

**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

Electronically Filed
Nov 10, 2023 09:42 AM
District Court Case No. A787004
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' APPENDIX
VOLUME 2

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COUNSEL FOR APPELLANTS

CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

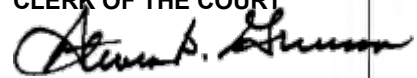
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MOC
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Attorneys for Clear River, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

Case No, A-19-787004-B

In Re: DOT LITIGATION

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

Dept. No. XI

CLEAR RIVER, LLC'S MEMORANDUM OF COSTS

Pursuant to NRS 18.005 and 18.110, Defendant/Intervenor, CLEAR RIVER, LLC, by and through their counsel BRIGID M. HIGGINS, ESQ., and RUSTY GRAF, ESQ., of the law firm of BLACK & WADHAMS, hereby moved this court to recover costs of suit: as to ALL PLAINTIFFS/PETITIONERS. These costs were actually incurred and are of a reasonable amount. The following is a listing of those costs and disbursements incurred and paid¹:

¹ See Appendix filed separately for exhibits and Declaration of counsel.

BLACK & WADHAMS
 10777 W. Twain Avenue, 3rd Floor
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Expense Type: Photocopies

Date	Description	no.	Billable (\$)
5/6/2019	Copies	37	\$11.10
5/7/2019	Copies	71	\$21.30
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5/15/2019	Copies	123	\$36.90
5/16/2019	Copies	110	\$33.00
5/17/2019	Copies	152	\$45.60
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9/13/2019	Copies	9	\$2.70
9/17/2019	Copies	4	\$1.20
9/18/2019	Copies	29	\$8.70

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27	11/25/2020	Copies	15	\$4.50

11/15/2021	Copies	3552	\$1065.60
		TOTAL:	\$10,588.80

Expense Type: Court Filing Fees²

Date	Description	Billable (\$)
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5/15/2019	Court Filing Fee	\$3.50
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3/30/2020	Court Filing Fee	\$3.50
4/1/2020	Court Filing Fee	\$3.50

² See exhibit ____

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1	4/9/2020	Court Filing Fee	\$3.50
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32	6/21/2022	Odyssey Court Filing Fee Envelope #10064169	\$3.50
33	7/18/2022	Odyssey Court Filing Fee	\$3.50

	Envelope #10207587	
7/18/2022	Odyssey Court Filing Fee Envelope #10269131	\$3.50
7/18/2022	Odyssey Court Filing Fee Envelope #10269352	\$3.50
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Expense Type: Westlaw Research Fees

Date	Description	Billable (\$)
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7/3/2019	WestLaw - Online Research, Document Displays (JRG)	\$26.54
7/11/2019	WestLaw - Online Research, Document Displays (JRG)	\$26.54
7/12/2019	WestLaw - Online Research, Document Displays (JRG)	\$33.73
7/14/2019	WestLaw - Online Research, Document Displays (JRG)	\$288.8
7/17/2019	WestLaw - Online Research, Document Displays (JRG)	\$58.01
7/17/2019	WestLaw - Online Research, Document Displays (JRG)	\$238.41
8/14/2019	WestLaw - Online Research, Keycite, Document Displays (JRG)	\$115.98
8/15/2019	WestLaw - Online Research, Keycite, Document Displays (JRG)	\$46.01
8/20/2019	WestLaw - Online Research, Keycite, Document Displays (JRG)	\$10.59
8/28/2019	WestLaw - Online Research, Keycite, Document Displays (JRG)	\$52.78
8/13/2019	WestLaw - Online Research, Keycite, Document Displays (SMW)	\$46.01
8/15/2019	WestLaw - Online Research, Keycite, Document Displays (SMW)	\$14.06
8/28/2019	WestLaw - Online Research, Keycite, Document Displays (BMH)	\$202.26
8/14/2019	WestLaw - Online Research, Keycite, Document Displays (SMW)	\$3.47
10/21/2019	WestLaw - Online Research - Multi-Search Keycites (JRG)	\$3.48
10/21/2019	WestLaw - Online Research - Multi-Search Document Displays (JRG)	\$13.94
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10/21/2019	WestLaw - Online Research - Multi-Search Document Displays (JRG)	\$13.94

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1	10/21/2019	WestLaw - Online Research - Multi-Search Document Displays (JRG)	\$6.97
2	10/21/2019	WestLaw - Online Research - Multi-Search Transactional Searches (JRG)	\$8.77
3	10/21/2019	WestLaw - Online Research - Multi-Search Transactional Searches (JRG)	\$26.32
4	10/21/2019	WestLaw - Online Research - Multi-Search Transactional Searches (JRG)	\$17.54
5	10/21/2019	WestLaw - Online Research - Multi-Search Document Displays (JRG)	\$13.94
6	10/21/2019	WestLaw - Online Research - Multi-Search Document Displays (JRG)	\$3.48
7	10/8/2019	WestLaw - Online Research - Multi-Search Document Displays (JRG)	\$49.03
8	10/11/2019	WestLaw - Online Research - Multi-Search Document Displays (MXL)	\$49.03
9	10/11/2019	WestLaw - Online Research - Multi-Search Document Displays (MXL)	\$87.37
10	10/21/2019	WestLaw - Online Research - Multi-Search Document Displays (MXL)	\$24.51
11	10/22/2019	WestLaw - Online Research - Multi-Search Document Displays (MXL)	\$112.00
12	10/28/2019	WestLaw - Online Research - Multi-Search Document Displays (MXL)	\$174.86
13	10/31/2019	WestLaw - Online Research - Multi-Search Document Displays (SMW)	\$69.95
14	1/8/2020	Westlaw: Online Research, Multi-Search Document Displays, Transactional Searches (SMW)	\$40.00
15	3/11/2020	Westlaw: Online Research, Multi-Search Document Displays (APD)	\$252.00
16	3/13/2020	Westlaw: Online Research, Multi-Search Document Displays (APD)	\$288.00
17	3/23/2020	Westlaw: Online Research, Multi-Search Document Displays (APD)	\$12.00
18	3/11/2020	Westlaw: Online Research, Multi-Search Document Displays (BMH)	\$216.00
19	3/19/2020	Westlaw: Online Research, Multi-Search Document Displays (BMH)	\$96.00
20	3/25/2020	Westlaw: Online Research, Multi-Search Document Displays (MXL)	\$252.00
21	3/26/2020	Westlaw: Online Research, Multi-Search Document Displays (MXL)	\$60.00
22	3/27/2020	Westlaw: Online Research, Multi-Search Document Displays (MXL)	\$24.00
23	3/16/2020	Westlaw: Online Research, Multi-Search Document Displays (JRG)	\$36.00

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1	3/17/2020	Westlaw: Online Research, Multi-Search Document Displays (JRG)	\$36.00
2	3/19/2020	Westlaw: Online Research, Multi-Search Document Displays (JRG)	\$168.00
3	3/26/2020	Westlaw: Online Research, Multi-Search Document Displays (JRG)	\$24.00
4	3/30/2020	Westlaw: Online Research, Multi-Search Document Displays (JRG)	\$96.00
5	4/16/2020	Westlaw: Online Research, Multi-Search Document Display (APD)	\$80.00
6	4/8/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$50.00
7	4/13/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$80.00
8	4/14/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$20.00
9	4/16/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$70.00
10	4/17/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$130.00
11	4/24/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$40.00
12	4/29/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$100.00
13	4/30/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$100.00
14	5/29/2020	Westlaw: Online Research, Multi-Search Document Display (BMH)	\$90.00
15	6/22/2020	Westlaw: Online Research, Multi-Search Document Display (APD)	\$10.00
16	6/23/2020	Westlaw: Online Research, Multi-Search Document Display (APD)	\$20.00
17	6/11/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$60.00
18	6/24/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$110.00
19	6/25/2020	Westlaw: Online Research, Multi-Search Document Display (JRG)	\$80.00
20	7/2/2020	Westlaw Online Research	\$30.00
21	7/18/2020	Westlaw Online Research	\$60.00
22	7/20/2020	Westlaw Online Research	\$220.00
23	7/27/2020	Westlaw Online Research	\$230.00
24	7/28/2020	Westlaw Online Research	\$230.00
25	8/6/2020	Westlaw Online Research	\$10.00
26	8/6/2020	Westlaw Online Research	\$160.00
27	8/8/2020	Westlaw Online Research	\$40.00

8/14/2020	Westlaw Online Research	\$280.00
8/21/2020	Westlaw Online Research	\$70.00
12/31/2021	Westlaw Online Research	\$71.92
	TOTAL:	\$6,291.37

