Gardens, LLC; (Case No. A787004-B) (the “ETW Plaintiffs”);

5 Nathaniel R. Rulis, Esq. of the law firm Kemp, Jones & Coulthard, LLP, appeared on behalf of
6 MM Development Company, Inc. and LivFree Wellness, LLC; (Case No. A785818-W) (the “MM
7 Plaintiffs”);;

8 Theodore Parker III, Esq. and Jennifer Del Carmen, Esq. of the law firm Parker Nelson &
9 Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W) and Frank
10 Hawkins appeared as the representative for Nevada Wellness Center;

11 Peter S. Christiansen, Esq. and Whitney Barrett, Esq. of the law firm Christiansen Law Offices,
12 appeared on behalf of Qualcan LLC;

13 James W. Puzey, Esq. of the law firm Holley, Driggs, Walch, Fine, Puzey, Stein & Thompson,
14 appeared on behalf of High Sierra Holistics, LLC;

15 Amy L. Sugden, Esq. of Sugden Law, appeared on behalf of THC Nevada, LLC and Allen Puliz
16 appeared as the representative for THC Nevada, LLC;

17 Sigal Chattah, Esq. of the law firm Chattah Law Group, appeared on behalf of Herbal Choice,
18 Inc..

19 Nicolas R. Donath, Esq. of the law firm N.R. Donath & Associates, PLLC, appeared on behalf
20 of Green Leaf Farms Holdings, LLC; Green Therapeutics, LLC; NevCann, LLC; and Red Earth, LLC;

21 Stephanie J. Smith, Esq. of Bendavid Law, appeared on behalf of Natural Medicine, LLC;

22 Craig D. Slater, Esq. of the law firm Luh & Associates, appeared on behalf of Clark Natural
23 Medicinal Solutions, LLC; NYE Natural Medicinal Solutions, LLC; Clark NMSD, LLC; and Inyo Fine
24 Cannabis Dispensary, LLC; and,

1 Clarence E. Gamble, Esq. of the law firm Ramos Law on behalf of Rural Remedies, LLC.

2 *The State*

3 Steven G. Shevorski, Esq. and Kiel Ireland, Esq. of the Office of the Nevada Attorney General,
4 appeared on behalf of the State of Nevada, Department of Taxation (“DoT”) and Cannabis Compliance
5 Board⁴ (“CCB”) (collectively “the State”).

6 *The Industry Defendants*

7 David R. Koch, Esq. of the law firm Koch & Scow, LLC, appeared on behalf of Nevada
8 Organic Remedies, LLC (“NOR”);

9 Rusty Graf, Esq. of the law firm Black & Lobello, appeared on behalf of Clear River, LLC;

10 Eric D. Hone, Esq. of the law firm H1 Law Group, appeared on behalf of Lone Mountain
11 Partners, LLC;

12 Alina M. Shell, Esq. of the law firm McLetchie Law, appeared on behalf of GreenMart of
13 Nevada NLV LLC;

14 Jared Kahn, Esq. of the law firm JK Legal & Consulting, LLC, appeared on behalf of Helping
15 Hands Wellness Center, Inc.;

16 Rick R. Hsu, Esq. of the law firm Maupin, Cox & LeGoy, appeared on behalf of Pure Tonic
17 Concentrates, LLC;

18 Andrew J. Sharples, Esq. of the law firm Naylor & Braster, appeared on behalf of Circle S
19 Farms, LLC;

20 Christopher Rose, Esq. and Kirill Mikhaylov, Esq. of the law firm Howard and Howard,
21 appeared on behalf of Wellness Connection of Nevada, LLC;

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27 ⁴ The CCB was added based upon motion practice as a result of the transfer of responsibility for the Marijuana
28 Enforcement Division effective on July 1, 2020. While certain statutes and regulations in effect at the time of the
application process have been modified, for purposes of these proceedings the Court evaluates those that were in existence
at the time of the application process.

1 Richard D. Williamson, Esq. and Jonathan Tew, Esq. of the law firm Robertson, Johnson,
2 Miller & Williamson, appeared on behalf of Deep Roots Medical, LLC;

3 Joseph A. Gutierrez, Esq. of the law firm Maier Gutierrez & Associates, and Dennis Prince,
4 Esq. of the Prince Law Group, appeared on behalf of CPCM Holdings, LLC d/b/a Thrive Cannabis
5 Marketplace; Commerce Park Medical, LLC; and Cheyenne Medical, LLC (“Thrive”); and,

6 Todd L. Bice, Esq. and Jordan T. Smith, Esq. of the law firm Pisanelli Bice, appeared on behalf
7 of Integral Associates, LLC d/b/a Essence Cannabis Dispensaries; Essence Tropicana, LLC; Essence
8 Henderson, LLC; (“Essence”) (collectively the “Industry Defendants”).