Expense Type: Parking Costs

DATE	DESCRIPTION	TOTAL
5/31/2019	Shannon M. Wilson: Douglas Parking LV10	\$28
6/5/2019	Brigid M. Higgins: Parking Fees for Hearings	\$151
6/11/2019	Shannon M. Wilson: Expense Reimbursement - Parking	\$24
6/17/2019	Rusty Graf: Parking Expense 5/24/19	\$30
6/17/2019	Rusty Graf: Parking Expense 5/30/19	\$30
6/17/2019	Rusty Graf: Parking Expense 5/31/19	\$30
6/17/2019	Rusty Graf: Parking Expense 6/10/19	\$30
6/17/2019	Rusty Graf: Parking Expense 6/14/19 1 of 3	\$10
6/17/2019	Rusty Graf: Parking Expense 2 of 3	\$30
6/17/2019	Rusty Graf: Parking Expense 6/14/19 3 of 3	\$26
6/18/2019	Shannon M. Wilson: Douglas Parking Reimbursement	\$21
6/18/2019	Shannon M. Wilson: Lewis St Garage Reimbursement	\$24
6/20/2019	Shannon M. Wilson: 2019.06.19 Parking Charges - Lewis St Garage	\$24
7/5/2019	Brigid M. Higgins: May 24, 2019 - Hrg - Parking	\$23
6/18/2019	Rusty Graf: Parking Expense 6/18/19	\$30
6/19/2019	Rusty Graf Parking 6/19/2019	\$30
6/20/2019	Rusty Graf Parking 6/20/2019	\$30
6/25/2019	Rusty Graf Parking 6/25/2019	\$30
7/1/2019	Rusty Graf Parking 7/1/19	\$30
7/2/2019	Rusty Graf Parking 7/2/19	\$30
7/23/2019	Brigid Higgins, Esq.: Parking for Preliminary Injunction Hearings and Cont'd Hearings	\$217
7/15/2019	Rusty Graf: Parking 7/15/19	\$30
7/17/2019	Rusty Graf Parking 7/17/2019	\$22
8/8/2019	Rusty Graf Parking 8/8/2019	\$14
8/14/2019	Rusty Graf: Parking 2019.08.12	\$18
8/22/2019	Brigid Higgins, Esq.: Parking Fees for Attending Preliminary Injunction Hearing	\$63
8/26/2019	Rusty Graf: Parking: 7/24/19	\$3
7/24/2019	Rusty Graf: Parking: 7/24/19	\$30

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8/13/2019	Rusty Graf: Parking: 8/13/2019	\$30
8/14/2019	Rusty Graf: Parking: 8/14/2019	\$30
8/15/2019	Rusty Graf: Parking: 8/15/2019	\$30
8/16/2019	Rusty Graf: Parking: 8/16/2019	\$30
8/19/2019	Rusty Graf: Parking: 8/19/2019	\$18
9/10/2019	Rusty Graf: Parking 2019.09.09	\$14
8/30/2019	Rusty Graf: Parking 2019.08.26	\$10
8/30/2019	Rusty Graf: Parking 2019.08.29	\$20
8/19/2019	Brigid M. Higgins: Parking Fees for Hearings	\$51
10/24/2019	Rusty Graf: Parking on 9/27, 9/30 and 10/18/19	\$34
11/15/2019	Rusty Graf: Parking - 10/28, 10/30 and 11/5	\$38
11/15/2019	Rusty Graf: Parking 10/29/19	\$14
12/4/2019	Rusty Graf: Parking 10/15/19 \$10.00 Parking 11/12/19 \$26.00 Parking 11/18/19 \$18.00	\$54
1/14/2020	Brigid Higgins : Parking for Hearings	\$15
2/12/2020	Payable To: Rusty Graf, for Parking - 1/13/20 Parking - 1/27/20	\$36
3/19/2020	Payable To: Brigid Higgins, for Parking for Hearings - 02-28-20 and 03-13-20	\$34
7/10/2020	City of Las Vegas: Parking (JRG)	\$25
7/28/2020	Payable To: Other (Not Listed): Rusty Graf, for Parking for Clear River Hearing	\$14
TOTAL:		\$1,555.00

Expense Type: Runner Services and Document Delivery

Date	Description	Billable (\$)
5/7/2019	RUNNER SERVICE: Leave for Signature: Order Granting Clear River, LLC Motion to Intervene; Location: District Court; eFile	\$25
5/8/2019	RUNNER SERVICE: Courtesy Copy: Answer to Complaint; Location: District Court	\$20
5/10/2019	RUNNER SERVICE: Drop-off/Hand Deliver: Order Shortening Time on Motion for Protective Order and To Quash Subpoena; Location: District Court; eFile	\$40
5/16/2019	RUNNER SERVICE: Courtesy Copy: Notice of Entry of Order of Defendant/Intervenor, Clear River, LLC's Order Shortening Time On Motion for Protective Order and to Quash Subpoena; Location: District Court	\$20

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1		RUNNER SERVICE: Courtesy Copy: Clear River, LLC's Joinder to Nevada Organic Remedies, LLC's Opposition to	
2	5/30/2019	Plaintiffs' Motion to Compel; Location: District Court	\$20
3		RUNNER SERVICE: Courtesy Copy: Joinder to Helping	
4	6/18/2019	Hands Wellness Center Inc.'s Motion for Summary Judgment; Location: District Court;	\$20
5	6/20/2019	RUNNER SERVICE: Courtesy Copy: Clear River, LLC - Motion for Summary Judgment; Location: District Court;	\$20
6		RUNNER SERVICE: Courtesy Copy: Clear River, LLC's	
7	6/24/2019	Opposition to Plaintiffs' Motion to Release Cash Bond; Location: District Court;	\$20
8		RUNNER SERVICE: Courtesy Copy: Clear River, LLC's	
9	6/25/2019	Joinder To Defendant-Intervenor Lone Mountain Partners, LLC's Pocket Brief Regarding Interpretation of Statutes Enacted by Ballot Initiative; Location: District Court; eFile	\$25
10		RUNNER SERVICE: Courtesy Copy: Clear River, LLC's	
11	7/22/2019	Opposition to Plaintiffs' Renewed Motion to Release Cash Bond; Location: District Court;	\$20
12		RUNNER SERVICE: Courtesy Copy: Clear River, LLC's	
13	7/22/2019	Motion for Summary Judgment, Joinders, and Opposition; Location: District Court;	\$20
14	7/22/2019	RUNNER SERVICE: Courtesy Copy: Clear River, LLC's Notice of Compliance; Location: District Court;	\$25
15	7/23/2019	RUNNER SERVICE: Courtesy Copy: Clear River, LLC's Notice of Compliance; Location: District Court;	\$20
16		RUNNER SERVICE: Drop-off/Hand Deliver: Cash \$119.46 for Hearing Transcript for Summary Judgment and Motion to Seal; Location: District Court;	\$20
17	7/26/2019		\$20
18		RUNNER SERVICE: Courtesy Copy: NOH, Clear River, LLC's Answer to Plaintiffs' Corrected First Amd Complaint; Location: District Court;	\$25
19	7/30/2019		\$25
20	8/8/2019	RUNNER SERVICE: Expedited/Special; Drop-off/Hand Deliver; District Court ; Invoice Payment; Efile	\$35
21		RUNNER SERVICE: Other: Efile after signed by Judge: Defendant/Intervenor, Clear River, LLC's, Order Denying Its Motion for Partial Summary Judgment on the Petition for Judicial Review Cause of Action; Location: District Court; eFile	\$25
22	10/29/2019		\$25
23		RUNNER SERVICE: Pick-up: CLEAR RIVER, LLC'S, ORDER DENYING ITS MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PETITON FOR JUDICIAL REVIEW CAUSE OF ACTION; Location: District Court; eFile	\$25
24	11/6/2019		\$25
25		RUNNER SERVICE: Expedited/Special; Drop-off/Hand Deliver; Other ; EFILE: No; Check No. 1876 for \$180.00	\$35
26	11/14/2019		\$35
27			

2/13/2020	RUNNER SERVICE: Courtesy Copy: Clear River's Joinder to Essence' Motion to Dismiss; Location: District Court; eFile	\$25
TOTAL:		\$485.00

Expense Type: Transcripts

DATE	DESCRIPTION	TOTAL
6/11/2019	Florence Hoyt: Court Transcriber Fees, Check No. 1791	\$4000.00
6/17/2019	Florence Hoyt: Balance of Dailies	\$2954.12
7/24/2019	Florence M. Hoyt: Hearing Transcript on Motions for Summary Judgment and Motion to Seal	\$119.46
10/30/2019	Order No. 13-002577/Transcript of Hearing 10/29/19	\$270.45
TOTAL:		\$7,344.03

Expense Type: Postage

DATE	DESCRIPTION	TOTAL
9/13/2019	Postage to NV Dept of Taxation/Steve Gilbert (certified)	8.35
9/13/2019	Postage to City of Henderson Finance Dept/Jim McIntosh (certified)	6.95
9/25/2019	Postage to Advanced Resolution Management	0.55
10/29/2019	Postage to Jury to Verdict Trial Services	0.55
5/11/2020	FedEx to Dan Kutinac, JEA, Dept. XI	18.53
5/28/2020	Postage to Dominic Gentile, Esq.	0.55
7/15/2020	Postage to Litig Services	0.55
TOTAL:		\$36.03

Expense Type: Jury to Verdict Trial Services

DATE	DESCRIPTION	TOTAL
6/6/2019	Jury to Verdict Trial Services: Transcripts, Invoice No. 2019-2059, Check No. 1786	\$950.00
7/8/2019	Jury to Verdict Trial Services: (Split of \$6,000 by six firms), Check No. 1843	\$1000.00
7/25/2019	Jury to Verdict Trial Services: Six-way split (\$4,650.00) Check No. 1843	\$775.00

8/28/2019	Jury to Verdict Trial Services: Invoice No. 2019-2066 Closing - \$2925.00 split 6 ways, \$487.50	\$487.50
	TOTAL:	\$3,212.50

Expense Type: Advance Resolution Management

DATE	DESCRIPTION	TOTAL
8/22/2019	Advanced Resolution Management: Clear River's share Re: MM Development Co. Check No. 1847	\$1809.00
	Advanced Resolution Management: Invoice #4616	
10/5/2019	Mediation, 09/18/2019 & 09/19/2019	\$1464.28
	Advanced Resolution Management: Invoice #4649	
10/10/2019	Mediation: 10/11/2019	\$1339.28
	TOTAL:	\$4,612.56

TOTAL.....\$37,194.47

Clear River should be awarded a grand total of \$37,194.47 in taxable costs and disbursements, as well as prejudgment interest on said costs and disbursements in the amount of \$30,727.59 pursuant to NRS 17.130.