9
10 Having read and considered the pleadings filed by the parties, having reviewed the
11 administrative record filed in this proceeding,⁵ and having considered the oral and written arguments of
12 counsel, and with the intent of deciding the remaining issues⁶ related to the various Petitions for
13 Judicial Review only,⁷ the Court makes the following findings of fact and conclusions of law:

14 15 **PROCEDURAL POSTURE**

16 Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive,
17 licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout
18 the state. Defendant is the DoT, which was the administrative agency responsible for issuing the
19 licenses at the times subject to these complaints. Some successful applicants for licensure intervened as
20 Defendants.

21
22
23 ⁵ The State produced the applications as redacted by various Plaintiffs on June 12, 2020 and supplemented with
24 additional information on June 26, 2020. The Court previously denied TGIG’s motion to supplement the record by order
25 entered August 28, 2020. The portions of the applications which were redacted varied based upon the decisions made by
26 each individual Plaintiff. These redacted applications do not provide the Court with information needed to make a decision
27 related to the “completeness” issue as argued during Phase 1. During Phase 2 of the Trial an unredacted application by THC
28 was admitted.

⁶ The Court granted partial summary judgment and remanded to the DoT, MM and LivFree’s appeals which had
been summarily rejected by Pupo. See written order filed on July 11, 2020.

⁷ While several plaintiffs have reached a resolution of their claims with the State and certain Industry Defendants,
the Petitions of the remaining plaintiffs remain virtually the same.

The Attorney General's Office was forced to deal with a significant impediment at the early stages of the litigation. This inability to disclose certain information was outside of its control because of confidentiality requirements that have now been slightly modified by SB 32. Although the parties stipulated to a protective order on May 24, 2019,⁸ many documents produced in preparation for the trial and for discovery purposes were heavily redacted or produced as attorney's eyes only because of the highly competitive nature of the industry and sensitive financial and commercial information involved. Much of the administrative record is heavily redacted and was not provided to the Court in unredacted form.

PRELIMINARY STATEMENT

On June 12, 2020, the DOT submitted its Record on Review in Accordance with the Nevada Administrative Procedure Act, including documents showing certain applicants' applications, the scoring sheets, and related tally sheets. On June 26, 2020, the DOT filed a Supplement to Record on Review in Accordance with the Nevada Administrative Procedure Act to add certain information related to the dissemination of the applications. The documents contained within these two filings (collectively, the "Record") provides all relevant evidence that resulted in the DoT's final decision. All Plaintiffs redacted their own applications that are the subject of their Petition for Judicial Review.⁹

FINDINGS OF FACT

1. Ballot Question 2 ("BQ2") was enacted by the Nevada Legislature and is codified at NRS 453D.¹⁰

⁸ The Court recognizes the importance of utilizing a stipulated protective order for discovery purpose in complex litigation involving confidential commercial information. NRS 600A.070. The use of a protective order does not relieve a party of proffering evidence sufficient for the Court to make a determination on the merits related to the claims at issue.

⁹ The Record filed by the State utilized the versions of the submitted applications which had been redacted by the applicants as part of the stipulated protective order in this matter. Applications for which an attorney's eyes only designation had been made by a Plaintiff were not included in the Record. The redacted applications submitted by Plaintiffs limits the Court's ability to discern information related to this Phase.

¹⁰ As the provisions of BQ2 and the sections of NRS 453D in effect at the time of the application process (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature during the 2017 session in NRS 453D.

2. BQ2 specifically identified regulatory and public safety concerns:

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

- (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly controlled through State licensing and regulation;
- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the State will be tested and labeled.

NRS 453D.020(3).

3. 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”).

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

5. NAC 453D.272(1) provides the procedure for when the DoT receives more than one “complete” application for a single county. Under this provision the DoT will determine if the “application is complete and in compliance with this chapter and Chapter 453D of NRS, the Department will rank the applications . . . in order from first to last based on the compliance with the provisions of this chapter and Chapter 453D of NRS and on the content of the applications relating to . . .” several enumerated factors. NAC 453D.272(1).

6. The DoT posted the application on its website and released the application for recreational marijuana establishment licenses on July 6, 2018.¹¹

¹¹ 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 7. The DoT used a Listserv¹² to communicate with prospective applicants.

2 8. Applications were accepted from September 7, 2018 through September 20, 2018.

3 9. After the posting of the application on July 6, 2018, Pupo decided to eliminate the
4 physical location requirement outlined in NRS 453D.210(5) and NAC 453D.265(b)(3).

5 10. The DoT published a revised application on July 30, 2018. This revised application was
6 sent to all participants via the DoT's Listserv. The revised application modified physical address
7 requirements. For example, a sentence on Attachment A of the application, prior to this revision, the
8 sentence had read, "Marijuana Establishment's proposed physical address (this must be a Nevada
9 address and cannot be a P.O. Box)." The revised application on July 30, 2018, read: "Marijuana
10 Establishment's proposed physical address if the applicant owns property or has secured a lease or
11 other property agreement (this must be a Nevada address and not a P.O. Box)." Otherwise, the
12 applications are virtually identical.
13

14 11. The DoT sent a copy of the revised application through the Listserv used by the DoT.
15 Not all Plaintiffs' correct emails were included on this list.
16

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

20 13. The identified criteria consisted of organizational structure of the applicant (60 points);
21 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
22 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
23 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.
24
25
26

27 ¹² According to Dictionary.com, the term "Listserv" is used to refer to online mailing list. When capitalized it refers
28 to a proprietary software.

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

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

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

17. NAC 453D.272(1) required the DoT to determine that an Application is "complete and in compliance" with the provisions of NAC 453D in order to properly apply the licensing criteria.¹³

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

19. The DoT announced the award of conditional licenses in December 2018.

¹³ The Plaintiffs argue that the failure to provide an actual proposed physical address should render many of the applications incomplete and requests that Court remand the matter to the State for a determination of the completeness of each application and supplementation of the record. As the physical address issue has been resolved by the Court in the Phase 2 decision, the Court declines to take any action on the petition for judicial review with respect to this issue.

¹⁴ As the Plaintiffs (with the exception of THC) have not provided their unredacted applications, the Court cannot make a determination with respect to completeness of this area. As the Court has already granted a permanent injunction on the ownership issue, the Court declines to take any further action on the petition for judicial review with respect to this issue.

1 20. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
2 would not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
3 inspection of their marijuana establishment.¹⁵

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

6 22. In 2019, more than three years from the passage of BQ2, Nevada's legislature repealed
7 NRS 453D.200. 2019 Statutes of Nevada, Page 3896.

8 23. With its repeal, NRS 453D.200 was no longer effective as of July 1, 2020.

9 24. Nevada's legislature also enacted statutes setting forth general qualifications for
10 licensure and registration of persons who have applied to receive marijuana establishment licenses.
11 NRS 678B.200.

12 25. The CCB was formed by the legislature and is now the government entity that oversees
13 and regulates the cannabis industry in the State of Nevada. By statute, the CCB now determines if the
14 "person is qualified to receive a license..." NRS 678B.200(1).

15 26. The Plaintiffs have not identified by a preponderance of the evidence any specific
16 instance with respect to their respective applications that the procedure used by the DoT for analyzing,
17 evaluating, and ranking the applications was done in violation of the applicable regulations or in an
18 arbitrary or capricious manner.

19 27. To the extent that judicial review would be available in this matter, no additional relief is
20 appropriate beyond that contained in the decision entered on September 3, 2020.¹⁶

21 ¹⁵ The DoT has agreed to extend this deadline due to these proceedings and the public health emergency. Some of
22 the conditional licenses not enjoined under the preliminary injunction have now received final approval.

23 ¹⁶ The Court recognizes the decision in *State Dep't of Health & Human Services, Div. of Pub. & Behavioral Health*
24 *Med. Marijuana Establishment Program v. Samantha Inc.* ("Samantha"), 133 Nev. 809, 815-16, 407 P.3d 327, 332 (2017),
25 limits the availability of judicial review. Here as the alternative claims not present in that matter have already been decided
26 by written order entered September 3, 2020, regardless of whether the vehicle of judicial relief is appropriate, no further
27 relief will be granted in this matter.
28

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

CONCLUSIONS OF LAW

29. This Court has previously held that the 5 percent rule found in NAC 453D.255(1) was an impermissible deviation from the background check requirement of NRS 453D.200(6) as applied to that statute.