Dated this 8th day of August 2022

BLACK & WADHAMS

BRIGID M. HIGGINS, ESQ.
Nevada Bar No. 5990
RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

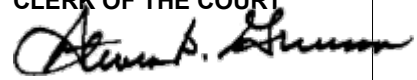
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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, **MEMORANDUM OF COSTS AND DISBURSEMENTS** was electronically filed on the 8th day of August, 2022 and served through the Notice of Electronic Filing automatically generated by the Court's facilities and system to those parties listed on the Court's Master Service List.

/s/ Allison Schmidt
An Employee of Black & Wadhams



HOLLEY DRIGGS, LTD.
JAMES W. PUZEY, ESQ.
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Facsimile: 775/851-7681

Attorney for High Sierra Holistics, LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation:

CASE NO.: A-19-787004-B
Consolidated with:

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

DEPT. NO.: XXXI

MOTION TO RETAX AND SETTLE COSTS

COMES NOW, HIGH SIERRA HOLISTICS, LLC (“HSH”), by and through its attorney of record, James W. Puzey, Esq. of Holley Driggs, Ltd., and out of an abundance of caution, hereby moves this court to retax and settle the costs set forth in CPCMH Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC (“Thrive”)’s Verified Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 11th day of August, 2022.

HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Thrive cannot recover the costs claimed in the Memorandum against HSH. Thrive cannot recover costs because it never appeared in Case No. A-19-787726-C involving HSH, is neither a prevailing party in this action against the HSH nor does Thrive have a statutory right to recover its costs. Even if the Memorandum is considered, none of the claimed costs were reasonably, necessarily, and actually incurred as to the HSH's petition for judicial review. As a result, HSH requests that this Court award no costs to Thrive.

Finally, none of the claimed costs are appropriately partitioned amongst the numerous Plaintiffs.

II. RELEVANT FACTUAL BACKGROUND**A. The Proceedings and Settlement**

Case No. A-19-787726-C was commenced on January 16, 2019. Thrive never intervened or otherwise appeared in the action. The primary and substantive causes of action were asserted against only the Nevada Department of Taxation (the "Department"). Namely, the causes of action for violation of substantive due process, violation of procedural due process, violation of equal protection, and petition for writ of mandamus were asserted exclusively against the Department.

Nearly one year later, prior to the trial in this matter, Case No. A-19-787726-C was consolidated with Case No. A-19-787004-B on December 6, 2019. Also prior to the trial, the Court determined that (i) the Department acted beyond the scope of its authority by replacing the requirement for a background check on each prospective owner with the 5 percent or greater standard in NAC 453D.255(1)¹ and (ii) that appeals were to be heard arising from the denial of licensure in the September 2018 retail licensure application competition.²

¹ See Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment on First Claim for Relief ("Order Granting Summary Judgment"), at 6:4-8, dated Aug. 15, 2020, on file herein.

² See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM Development Company, Inc. and LivFree Wellness, LLC's Motion for Summary Judgment or for Writ of Mandamus ("FFCL re Summary Judgment"), at 3:10-14, dated July 11, 2020, on file

1 The trial in these proceedings began on July 13, 2020. Importantly, the proceedings were
 2 conducted in a series of three phases where only certain claims would be examined and
 3 determined in each phase. The First Phase addressed only the petition for judicial review (the
 4 “First Phase Claim”), the Second Phase addressed the equal protection, due process, declaratory
 5 relief, and permanent injunction claims (the “Second Phase Claims”), and the Third Phase would
 6 address writ of mandamus claims (the “Third Phase Claim”).³

7 During the Second Phase of the proceedings, HSH settled with the State of Nevada,
 8 Department of Taxation. See attached hereto by reference as **Exhibit 1**, a copy of said Settlement
 9 Agreement. The Second Phase concluded with a decision issued by the Court on September 3,
 10 2020.⁴ Therein, the Court granted declaratory relief.⁵

11 Before beginning the next phase (i.e., the First Phase), the Court limited the evidence and
 12 record that could be considered for that phase to only the administrative record pursuant to the
 13 requirements of NRS 233B.135(1)(b).⁶ More specifically, the Court determined that evidence
 14 related to a claim for judicial review is to be restricted to the administrative record because it
 15 contains all relevant evidence that resulted in the Department’s analysis of the plaintiffs’
 16 applications.⁷ The Court proceeded with and completed the First Phase thereafter.

17 **B. The Memorandum of Costs**

18 On August 8, 2022, Thrive filed their Memorandum, approximately twenty-one (21) days
 19 after the Second Phase Judgment was entered and eight (8) days after the First Phase Judgment
 20 was entered.⁸ In the Memorandum, Thrive impermissibly claims a total of \$155,829.31 in costs.
 21 That is comprised of: Arbitrators/Mediators \$4,153.00, Color Copies/Prints \$5,283.85,
 22 Copies/Prints \$8,623.65, Court Fees \$5,028.95, Delivery Services/Courier (Special) \$2,012.70,

23 _____ (continued)
 herein.

24 ³ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
 preceded the First Phase.

25 ⁴ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the
 “Second Phase Judgment”). As noted therein, the Court recognized that HSH had reached a
 26 settlement with the Department prior to the issuance of the Second Phase Judgment. Id.

⁵ Id. at 29:3.

27 ⁶ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the
 “First Phase Judgment”).

28 ⁷ Id.

⁸ See First Phase Judgment and Second Phase Judgment, respectively.

Delivery Services/Courier (Standard) \$260.00, Deposition/Court Transcripts \$117,601.97, Experts \$235.00, Litigation Support Vendors \$7,035.57, Local Travel/Parking \$830.00, Meals \$144.50, Pacer \$52.20, Postage \$16.74, Private Investigators \$705.00, Subpoena/Process Fee \$860.00, Westlaw \$2,932.00, and Witness Fee \$54.18.⁹

III. LEGAL STANDARD AND ARGUMENT

A. Legal Standard

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly exercised when considering whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005).

In addition, the plain language of a statute governs the manner in which it is applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).

B. Thrive Cannot Recover the Claimed Costs.

1. Thrive is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Thrive cannot recover against HSH because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party*” against any

⁹ See Mem. of Costs of Thrive, Aug. 8, 2022.

adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered*.” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

HSH’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Consequently, the Second Phase Claims did not proceed to judgment in favor of Thrive, and there is no court order declaring any party as the prevailing party as to those claims. Further, pursuant to NRS 18.020, Thrive does not fall within any of the identified categories to recover its costs. See NRS 18.020. Indeed, with no judgment against HSH for either the Second Phase Claims or the First Phase Claim, Thrive cannot recover its claimed costs.

C. The Claimed Costs are not Reasonable and Necessary

Additionally, even though HSH had settled its action prior to the commencement of Phase I, nonetheless, Thrive cannot recover any of the claimed costs because they were not reasonably, necessarily, and actually incurred as part of the First Phase Claim. Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase to include only the administrative record.¹⁰ This necessarily excluded from the record all court filings, Westlaw legal research, photocopies, deposition and transcripts, documents delivered by runner, witness testimony, trial exhibits, trial transcripts, and any trial administrative services; which comprise all of Thrive’s claimed costs. Indeed, the record consisted of only the plaintiffs’ applications and related information that was before the Department when it evaluated the applicants and awarded the licenses.

Because the record for the First Phase Claim was restricted and did not include any of the evidence related to Thrive’s claimed costs, the claimed costs were not reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary, and actually incurred for the First Phase Claim, they cannot be recovered in connection with the First Phase Judgment.

¹⁰ See First Phase Judgment, at 11:4-9.

Moreover, even if the Court were to consider any of these claimed costs, Thrive includes requests for unnecessary, unreasonable and excessive costs. Assuming HSH as a settling party is responsible for any costs, Thrive's Memorandum of Cost and Disbursements does not identify which of the costs pertain to HSH. HSH was not the only Plaintiff in the consolidated action upon which Thrive relies in filing its Memorandum. Thrive sent no written discovery to HSH, took no depositions of anyone from HSH, took no witness testimony from HSH, sent no correspondence to HSH, engaged in no phone calls with HSH, nothing. Just as unapportioned joint offers of judgment are invalid for purposes of determining prevailing party eligibility for recovery of attorney's fees and costs against a party rejecting the offer under NRCP 68 (See *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172 (1999)), unapportioned Memorandum of Costs should be invalid as there is no way for an opponent of the Memorandum to ascertain which costs are the result of litigation against which party. For that reason, under NRS 18.050, the Court has discretion in allowing costs and should not permit any of these to be attributed to HSH.