30. This Court has previously held that the deletion of the physical address requirement given the decision in *Nuleaf CLV Dispensary, LLC v. State Dept. of Health and Human Services, Div. of Pub. and Behavioral Health*, 414 P.3d 305, 308 (Nev. 2018) does not form a basis for relief.¹⁷

31. “Courts have no inherent appellate jurisdiction over official acts of administrative agencies.” *Fitzpatrick v. State ex rel., Dept. of Commerce, Ins. Div.*, 107 Nev. 486, 488, 813 P.2d 1004 (1991) (citing *Crane*, 105 Nev. 399, 775 P.2d 705).

32. Under NRS 233B.130(1), judicial review is only available for a party who is “(a) [i]dentified as a party of record by an agency in an administrative proceeding; and (b) [a]ggrieved by a final decision in a contested case.”

33. A contested case is “a proceeding . . . in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.” NRS 233B.032.

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

- (a) All pleadings, motions and intermediate rulings.
- (b) Evidence received or considered.
- (c) A statement of matters officially noticed.

¹⁷ The Court remains critical of the method by which the decision to delete the address requirement was made and the manner by which it was communicated. These issues are fully addressed in the decision entered September 3, 2020.

- (d) Questions and offers of proof and objections, and rulings thereon.
(e) Proposed findings and exceptions.
(f) Any decision, opinion or report by the hearing officer presiding at the hearing.

NRS 233B.121(7).

35. Judicial review under NRS 233B is to be restricted to the administrative record. *See* NRS 233B.135(1)(b).

36. The Record provides all relevant evidence that resulted in the DoT's analysis of Plaintiffs' applications.

37. The Record is limited and Plaintiffs themselves redacted their own applications at issue.

38. The Record in this case does not support Plaintiffs' Petition.

39. Plaintiffs do not cite to any evidence in the Record that supports their substantive arguments.

40. The Plaintiffs have not met their burden of establishing that the DoT's decisions granting and denying the applications for conditional licenses: (1) violated constitutional and/or statutory provisions; (2) exceeded the DOT's statutory authority; (3) were based upon unlawful procedure; (4) were clearly erroneous based upon the Record; (5) were arbitrary and capricious; or (6) generally constituted an abuse of discretion.

41. The applicants were applying for conditional licensure, which would last for 1 year. NAC 453D.282. The license was conditional based on the applicant gaining approval from local authorities on zoning and land use, the issuance of a business license, and the Department of Taxation inspections of the marijuana establishment.

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

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

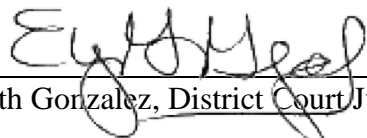
ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

Plaintiffs' Petitions for Judicial Review under NRS 233B.130 is denied in its entirety.

All remaining claims for relief raised by the parties in this Phase are denied.

DATED this 16th day of September 2020.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, these Findings of Fact, Conclusion of Law and Permanent Injunction were electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA Dept XI

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

OGM

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

JJP@pisanellibice.com

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

TLB@pisanellibice.com

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

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

Facsimile: 702.214.2101

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

DISTRICT COURT

CLARK COUNTY, NEVADA

Case No.: A-19-787004-B

Dept. No.: XXXI

In Re: D.O.T. Litigation,

CONSOLIDATED WITH:

A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

**ORDER GRANTING MOTION TO
CERTIFY TRIAL PHASES 1 AND 2 AS
FINAL UNDER NRCP 54(b)**

This matter came before the Court on Integral Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC's ("the Essence Entities") Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) and Request for an Order Shortening Time (the "Motion") on July 20, 2022.

Having considered the briefing, the relevant legal authorities, the oral arguments of counsel, and good cause appearing, THE COURT HEREBY FINDS as follows:

1. The Motion is substantively unopposed under EDCR 2.20(e).

2. The requirements of NRCP 54(b) have been substantively met to certify as final the Trial Phase 1 Findings of Fact and Conclusions of Law and Permanent Injunction, dated

September 16, 2020, and the Trial Phase 2 Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020.

3. There is no just reason for delaying entry of final judgment as to Phase 1 or Phase 2. NRCP 54(b).

ACCORDINGLY, THE COURT HEREBY ORDERS that the Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b) is GRANTED.

IT IS SO ORDERED.

DATED this __ day of August, 2022.