D. Thrive's Memorandum of Costs does not fall within the parameters of NRS 18.020.

If Thrive's Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI") which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI's denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

NRS 18.020 Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs

1 accrued in the action if originally commenced in a Justice Court. [1911 CPA §
2 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
3 1981, 470; 1985, 1503, 1622; 1995, 2793)

4 In addition to the fact that HSH settled its action against the State of Nevada Department
5 of Taxation before the First Phase of the Trial began, a Petition for Judicial Review, which is the
6 subject of the First Phase of Trial, is not within any of the five (5) category of cases listed at
7 NRS 18.020 and, therefore, the same does not provide authority for Thrive to seek an award of
8 costs.

9 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
10 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
11 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
12 costs in the following five actions: (1) an action for the recovery of real property or a possessory
13 right thereto; (2) an action to recover the possession of personal property valued more than
14 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
15 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
16 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
17 actions noted in NRS 18.020.

18 If the Legislature intended that costs be awarded for petitions for judicial review, the
19 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
20 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
21 reference petition for judicial review, but the legislature did not include more expansive phrases
22 in the wording of the statute such as “including but not limited to” or “in other actions where the
23 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
24 only the five cases specified, and the Court must follow the plain language of the statute. See
25 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
26 is significant that the Legislature did not include petitions for judicial review in the types of cases
27 for which a party may recover its costs. The Legislature is presumed to have knowledge of
28 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.

1 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
2 57 Nev. 332, 366, 65 P.2d 133 (1937).

3 Chapter 233B of the NRS does not classify a petition for judicial review as a special
4 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
5 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
6 An aggrieved party seeking review of a district court's decision on a petition for judicial review
7 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
8 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
9 a "civil case."

10 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
11 a court to assess additional costs against a party unreasonably refusing to limit the record to be
12 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
13 contains no other mention of assessing costs against a party in a petition for judicial review and it
14 doesn't mention or make reference to NRS Chapter 18.

15 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
16 most recent amendment occurring in 1995 where it added to subsection 4 the following language
17 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
18 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
19 the type of cases for which costs may be awarded, the Court may presume that the Legislature
20 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
21 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
22 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
23 doing and purposefully uses the specific language [it chooses].").

24 Therefore, the Memo of Costs should be denied because petitions for judicial review are
25 not special proceedings for purposes of NRS 18.020.

26 **E. Thrive was never a party to the HSH case**

27 Thrive never intervened into Case No. A-19-787726-C nor have they made any
28 appearance in the HSH case.

1 The Nevada Supreme Court has determined that consolidation does not merge two suits
2 into a single cause or change the rights of the parties or make one party a party in a separate suit.
3 See *Mikulich v. Carner*, 68 Nev. 161, 169, 228 P.2d 257, 260 (1951) citing *Johnson v.*
4 *Manhattan R. Co.*, 289 U.S. 479, 535, Ct. 721, 77 L. Ed. 1331, 1345.

5 In *Mukulich v. Carner*, 68 Nev. 161, 170, 228 P.2d 257, 261 (1951), the Nevada Supreme
6 Court relied on federal cases, which have consistently construed FRCP 42(a) consolidation
7 orders providing for the combined trial of two or more cases as “not having the effect of merging
8 the several causes into a single cause.” In such a case, the trial court simply enters two separate
9 judgments. *Mukulich*, 68 Nev. At 169, 228 P.2d at 261.

10 Even after consolidation, the actions retain their separate identities, and the parties and
11 pleadings in one action do not automatically become parties and pleadings in the other action.
12 *Mikulich*, 68 Nev. At 170, 228 P.2d at 261.

13 Thrive was granted intervention into Case No. A-19-787004-B by Court Order on April
14 22, 2019.

15 Over 7 ½ months later, the Order Granting Joint Motion to Consolidate was entered.
16 Thrive never intervened or made an appearance in Case No. A-19-787726-C either before or
17 after consolidation. Thrive never appeared via Answer or other pleadings either before or after
18 consolidation.

19 **F. Thrive is prevented from seeking costs from HSH by paragraph 14 of its**
20 **settlement with LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”),**
21 **MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management**
22 **Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC,**
23 **Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”);**
24 **Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan,**
25 **LLC, a Nevada limited liability company, (“Qualcan”).**

26 Thrive and the State of Nevada Department of Taxation settled its action with certain
27 Plaintiffs.

28 Section 14 of that Settlement Agreement provides:

SHS settled its action with the State of Nevada Department of Taxation shortly thereafter. Therefore Thrive is subject to the “Future Settlement” provision of their earlier agreement. As such, since the State of Nevada Department of Taxation settled a “Future Settlement”, Thrive is a released party “in such Future Settlement on the same release terms and conditions as set forth herein”.

“C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys’ fees, and to exchange mutual releases as provided in this Agreement.”

IV. CONCLUSION

AFFIRMATION

Dated this 11th day of August, 2022.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2022, I served a true and correct copy of the foregoing MOTION TO RETAX AND SETTLE COSTS through the Court's electronic filing system pursuant to Administrative Order 14-2 to all parties currently receiving service in this matter on the electronic service list.

/s/ Kelsey Fusco
An Employee of Holley Driggs, Ltd.

EXHIBIT 1

EXHIBIT 1

8/18/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August, 2020 (the "Effective Date") (this "Agreement"), among High Sierra Holistics, LLC, a Nevada limited liability company ("HSH") ("Settling Plaintiff"), the State of Nevada, Department of Taxation ("DOT") and TRNVP098, LLC a Nevada limited liability company ("TRNVP098") (collectively "Settling Defendants" or individually, a "Settling Defendant").

RECITALS

- A. HSH, TRNVP098 and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFER AND ISSUANCES OF LICENSE

1. The Settling Defendant hereby assigns (subject to DOT and/or Cannabis Compliance Board ("CCB") approval) all rights, interest and title in the Nevada retail marijuana dispensary conditional license (the "Conditionally Approved License") to HSH contingent on the execution of a Purchase Agreement and as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 4-6 hereof, shall first be fulfilled:

➤ TRNVP098 hereby assigns 1 Lyon County conditional license to HSH.

- 2. The license described in this Agreement must be in good standing.
- 3. The license transfer pursuant to this Agreement cannot create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

TRANSFER OF OWNERSHIP APPLICATIONS

4. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process HSH's transfer of ownership application described in paragraphs 1 and 6 in this Agreement.

5. As a condition and term of the settlement, DOT agrees to take all necessary steps to attempt to have all other non-settling parties waive their costs and fees against the settling parties. ✓

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TIMING OF TRANSFERS

6. As a condition and term of this settlement, after the conditions precedent in Paragraphs 4-5 are met, the CCB agrees to make a good faith effort to expedite any Transfer of Interest request for the transfer of the license from TRNVP098 to HSH as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process the Transfer of Interest request after submission thereof. For purposes of approving the transfers, HSH was previously and is currently approved by the DOT as an owner and operator of marijuana cultivation and distribution licenses in the state of Nevada. In compliance with Nevada law, HSH has operated pursuant to those licenses without any suspensions or revocations of those licenses. Any delays in approvals of the Transfer of Interest request due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

7. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, the parties will execute mutual releases in the form attached hereto as Exhibit A, with each party to bear its own costs and attorneys' fees.

8. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, HSH shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. A-19-787726-C currently pending in the Eighth Judicial District Court of the State of Nevada, In and For the County of Clark;
- b. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. 19-CV-00073 currently pending in the Third Judicial District Court of the State of Nevada, In and For the County of Lyon; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00271-MMD-CLB; consolidated into Case No. 3:19-CV-00270-LRH-CLB;
- c. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. CV19-000142 currently pending in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00270-LRH-CLB

HSH will dismiss the Dismissed Claims with prejudice against DOT, as applicable, and without costs or fees to or from any such Settling Party.

9. HSH agrees to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

8/18/2020

CONTINUED PARTICIPATION BY SETTLING PLAINTIFFS

10. If any Settling Party settles any other matter related to the Lawsuit (each, a "Future Settlement"), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys' fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

11. This Settlement Agreement shall only be valid if the current litigation pending in Case No. A-19-787004-B is settled in its totality and/or the litigation results in TRNVP098 retaining the conditional license granted to it in Lyon County. Should it be determined that TRNVP098 is not entitled to retain the conditional license granted to it in Lyon County, then this Settlement Agreement shall be declared null and void and all monies and other items shall be returned to the party from which they originated.

12. DOT and/or CCB agrees that the parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on the conditional license received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including but not limited to the Counties of Humboldt, Pershing, White Pine, Storey and Lander), DOT and/or CCB agrees to extend the deadline to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses owned by TRNVP098 in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

13. DOT and/or CCB further agrees to make a good faith effort to perform final inspections on an expedited time period – within 5 business days of the request for inspection – for the new locations of the Settling Parties.

REPRESENTATIONS AND WARRANTIES

14. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

15. TRNVP098 represents and warrants that it has full and complete control to assign the conditional license it was awarded and TRNVP098 shall indemnify, defend and hold HSH harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any entity claiming an ownership interest in the TRNVP098 conditional Lyon County license being transferred. TRNVP098 is not responsible for securing any ownership transfer approvals

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from the DOT or CCB for the Lyon County license TRNVP098 transfers hereunder. HSH will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

16. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

17. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

18. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

19. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit ("Global Settlement") consistent with this Agreement. ✓

20. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

GENERAL PROVISIONS

21. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

22. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

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23. Mediation. If the event of a dispute among the Parties concerning this agreement, the Parties agree they shall attempt to resolve such dispute through mediation with a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

24. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns contingent upon the execution of a final Purchase Agreement between HSH and TRNVP098. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

25. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

26. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

27. Partial Invalidity. Except with respect to Paragraph 5, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

28. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

29. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Lyon County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of

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compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

30. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

32. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

33. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or" are used in the inclusive sense of "and/or".

[Signatures on following pages]

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

TRNVP098, LLC

By: 

By: _____

Print Name: Russell Ernst

Print Name: Shane Terry

Title: MANAGING PARTNERTitle: Managing Member

STATE OF NEVADA,
DEPARTMENT OF TAXATION

By: _____

Print Name: _____

Title: _____

8/18/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August, 2020 (the "Effective Date") (this "Agreement"), among High Sierra Holistics, LLC, a Nevada limited liability company ("HSH") ("Settling Plaintiff"), the State of Nevada, Department of Taxation ("DOT") and TRNVP098, LLC a Nevada limited liability company ("TRNVP098") (collectively "Settling Defendants" or individually, a "Settling Defendant").

RECITALS

- A. HSH, TRNVP098 and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFER AND ISSUANCES OF LICENSE

- 1. The Settling Defendant hereby assigns (subject to DOT and/or Cannabis Compliance Board ("CCB") approval) all rights, interest and title in the Nevada retail marijuana dispensary conditional license (the "Conditionally Approved License") to HSH contingent on the execution of a Purchase Agreement and as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 4-6 hereof, shall first be fulfilled:
 - TRNVP098 hereby assigns 1 Lyon County conditional license to HSH.

- 2. The license described in this Agreement must be in good standing.
- 3. The license transfer pursuant to this Agreement cannot create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

TRANSFER OF OWNERSHIP APPLICATIONS

- 4. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process HSH's transfer of ownership application described in paragraphs 1 and 6 in this Agreement.
- 5. As a condition and term of the settlement, DOT agrees to take all necessary steps to attempt to have all other non-settling parties waive their costs and fees against the settling parties.

8/18/2020

TIMING OF TRANSFERS

6. As a condition and term of this settlement, after the conditions precedent in Paragraphs 4-5 are met, the CCB agrees to make a good faith effort to expedite any Transfer of Interest request for the transfer of the license from TRNVP098 to HSH as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process the Transfer of Interest request after submission thereof. For purposes of approving the transfers, HSH was previously and is currently approved by the DOT as an owner and operator of marijuana cultivation and distribution licenses in the state of Nevada. In compliance with Nevada law, HSH has operated pursuant to those licenses without any suspensions or revocations of those licenses. Any delays in approvals of the Transfer of Interest request due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

7. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, the parties will execute mutual releases in the form attached hereto as Exhibit A, with each party to bear its own costs and attorneys' fees.

8. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 4-6 are met, HSH shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. A-19-787726-C currently pending in the Eighth Judicial District Court of the State of Nevada, In and For the County of Clark;
- b. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. 19-CV-00073 currently pending in the Third Judicial District Court of the State of Nevada, In and For the County of Lyon; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00271-MMD-CLB; consolidated into Case No. 3:19-CV-00270-LRH-CLB;
- c. High Sierra Holistics, LLC v. State of Nevada, Department of Taxation, Case No. CV19-000142 currently pending in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe; removed to United States District Court for the District of Nevada; Case No. 3:19-CV-00270-LRH-CLB

HSH will dismiss the Dismissed Claims with prejudice against DOT, as applicable, and without costs or fees to or from any such Settling Party.

9. HSH agrees to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

8/18/2020

CONTINUED PARTICIPATION BY SETTLING PLAINTIFFS

10. If any Settling Party settles any other matter related to the Lawsuit (each, a "Future Settlement"), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys' fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

11. This Settlement Agreement shall only be valid if the current litigation pending in Case No. A-19-787004-B is settled in its totality and/or the litigation results in TRNVP098 retaining the conditional license granted to it in Lyon County. Should it be determined that TRNVP098 is not entitled to retain the conditional license granted to it in Lyon County, then this Settlement Agreement shall be declared null and void and all monies and other items shall be returned to the party from which they originated.

12. DOT and/or CCB agrees that the parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on the conditional license received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including but not limited to the Counties of Humboldt, Pershing, White Pine, Storey and Lander), DOT and/or CCB agrees to extend the deadline to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses owned by TRNVP098 in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

13. DOT and/or CCB further agrees to make a good faith effort to perform final inspections on an expedited time period -- within 5 business days of the request for inspection -- for the new locations of the Settling Parties.

REPRESENTATIONS AND WARRANTIES

14. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

15. TRNVP098 represents and warrants that it has full and complete control to assign the conditional license it was awarded and TRNVP098 shall indemnify, defend and hold HSH harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any entity claiming an ownership interest in the TRNVP098 conditional Lyon County license being transferred. TRNVP098 is not responsible for securing any ownership transfer approvals

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from the DOT or CCB for the Lyon County license TRNVP098 transfers hereunder. HSH will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

16. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

17. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

18. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

19. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit ("Global Settlement") consistent with this Agreement.

20. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

GENERAL PROVISIONS

21. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

22. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

8/18/2020

23. Mediation. If the event of a dispute among the Parties concerning this agreement, the Parties agree they shall attempt to resolve such dispute through mediation with a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

24. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns contingent upon the execution of a final Purchase Agreement between HSH and TRNVP098. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

25. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

26. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

27. Partial Invalidity. Except with respect to Paragraph 5, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

28. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

29. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Lyon County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of

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compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

30. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

32. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

33. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or" are used in the inclusive sense of "and/or".

[Signatures on following pages]

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

By: Print Name: Russell ErnstTitle: MANAGING PARTNER

TRNVP008, LLC

By: 

Print Name: Shane Terry

Title: Managing MemberSTATE OF NEVADA,
DEPARTMENT OF TAXATIONBy: Print Name: Melanie YoungTitle: Executive Director

8/18/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HIGH SIERRA HOLISTICS, LLC

TRNVP098, LLC

By: 

By: _____

Print Name: Russell Ernst

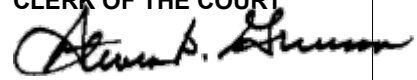
Print Name: Shane Terry

Title: MANAGING PARTNERTitle: Managing MemberSTATE OF NEVADA,
DEPARTMENT OF TAXATION

By: _____

Print Name: _____

Title: _____



HOLLEY DRIGGS, LTD.
JAMES W. PUZEY, ESQ.
NV Bar No. 5745
jpuzey@nevadafirm.com
800 South Meadows Pkwy., Suite 800
Reno, Nevada 89521
Telephone: 775/851-8700
Facsimile: 775/851-7681

Attorney for High Sierra Holistics, LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation:

CASE NO.: A-19-787004-B
Consolidated with:

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

DEPT. NO.: XXXI

MOTION TO RETAX AND SETTLE COSTS

COMES NOW, HIGH SIERRA HOLISTICS, LLC (“HSH”), by and through its attorney of record, James W. Puzey, Esq. of Holley Driggs, Ltd., and out of an abundance of caution, hereby moves this court to retax and settle the costs set forth in DEEP ROOTS HARVEST, INC.’s (“Deep Roots”) Verified Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 11th day of August, 2022.

HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Deep Roots cannot recover the costs claimed in the Memorandum against HSH. Deep Roots cannot recover costs because it never appeared in Case No. A-19-787726-C involving HSH, is neither a prevailing party in this action against the HSH nor does Deep Roots have a statutory right to recover its costs. Even if the Memorandum is considered, none of the claimed costs were reasonably, necessarily, and actually incurred as to the HSH's petition for judicial review. As a result, HSH requests that this Court award no costs to Deep Roots.

Finally, none of the claimed costs are appropriately partitioned amongst the numerous Plaintiffs.

II. RELEVANT FACTUAL BACKGROUND**A. The Proceedings and Settlement**

Case No. A-19-787726-C was commenced on January 16, 2019. Deep Roots never intervened or otherwise appeared in the action. The primary and substantive causes of action were asserted against only the Nevada Department of Taxation (the "Department"). Namely, the causes of action for violation of substantive due process, violation of procedural due process, violation of equal protection, and petition for writ of mandamus were asserted exclusively against the Department.

Nearly one year later, prior to the trial in this matter, Case No. A-19-787726-C was consolidated with Case No. A-19-787004-B on December 6, 2019. Also prior to the trial, the Court determined that (i) the Department acted beyond the scope of its authority by replacing the requirement for a background check on each prospective owner with the 5 percent or greater standard in NAC 453D.255(1)¹ and (ii) that appeals were to be heard arising from the denial of licensure in the September 2018 retail licensure application competition.²

¹ See Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment on First Claim for Relief ("Order Granting Summary Judgment"), at 6:4-8, dated Aug. 15, 2020, on file herein.