Dated this 4th day of August, 2022


DISTRICT COURT JUDGE

6BA 7AA F272 DCFF
Joanna S. Kushner
District Court Judge

Respectfully submitted by:

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith
James J. Pisanelli, Esq., #4027
Todd L. Bice, Esq., #4534
Jordan T. Smith, Esq., #12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

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

Approved as to Form and Content by:

HOWARD & HOWARD ATTORNEYS
PLLC

ROBERTSON, JOHNSON, MILLER &
WILLIAMSON

By: /s/ L. Christopher Rose
L. Christopher Rose, Esq., #7500
3800 Howard Hughes Pkwy,
Suite 1000
Las Vegas, Nevada 89169

By: /s/ Richard D. Williamson
Richard D. Williamson, Esq., #9932
50 West Liberty Street, Suite 600
Reno, Nevada 89501

*Attorneys for Wellness Connection of
Nevada LLC*

Attorneys for Deep Roots Medical, LLC

KING SCOW KOCH DURHAM LLC

OFFICE of the ATTORNEY GENERAL

By: /s/ David Koch
David Koch, Esq., #8830
11500 S. Eastern, Suite 210
Henderson, Nevada 89052

By: /s/ Steven G. Shevorski
Steven G. Shevorski, Esq., #8256
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

Attorneys for Nevada Organic Remedies, LLC

Attorneys for State of Nevada ex rel. its Dept. of Taxation and Cannabis Compliance Board

BLACK & WADHAMS

N.R. DONATH & ASSOCIATES PLLC

By: /s/ Rusty Graf
Rusty Graf, Esq., #6322
10777 W. Twain Ave., Suite 300
Las Vegas, Nevada 89135

By: /s/ Nicolas R. Donath
Nicolas R. Donath, Esq., #13106
871 Coronado Center Dr., Suite 200
Henderson, Nevada 89052

Attorneys for Clear River, LLC

Attorneys for Green Leaf Farms Holdings LLC, Green Therapeutics LLC, NevCann LLC, and Red Earth LLC

CLARK HILL, PLLC

By: /s/ Mark S. Dzarnoski
John A. Hunt, Esq., #1888
Dominic P. Gentile, Esq., #1923
Mark S. Dzarnoski, Esq., #3398
A. William Maupin, Esq., #1150
3800 Howard Hughes Pkwy, #500
Las Vegas, Nevada 89169

Attorneys for TGIG, LLC

From: [L. Christopher Rose](#)
To: [Jordan T. Smith](#)
Subject: Order Granting Motion to Certify
Date: Thursday, July 28, 2022 11:11:54 AM
Attachments: [hh_logo_0f1d9cb0-80ba-4943-b445-368a57555dd0.png](#)

CAUTION: This message is from an EXTERNAL SENDER.

Jordan

You may use my electronic signature for the order granting the motion to certify Phase 1 and 2 as final.

Here is the signature block:

Approved as to form:

/s/ L. Christopher Rose
L. CHRISTOPHER ROSE, ESQ.
Nevada Bar No. 7500
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
(702) 257-1483
Fax (702) 567-1568
lcr@h2law.com



L. Christopher Rose

Attorney

3800 Howard Hughes Pkwy, STE 1000, Las Vegas, NV 89169

D: 702.667.4852 | **C:** 702.355.2973 | **F:** 702.567.1568

[lcr@h2law.com](#) | [Bio](#) | [vCard](#) | [LinkedIn](#)

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To: [Joel Schwarz](#); [Jordan T. Smith](#); [Joseph Gutierrez](#); [Dennis Prince](#); [dkoch.kochscow.com](#); [Steven G. Shevorski](#); [Rusty Graf](#); [Akke Levin](#)
Cc: [Todd Bice](#); [Ashley R. Ellison](#); [Eric Hone](#); [Jamie Zimmerman](#); [Karen Morrow](#)
Subject: RE: In Re DOT
Date: Friday, July 29, 2022 12:47:10 PM

CAUTION: This message is from an EXTERNAL SENDER.

Jordan,

On a separate but related matter, you have my approval as to form and content of the proposed order to certify.

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: aeshenbaugh@kochscow.com
To: [Jordan T. Smith](#)
Cc: dkoch@kochscow.com
Subject: A-19-787004-B Order on Motion to Certify
Date: Friday, July 29, 2022 9:19:45 AM
Attachments: [2022.07.29 For proposed Order Granting Motion to Certify Trial Phases 1 and 2 as Final.docx](#)

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Good Morning,

Attached is a signature block for Mr. Koch on behalf of Nevada Organic Remedies, LLC. Mr. Koch authorizes you to use his e-signature for the proposed *Order Granting Motion to Certify Trial Phases 1 and 2 as Final* in case no.: A-19-787004-B.

Respectfully,

[Andrea W. Eshenbaugh](#)

Legal Assistant

Koch & Scow LLC

11500 S. Eastern Ste. 210

Henderson, NV 89052

702-318-5040

aeshenbaugh@kochscow.com

From: [Steven G. Shevorski](#)
To: [Rich Williamson](#); [Joel Schwarz](#); [Jordan T. Smith](#); [Joseph Gutierrez](#); [Dennis Prince](#); [dkoch kochscow.com](#); [Rusty Graf](#); [Akke Levin](#)
Cc: [Todd Bice](#); [Ashley R. Ellison](#); [Eric Hone](#); [Jamie Zimmerman](#); [Karen Morrow](#)
Subject: Re: In Re DOT
Date: Friday, July 29, 2022 12:52:42 PM

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Me too.

-Shevorski

From: Rich Williamson <rich@nvlawyers.com>
Sent: Friday, July 29, 2022 12:47 PM
To: Joel Schwarz <jschwarz@hone.law>; Jordan T. Smith <JTS@pisanellibice.com>; Joseph Gutierrez <jag@mgalaw.com>; Dennis Prince <dprince@thedplg.com>; dkoch kochscow.com <dkoch@kochscow.com>; Steven G. Shevorski <SShevorski@ag.nv.gov>; Rusty Graf <rgraf@blackwadhams.law>; Akke Levin <ALevin@ag.nv.gov>
Cc: Todd Bice <tlb@pisanellibice.com>; Ashley R. Ellison <are@pisanellibice.com>; Eric Hone <ehone@hone.law>; Jamie Zimmerman <jzimmerman@hone.law>; Karen Morrow <kmorrow@hone.law>
Subject: RE: In Re DOT

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Jordan,

On a separate but related matter, you have my approval as to form and content of the proposed order to certify.

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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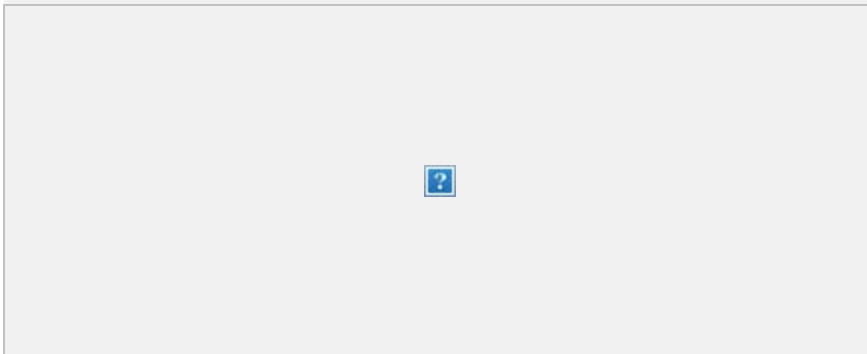
From: [Rusty Graf](#)
To: [Rich Williamson](#); [Joel Schwarz](#); [Jordan T. Smith](#); [Joseph Gutierrez](#); [Dennis Prince](#); [dkoch.kochscow.com](#); [Steven G. Shevorsi](#); [Akke Levin](#)
Cc: [Todd Bice](#); [Ashley R. Ellison](#); [Eric Hone](#); [Jamie Zimmerman](#); [Karen Morrow](#)
Subject: RE: In Re DOT
Date: Friday, July 29, 2022 1:52:57 PM
Attachments: [image001.png](#)

CAUTION: This message is from an EXTERNAL SENDER.
Same as to Clear River. You have our approval.

Thank you and Stay safe!

Rusty Graf, Esq.

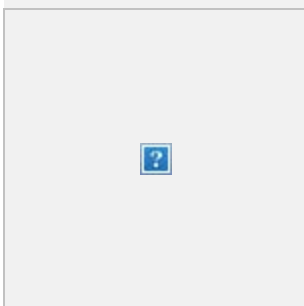
Partner



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

W: www.blackwadhams.law

E: rgraf@blackwadhams.law



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From: [Nicolas Donath](#)
To: [Jordan T. Smith](#)
Subject: In Re DOT - Order Granting Mot to Certify Phases 1 and 2
Date: Sunday, July 31, 2022 12:42:14 PM

CAUTION: This message is from an EXTERNAL SENDER.

Hello Jordan,

I am fine with the proposed order as is. You may affix my e-signature:

/s/ Nicolas R. Donath

Nicolas R. Donath Esq.

NVBN 13106

N.R. DONATH & ASSOCIATES PLLC

871 Coronado Center Dr., Ste. 200

Henderson, NV 89052

Attorneys for

Green Leaf Farms Holdings LLC, Green Therapeutics LLC,

NevCann LLC, and Red Earth LLC

Thanks,

Nick

Nicolas Donath, Esq.