² See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM Development Company, Inc. and LivFree Wellness, LLC's Motion for Summary Judgment or

1 The trial in these proceedings began on July 13, 2020. Importantly, the proceedings were
 2 conducted in a series of three phases where only certain claims would be examined and
 3 determined in each phase. The First Phase addressed only the petition for judicial review (the
 4 “First Phase Claim”), the Second Phase addressed the equal protection, due process, declaratory
 5 relief, and permanent injunction claims (the “Second Phase Claims”), and the Third Phase would
 6 address writ of mandamus claims (the “Third Phase Claim”).³

7 During the Second Phase of the proceedings, HSH settled with the State of Nevada,
 8 Department of Taxation. See attached hereto by reference as **Exhibit 1**, a copy of said Settlement
 9 Agreement. The Second Phase concluded with a decision issued by the Court on September 3,
 10 2020.⁴ Therein, the Court granted declaratory relief.⁵

11 Before beginning the next phase (i.e., the First Phase), the Court limited the evidence and
 12 record that could be considered for that phase to only the administrative record pursuant to the
 13 requirements of NRS 233B.135(1)(b).⁶ More specifically, the Court determined that evidence
 14 related to a claim for judicial review is to be restricted to the administrative record because it
 15 contains all relevant evidence that resulted in the Department’s analysis of the plaintiffs’
 16 applications.⁷ The Court proceeded with and completed the First Phase thereafter.

17 **B. The Memorandum of Costs**

18 On August 8, 2022, Deep Roots filed their Memorandum, approximately twenty-one (21)
 19 days after the Second Phase Judgment was entered and eight (8) days after the First Phase
 20 Judgment was entered.⁸ In the Memorandum, Deep Roots impermissibly claims a total of
 21 \$44,250.67 in costs. That is comprised of: Clerks’ Fees \$1,102.49, Reporters’ Fees \$16,553.45,

22 _____ (continued)
 23 for Writ of Mandamus (“FFCL re Summary Judgment”), at 3:10-14, dated July 11, 2020, on file
 24 herein.

25 ³ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
 26 preceded the First Phase.

27 ⁴ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the
 28 “Second Phase Judgment”). As noted therein, the Court recognized that HSH had reached a
 settlement with the Department prior to the issuance of the Second Phase Judgment. Id.

⁵ Id. at 29:3.

⁶ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the
 “First Phase Judgment”).

⁷ Id.

⁸ See First Phase Judgment and Second Phase Judgment, respectively.

Expert Witness Fees \$235.00, Photocopies \$4,718.00, Long distance phone \$292.43, Postage \$106.63, Travel & lodging \$13,355.24, Miscellaneous Fees \$1,339.28, Computerized legal research \$1,472.93 and Trial technology services \$5,075.22.⁹

III. LEGAL STANDARD AND ARGUMENT

A. Legal Standard

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly exercised when considering whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005).

In addition, the plain language of a statute governs the manner in which it is applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).

B. Deep Roots Cannot Recover the Claimed Costs.

1. Deep Roots is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Deep Roots cannot recover against HSH because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party*” against any

⁹ See Mem. of Costs of Deep Roots, Aug. 8, 2022.

adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered*.” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

HSH’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Consequently, the Second Phase Claims did not proceed to judgment in favor of Deep Roots, and there is no court order declaring any party as the prevailing party as to those claims. Further, pursuant to NRS 18.020, Deep Roots does not fall within any of the identified categories to recover its costs. See NRS 18.020. Indeed, with no judgment against HSH for either the Second Phase Claims or the First Phase Claim, Deep Roots cannot recover its claimed costs.

C. The Claimed Costs are not Reasonable and Necessary

Additionally, even though HSH had settled its action prior to the commencement of Phase I, nonetheless, Deep Roots cannot recover any of the claimed costs because they were not reasonably, necessarily, and actually incurred as part of the First Phase Claim. Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase to include only the administrative record.¹⁰ This necessarily excluded from the record all court filings, Westlaw legal research, photocopies, deposition and transcripts, documents delivered by runner, witness testimony, trial exhibits, trial transcripts, and any trial administrative services; which comprise all of Deep Roots’s claimed costs. Indeed, the record consisted of only the plaintiffs’ applications and related information that was before the Department when it evaluated the applicants and awarded the licenses.

Because the record for the First Phase Claim was restricted and did not include any of the evidence related to Deep Roots’s claimed costs, the claimed costs were not reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary, and actually incurred for the First Phase Claim, they cannot be recovered in

¹⁰ See First Phase Judgment, at 11:4-9.

1 connection with the First Phase Judgment.

2 Moreover, even if the Court were to consider any of these claimed costs, Deep Roots
3 includes requests for unnecessary, unreasonable and excessive costs. Assuming HSH as a settling
4 party is responsible for any costs, Deep Roots's Memorandum of Cost and Disbursements does
5 not identify which of the costs pertain to HSH. HSH was not the only Plaintiff in the
6 consolidated action upon which Deep Roots relies in filing its Memorandum. Deep Roots sent no
7 written discovery to HSH, took no depositions of anyone from HSH, took no witness testimony
8 from HSH, sent no correspondence to HSH, engaged in no phone calls with HSH, nothing. Just
9 as unapportioned joint offers of judgment are invalid for purposes of determining prevailing
10 party eligibility for recovery of attorney's fees and costs against a party rejecting the offer under
11 NRCF 68 (See *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172 (1999)), unapportioned
12 Memorandum of Costs should be invalid as there is no way for an opponent of the Memorandum
13 to ascertain which costs are the result of litigation against which party. For that reason, under
14 NRS 18.050, the Court has discretion in allowing costs and should not permit any of these to be
15 attributed to HSH.

16 **D. Deep Roots's Memorandum of Costs does not fall within the parameters of**
17 **NRS 18.020.**

18 If Deep Roots's Memo of Costs is filed in connection with the *Findings of Fact,*
19 *Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-
20 2020 FFCL&PI") which denied the Petition of Judicial Review, then the Memo of Costs should
21 be denied because the 9-16-2020 FFCL&PI's denial of the Petition for Judicial Review is not
22 one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS
23 18.020, which provides:

24 NRS 18.020 Cases in which costs allowed prevailing party. Costs must be
25 allowed of course to the prevailing party against any adverse party against whom
judgment is rendered, in the following cases:

- 26 1. In an action for the recovery of real property or a possessory right thereto.
- 27 2. In an action to recover the possession of personal property, where the
value of the property amounts to more than \$2,500. The value must be determined
by the jury, court or master by whom the action is tried.
- 28 3. In an action for the recovery of money or damages, where the plaintiff
seeks to recover more than \$2,500.

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

3 5. In an action which involves the title or boundaries of real estate, or the
4 legality of any tax, impost, assessment, toll or municipal fine, including the costs
5 accrued in the action if originally commenced in a Justice Court. [1911 CPA §
6 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
7 1981, 470; 1985, 1503, 1622; 1995, 2793)

8 In addition to the fact that HSH settled its action against the State of Nevada Department
9 of Taxation before the First Phase of the Trial began, a Petition for Judicial Review, which is the
10 subject of the First Phase of Trial, is not within any of the five (5) category of cases listed at
11 NRS 18.020 and, therefore, the same does not provide authority for Deep Roots to seek an award
12 of costs.

13 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
14 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
15 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
16 costs in the following five actions: (1) an action for the recovery of real property or a possessory
17 right thereto; (2) an action to recover the possession of personal property valued more than
18 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
19 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
20 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
21 actions noted in NRS 18.020.

22 If the Legislature intended that costs be awarded for petitions for judicial review, the
23 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
24 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
25 reference petition for judicial review, but the legislature did not include more expansive phrases
26 in the wording of the statute such as “including but not limited to” or “in other actions where the
27 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
28 only the five cases specified, and the Court must follow the plain language of the statute. See
Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
is significant that the Legislature did not include petitions for judicial review in the types of cases

1 for which a party may recover its costs. The Legislature is presumed to have knowledge of
2 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
3 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
4 57 Nev. 332, 366, 65 P.2d 133 (1937).

5 Chapter 233B of the NRS does not classify a petition for judicial review as a special
6 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
7 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
8 An aggrieved party seeking review of a district court's decision on a petition for judicial review
9 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
10 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
11 a "civil case."

12 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
13 a court to assess additional costs against a party unreasonably refusing to limit the record to be
14 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
15 contains no other mention of assessing costs against a party in a petition for judicial review and it
16 doesn't mention or make reference to NRS Chapter 18.

17 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
18 most recent amendment occurring in 1995 where it added to subsection 4 the following language
19 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
20 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
21 the type of cases for which costs may be awarded, the Court may presume that the Legislature
22 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
23 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
24 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
25 doing and purposefully uses the specific language [it chooses].").

26 Therefore, the Memo of Costs should be denied because petitions for judicial review are
27 not special proceedings for purposes of NRS 18.020.