Attorney at Law

N.R. Donath & Associates, PLLC



702-460-0718 (direct)

702-446-8063 (fax)

871 Coronado Center Drive Suite 200

Henderson, NV 89052

<http://www.nrdarelaw.com>

nick@nrdarelaw.com

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to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents, or immediately call [+1.702.460.0718](tel:+17024600718) to arrange for return via U.S. postal delivery at our expense. Thank you.

From: [Dzarnoski, Mark](#)
To: [Jordan T. Smith](#)
Cc: [Bain, Tanya](#)
Subject: Proposed 54b Certification Order
Date: Tuesday, August 2, 2022 3:34:33 PM

CAUTION: This message is from an EXTERNAL SENDER.

I am OK with the Proposed Order for certification e-served upon me on 7/28/22. You have my authority to affix my e-signature to the Proposed Order.

CLARK HILL, PLLC

By /s/ Mark S. Dzarnoski, Esq.
John A. Hunt, Esq. (NSBN 1888)
Dominic P. Gentile, Esq. (NSBN 1923)
Mark S. Dzarnoski, Esq. (NSBN 3398)
A. William Maupin (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Attorneys for TGIG Plaintiffs

Mark Dzarnoski

Senior Counsel

Clark Hill LLP

3800 Howard Hughes Parkway, Ste 500, Las Vegas, NV 89169
(702) 697-7506 (office) | (702) 778-9709 (fax)
mdzarnoski@ClarkHill.com | www.clarkhill.com



PISANELLI BICE

JORDAN T. SMITH
ATTORNEY AT LAW
JTS@PISANELLIBICE.COM

July 28, 2022

VIA E-SERVE

To All Parties:

**Re: *In Re: D.O.T. Litigation* –
Eighth Judicial District Court Case No. A-19-787004-B**

Counsel:

Please see the attached proposed Order Granting Motion to Certify Trial Phases 1 and 2 as Final Under NRCP 54(b). Please email any proposed edits to me (jts@pisanellibice.com) by noon next Tuesday, August 2, 2022. If you have no edits, please also email your approval to attach your e-signature and a copy of the signature block that you would like attached. The deadline to submit the order is next Wednesday, August 3, 2022.

Feel free to call me with any questions.

Thank you,

Jordan T. Smith

Jordan T. Smith

JTS/smd

Encl: As Stated

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CSERV**DISTRICT COURT
CLARK COUNTY, NEVADA**

In Re: D.O.T. Litigation

CASE NO: A-19-787004-B

DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 8/4/2022

Amy Reams areams@naylorandbrasterlaw.com

John Naylor jnaylor@naylorandbrasterlaw.com

Jennifer Braster jbraster@naylorandbrasterlaw.com

Heather Motta hmotta@mcllawfirm.com

Peter Christiansen pete@christiansenlaw.com

Whitney Barrett wbarrett@christiansenlaw.com

R. Todd Terry tterry@christiansenlaw.com

Eloisa Nunez enunez@pnalaw.net

Margaret McLetchie maggie@nvlitigation.com

Teresa Stovak teresa@nvlawyers.com

Eileen Conners eileen@nvlawyers.com

Jonathan Crain jcrain@christiansenlaw.com

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

1	Jorge Ramirez	jorge.ramirez@wilsonelser.com
2	Daniel Scow	dscow@kskdllaw.com
3	Olivia Swibies	oswibies@nevadafirm.com
4	Richard Holley, Esq.	rholley@nevadafirm.com
5	Lee Iglody	lee@iglody.com
6	Jennifer DelCarmen	jdelcarmen@pnalaw.net
7	Steven Shevorski	sshevorski@ag.nv.gov
8	Joseph Gutierrez	jag@mgallaw.com
9	Jared Kahn	jkahn@jk-legalconsulting.com
10	David Koch	dkoch@kochscow.com
11	Steven Scow	sscow@kochscow.com
12	Leilani Gamboa	lgamboa@bendavidfirm.com
13	Mark Dzarnoski	mdzarnoski@clarkhill.com
14	Joel Schwarz	jschwarz@hone.law
15	Lawrence Semenza	ljs@skrlawyers.com
16	Steven Handelin	steve@handelinlaw.com
17	Richard Williamson	rich@nvlawyers.com
18	Kathleen McConnell	khmccconnell@frontiernet.net
19	Kenneth Ching	ken@argentumnv.com
20	Dan Reaser	dwheelen@fclaw.com
21	D. Neal Tomlinson	neal@hyperionlegal.com
22	Michael Becker	Michael@702defense.com
23	Rory Vohwinkel	rory@vohwinkellaw.com
24		
25		
26		
27		
28		