1 **E. Deep Roots was never a party to the HSH case**

2 Deep Roots never intervened into Case No. A-19-787726-C nor have they made any
3 appearance in the HSH case.

4 The Nevada Supreme Court has determined that consolidation does not merge two suits
5 into a single cause or change the rights of the parties or make one party a party in a separate suit.
6 See *Mikulich v. Carner*, 68 Nev. 161, 169, 228 P.2d 257, 260 (1951) citing *Johnson v.*
7 *Manhattan R. Co.*, 289 U.S. 479, 535, Ct. 721, 77 L. Ed. 1331, 1345.

8 In *Mukulich v. Carner*, 68 Nev. 161, 170, 228 P.2d 257, 261 (1951), the Nevada Supreme
9 Court relied on federal cases, which have consistently construed FRCP 42(a) consolidation
10 orders providing for the combined trial of two or more cases as “not having the effect of merging
11 the several causes into a single cause.” In such a case, the trial court simply enters two separate
12 judgments. *Mukulich*, 68 Nev. At 169, 228 P.2d at 261.

13 Even after consolidation, the actions retain their separate identities, and the parties and
14 pleadings in one action do not automatically become parties and pleadings in the other action.
15 *Mikulich*, 68 Nev. At 170, 228 P.2d at 261.

16 The Order Granting Joint Motion to Consolidate was entered on December 6, 2019. Deep
17 Roots filed Answer to ETW Plaintiff's Third Amended Complaint, MM Development Company,
18 Inc. & Livfree Wellness, LLC's Second Amended Complaint and Petition for Judicial Review or
19 Writ of Mandamus, Answer to Nevada Wellness Center's Amended Complaint and Petition for
20 Judicial Review or Writ of Mandamus, Answer to Rural Remedies' Complaint in Intervention,
21 Petition for Judicial Review or Writ of Mandamus and Answer to the Serenity Plaintiffs' Second
22 Amended Complaint on February 12, 2020. Deep Roots never intervened or made an appearance
23 in Case No. A-19-787726-C either before or after consolidation. Deep Roots never appeared via
24 Answer or other pleadings in the HSH case either before or after consolidation.

25 **IV. CONCLUSION**

26 Based on the foregoing, HSH respectfully request that this Court grant this Motion to
27 Retax and Settle Costs in its entirety and award Deep Roots no costs.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 11th day of August, 2022.

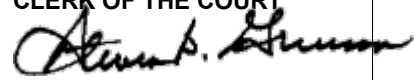
HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2022, I served a true and correct copy of the foregoing MOTION TO RETAX AND SETTLE COSTS through the Court's electronic filing system pursuant to Administrative Order 14-2 to all parties currently receiving service in this matter on the electronic service list.

/s/ Kelsey Fusco
An Employee of Holley Driggs, Ltd.



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Attorney for High Sierra Holistics, LLC

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

In Re: D.O.T. Litigation:

CASE NO.: A-19-787004-B
Consolidated with:

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

DEPT. NO.: XXXI

MOTION TO RETAX AND SETTLE COSTS

COMES NOW, HIGH SIERRA HOLISTICS, LLC (“HSH”), by and through its attorney of record, James W. Puzey, Esq. of Holley Driggs, Ltd., and out of an abundance of caution, hereby moves this court to retax and settle the costs set forth in CLEAR RIVER LLC’s (“Clear River”) Verified Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 11th day of August, 2022.

HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Clear River cannot recover the costs claimed in the Memorandum against HSH. Clear River cannot recover costs because it never appeared in Case No. A-19-787726-C involving HSH, is neither a prevailing party in this action against the HSH nor does Clear River have a statutory right to recover its costs. Even if the Memorandum is considered, none of the claimed costs were reasonably, necessarily, and actually incurred as to the HSH's petition for judicial review. As a result, HSH requests that this Court award no costs to Clear River.

Finally, none of the claimed costs are appropriately partitioned amongst the numerous Plaintiffs.

II. RELEVANT FACTUAL BACKGROUND**A. The Proceedings and Settlement**

Case No. A-19-787726-C was commenced on January 16, 2019. Clear River never intervened or otherwise appeared in the action. The primary and substantive causes of action were asserted against only the Nevada Department of Taxation (the "Department"). Namely, the causes of action for violation of substantive due process, violation of procedural due process, violation of equal protection, and petition for writ of mandamus were asserted exclusively against the Department.

Nearly one year later, prior to the trial in this matter, Case No. A-19-787726-C was consolidated with Case No. A-19-787004-B on December 6, 2019. Also prior to the trial, the Court determined that (i) the Department acted beyond the scope of its authority by replacing the requirement for a background check on each prospective owner with the 5 percent or greater standard in NAC 453D.255(1)¹ and (ii) that appeals were to be heard arising from the denial of licensure in the September 2018 retail licensure application competition.²

¹ See Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary Judgment on First Claim for Relief ("Order Granting Summary Judgment"), at 6:4-8, dated Aug. 15, 2020, on file herein.

² See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part MM Development Company, Inc. and LivFree Wellness, LLC's Motion for Summary Judgment or

1 The trial in these proceedings began on July 13, 2020. Importantly, the proceedings were
 2 conducted in a series of three phases where only certain claims would be examined and
 3 determined in each phase. The First Phase addressed only the petition for judicial review (the
 4 “First Phase Claim”), the Second Phase addressed the equal protection, due process, declaratory
 5 relief, and permanent injunction claims (the “Second Phase Claims”), and the Third Phase would
 6 address writ of mandamus claims (the “Third Phase Claim”).³

7 During the Second Phase of the proceedings, HSH settled with the State of Nevada,
 8 Department of Taxation. See attached hereto by reference as **Exhibit 1**, a copy of said Settlement
 9 Agreement. The Second Phase concluded with a decision issued by the Court on September 3,
 10 2020.⁴ Therein, the Court granted declaratory relief.⁵

11 Before beginning the next phase (i.e., the First Phase), the Court limited the evidence and
 12 record that could be considered for that phase to only the administrative record pursuant to the
 13 requirements of NRS 233B.135(1)(b).⁶ More specifically, the Court determined that evidence
 14 related to a claim for judicial review is to be restricted to the administrative record because it
 15 contains all relevant evidence that resulted in the Department’s analysis of the plaintiffs’
 16 applications.⁷ The Court proceeded with and completed the First Phase thereafter.

17 **B. The Memorandum of Costs**

18 On August 8, 2022, Clear River filed their Memorandum, approximately twenty-one (21)
 19 days after the Second Phase Judgment was entered and eight (8) days after the First Phase
 20 Judgment was entered.⁸ In the Memorandum, Clear River impermissibly claims a total of
 21 \$37,194.47 in costs. That is comprised of: Photocopies \$10,588.80, Court Filing Fees \$3,074.18,

22 _____ (continued)

for Writ of Mandamus (“FFCL re Summary Judgment”), at 3:10-14, dated July 11, 2020, on file
 23 herein.

³ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second Phase
 24 preceded the First Phase.

⁴ See Findings of Fact, Conclusions of Law and Permanent Inj., at 6 n.8, Sept. 3, 2020 (the
 25 “Second Phase Judgment”). As noted therein, the Court recognized that HSH had reached a
 settlement with the Department prior to the issuance of the Second Phase Judgment. Id.

⁵ Id. at 29:3.

⁶ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the
 27 “First Phase Judgment”).

⁷ Id.

⁸ See First Phase Judgment and Second Phase Judgment, respectively.

Westlaw Research Fees \$6,291.37, Parking Costs \$1,555.00, Runner Services and Document Delivery \$485.00, Transcripts \$7,344.03, Postage \$36.03, Jury Verdict Trial Services \$3,212.50, and Advance Resolution Management \$4,612.56.⁹

III. LEGAL STANDARD AND ARGUMENT

A. Legal Standard

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly exercised when considering whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005).

In addition, the plain language of a statute governs the manner in which it is applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).

B. Clear River Cannot Recover the Claimed Costs.

1. Clear River is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Clear River cannot recover against HSH because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party*” against any

⁹ See Mem. of Costs of Clear River, Aug. 8, 2022.

adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered*.” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

HSH’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Consequently, the Second Phase Claims did not proceed to judgment in favor of Clear River, and there is no court order declaring any party as the prevailing party as to those claims. Further, pursuant to NRS 18.020, Clear River does not fall within any of the identified categories to recover its costs. See NRS 18.020. Indeed, with no judgment against HSH for either the Second Phase Claims or the First Phase Claim, Clear River cannot recover its claimed costs.

C. The Claimed Costs are not Reasonable and Necessary

Additionally, even though HSH had settled its action prior to the commencement of Phase I, nonetheless, Clear River cannot recover any of the claimed costs because they were not reasonably, necessarily, and actually incurred as part of the First Phase Claim. Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase to include only the administrative record.¹⁰ This necessarily excluded from the record all court filings, Westlaw legal research, photocopies, deposition and transcripts, documents delivered by runner, witness testimony, trial exhibits, trial transcripts, and any trial administrative services; which comprise all of Clear River’s claimed costs. Indeed, the record consisted of only the plaintiffs’ applications and related information that was before the Department when it evaluated the applicants and awarded the licenses.