1	Rick Hsu	rhsu@mcllawfirm.com
2	Clarence Gamble	Clarence@ramoslaw.com
3	Jeffrey Whittemore	chase@sandelawgroup.com
4	Ben Ross	ben@litigationservices.com
5	Gia Marina	gmarina@clarkhill.com
6	Judah Zakalik	jz@pandalawfirm.com
7	Eric Hone	ehone@hone.law
8	Jamie Zimmerman	jzimmerman@hone.law
9	Lisa Holding	lholding@lawhjc.com
10	Stephanie George	sg@h2law.com
11	Daniel Tetreault	dtetreault@lawhjc.com
12	James Pisanelli	lit@pisanellibice.com
13	Logan Willson	Logan@jfnvlaw.com
14	Jordan Smith	jts@pisanellibice.com
15	Anastasia Noe	anastasia@pandalawfirm.com
16	Shannon Dinkel	sd@pisanellibice.com
17	Eservice Filing	eservice@thedplg.com
18	Phyllis Cameron	pcameron@clarkhill.com
19	John Savage	jsavage@nevadafirm.com
20	Katherine MacElwain	kmacelwain@nevadafirm.com
21	Karen Morrow	kmorrow@hone.law
22	Dominic Gentile	dgentile@clarkhill.com
23	Ross Miller	rmiller@clarkhill.com
24		
25		
26		
27		
28		

1	Tanya Bain	tbain@clarkhill.com
2	Gail May	Gail@ramoslaw.com
3	Jeffery Bendavid	jbendavid@bendavidfirm.com
4	Stephanie Smith	ssmith@bendavidfirm.com
5	Clarence Gamble	clarence@ramoslaw.com
6	Michelle Miller	michellemiller@millerlawinc.us
7	James Puzey	jpuzey@nevadafirm.com
8	Michael Ayers	mayers@nevadafirm.com
9	James Puzey	jpuzey@nevadafirm.com
10	Craig Slater	efile@luhlaw.com
11	Depository LIT	Depository@litigationservices.com
12	Alicia Vega	avega@litigationservices.com
13	Karen Stecker	kstecker@conantlawfirm.com
14	Brett Scolari	bscolari@trykecompanies.com
15	Paul Conant	pconant@conantlawfirm.com
16	Conant Law Firm	docket@conantlawfirm.com
17	Susan Owens	sao@h2law.com
18	Steven Jaffe	SJaffe@lawhjc.com
19	Clarissa Reyes	creyes@clarkhill.com
20	Kelsey Fusco	kfusco@nevadafirm.com
21	Katherine Rodriguez	krodriguez@nevadafirm.com
22	April Allen	aallen@kskdlaw.com
23	Susan Matejko - Administrative Assistant	smatejko@nevadafirm.com
24		
25		
26		
27		
28		

1	Candice Mata	lawclerk@hone.law
2	L. Christopher Rose	lcr@h2law.com
3	Kiel Ireland	kireland@ag.nv.gov
4	Vernon Nelson	vnelson@nelsonlawfirm.lv.com
5	Sigal Chattah	Chattahlaw@gmail.com
6	Sigal Chattah	Chattahlaw@gmail.com
7	Amy Sugden	amy@sugdenlaw.com
8	Anthony Arger	anthony@nvlawyers.com
9	Rusty Graf	rgraf@blackwadhams.law
10	Brigid Higgins	bhiggins@blackwadhams.law
11	Diane Meeter	dmeeter@blackwadhams.law
12	Marsha Stallsworth	mstallsworth@blackwadhams.law
13	Nicolas Donath	Nick@nrdarelaw.com
14	Lucas Combs	ljcombs@ag.nv.gov
15	Kaitlyn Brooks	Kaitlyn.Brooks@wilsonelser.com
16	Staci Ibarra	sibarra@pnalaw.net
17	Shayna Ortega-Rose	srose@lawhjc.com
18	Benjamin Gordon	bgordon@nblawnv.com
19	Misty Janati	misty@jfnvlaw.com
20	Sunny Southworth	ssouthworth@ag.nv.gov
21	Paul Garcia	pgarcia@hone.law
22	Mary Pizzariello	MPizzariello@ag.nv.gov
23		
24		
25		
26		
27		
28		