Because the record for the First Phase Claim was restricted and did not include any of the evidence related to Clear River’s claimed costs, the claimed costs were not reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary, and actually incurred for the First Phase Claim, they cannot be recovered in

¹⁰ See First Phase Judgment, at 11:4-9.

1 connection with the First Phase Judgment.

2 Moreover, even if the Court were to consider any of these claimed costs, Clear River
3 includes requests for unnecessary, unreasonable and excessive costs. Assuming HSH as a settling
4 party is responsible for any costs, Clear River's Memorandum of Cost and Disbursements does
5 not identify which of the costs pertain to HSH. HSH was not the only Plaintiff in the
6 consolidated action upon which Clear River relies in filing its Memorandum. Clear River sent no
7 written discovery to HSH, took no depositions of anyone from HSH, took no witness testimony
8 from HSH, sent no correspondence to HSH, engaged in no phone calls with HSH, nothing. Just
9 as unapportioned joint offers of judgment are invalid for purposes of determining prevailing
10 party eligibility for recovery of attorney's fees and costs against a party rejecting the offer under
11 NRCF 68 (See *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172 (1999)), unapportioned
12 Memorandum of Costs should be invalid as there is no way for an opponent of the Memorandum
13 to ascertain which costs are the result of litigation against which party. For that reason, under
14 NRS 18.050, the Court has discretion in allowing costs and should not permit any of these to be
15 attributed to HSH.

16 **D. Clear River's Memorandum of Costs does not fall within the parameters of**
17 **NRS 18.020.**

18 If Clear River's Memo of Costs is filed in connection with the *Findings of Fact*,
19 *Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-
20 2020 FFCL&PI") which denied the Petition of Judicial Review, then the Memo of Costs should
21 be denied because the 9-16-2020 FFCL&PI's denial of the Petition for Judicial Review is not
22 one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS
23 18.020, which provides:

24 NRS 18.020 Cases in which costs allowed prevailing party. Costs must be
25 allowed of course to the prevailing party against any adverse party against whom
judgment is rendered, in the following cases:

- 26 1. In an action for the recovery of real property or a possessory right thereto.
- 27 2. In an action to recover the possession of personal property, where the
value of the property amounts to more than \$2,500. The value must be determined
by the jury, court or master by whom the action is tried.
- 28 3. In an action for the recovery of money or damages, where the plaintiff
seeks to recover more than \$2,500.

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

3 5. In an action which involves the title or boundaries of real estate, or the
4 legality of any tax, impost, assessment, toll or municipal fine, including the costs
5 accrued in the action if originally commenced in a Justice Court. [1911 CPA §
6 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725;
7 1981, 470; 1985, 1503, 1622; 1995, 2793)

8 In addition to the fact that HSH settled its action against the State of Nevada Department
9 of Taxation before the First Phase of the Trial began, a Petition for Judicial Review, which is the
10 subject of the First Phase of Trial, is not within any of the five (5) category of cases listed at
11 NRS 18.020 and, therefore, the same does not provide authority for Clear River to seek an award
12 of costs.

13 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
14 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
15 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
16 costs in the following five actions: (1) an action for the recovery of real property or a possessory
17 right thereto; (2) an action to recover the possession of personal property valued more than
18 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
19 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
20 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
21 actions noted in NRS 18.020.

22 If the Legislature intended that costs be awarded for petitions for judicial review, the
23 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
24 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
25 reference petition for judicial review, but the legislature did not include more expansive phrases
26 in the wording of the statute such as “including but not limited to” or “in other actions where the
27 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
28 only the five cases specified, and the Court must follow the plain language of the statute. See
Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
is significant that the Legislature did not include petitions for judicial review in the types of cases

1 for which a party may recover its costs. The Legislature is presumed to have knowledge of
2 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
3 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
4 57 Nev. 332, 366, 65 P.2d 133 (1937).

5 Chapter 233B of the NRS does not classify a petition for judicial review as a special
6 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
7 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
8 An aggrieved party seeking review of a district court's decision on a petition for judicial review
9 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
10 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
11 a "civil case."

12 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
13 a court to assess additional costs against a party unreasonably refusing to limit the record to be
14 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
15 contains no other mention of assessing costs against a party in a petition for judicial review and it
16 doesn't mention or make reference to NRS Chapter 18.

17 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
18 most recent amendment occurring in 1995 where it added to subsection 4 the following language
19 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
20 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
21 the type of cases for which costs may be awarded, the Court may presume that the Legislature
22 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
23 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
24 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
25 doing and purposefully uses the specific language [it chooses].").

26 Therefore, the Memo of Costs should be denied because petitions for judicial review are
27 not special proceedings for purposes of NRS 18.020.

1 **E. Clear River was never a party to the HSH case**

2 Clear River never intervened into Case No. A-19-787726-C nor have they made any
3 appearance in the HSH case.

4 The Nevada Supreme Court has determined that consolidation does not merge two suits
5 into a single cause or change the rights of the parties or make one party a party in a separate suit.
6 See *Mikulich v. Carner*, 68 Nev. 161, 169, 228 P.2d 257, 260 (1951) citing *Johnson v.*
7 *Manhattan R. Co.*, 289 U.S. 479, 535, Ct. 721, 77 L. Ed. 1331, 1345.

8 In *Mukulich v. Carner*, 68 Nev. 161, 170, 228 P.2d 257, 261 (1951), the Nevada Supreme
9 Court relied on federal cases, which have consistently construed FRCP 42(a) consolidation
10 orders providing for the combined trial of two or more cases as “not having the effect of merging
11 the several causes into a single cause.” In such a case, the trial court simply enters two separate
12 judgments. *Mukulich*, 68 Nev. At 169, 228 P.2d at 261.

13 Even after consolidation, the actions retain their separate identities, and the parties and
14 pleadings in one action do not automatically become parties and pleadings in the other action.
15 *Mikulich*, 68 Nev. At 170, 228 P.2d at 261.

16 Clear River appeared in *Serenity Wellness Center, LLC, et al. v. The State of Nevada,*
17 *Department of Taxation*, Case No. A-19-786962-B, at some time prior to July 1, 2019 (the
18 “Serenity Action”) when it filed a Motion for Summary Judgment. The Order Granting Joint
19 Motion to Consolidate was entered on December 6, 2019, at least five months later. Clear River
20 never appeared via Answer or other pleadings either in the HSH case before or after
21 consolidation.

22 **IV. CONCLUSION**

23 Based on the foregoing, HSH respectfully request that this Court grant this Motion to
24 Retax and Settle Costs in its entirety and award Clear River no costs.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 11th day of August, 2022.

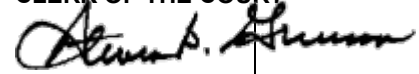
HOLLEY DRIGGS, LTD.

/s/ James W. Puzey
JAMES W. PUZEY, ESQ.
800 South Meadows Parkway, #800
Reno, Nevada 89521

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2022, I served a true and correct copy of the foregoing MOTION TO RETAX AND SETTLE COSTS through the Court's electronic filing system pursuant to Administrative Order 14-2 to all parties currently receiving service in this matter on the electronic service list.

/s/ Kelsey Fusco
An Employee of Holley Driggs, Ltd.



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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Requested
	)	Oral Argument Requested: Yes
)	

MOTION TO RETAX AND SETTLE COSTS
(re: Clear River LLC's Memorandum of Costs filed on August 8, 2022)

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B ("Plaintiffs"), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding *Clear River LLC's Memorandum of Costs* filed on August 8, 2022 ("Memo of Costs"). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Defendant/Intervenor, Clear River LLC ("Clear River") is simply not authorized as a matter of

law to receive its costs under NRS 18.020.

This Motion is made and based upon the following points and authorities, the papers and pleadings on file herein, any attached exhibit, and any oral argument the court may allow.

POINTS & AUTHORITIES

I. INTRODUCTION

Clear River's Memo of Costs notes a total of \$37,194.47 in claimed costs. As more fully referenced below, the Memo of Costs should be denied. NRS 18.110.

II. DISCUSSION

1. Clear River's Memo of Costs should be denied because it is Plaintiffs, not Clear River, who fall within the definition of a "prevailing party" for purposes of an award of costs.

"[S]tatutes permitting recovery of costs, being in derogation of the common law, must be strictly construed." Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418, 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v. Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S. Laboratories, Inc., the Nevada Supreme Court held that "a district court's decision regarding an award of costs will not be overturned absent a finding that the district court abused its discretion." 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999)).

A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d

40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”).

The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part) and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not Clear River, who fall within the definition of a “prevailing party” for purposes of an award of costs. Accordingly, because Clear River is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request for costs should be denied.

2. If Clear River’s Memo of Costs is filed in connection with the Findings of Fact, Conclusion of Law and Permanent Injunction e-filed and e-served on September 16, 2020, it should be denied because it does not fall within the parameters of NRS 18.020.

Alternatively, if Clear River’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

NRS 18.020 Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. [1911 CPA § 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725; 1981, 470; 1985, 1503, 1622; 1995, 2793)

1 A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not
2 within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does
3 not provide authority for Clear River to seek an award of costs.

4 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
5 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
6 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
7 costs in the following five actions: (1) an action for the recovery of real property or a possessory
8 right thereto; (2) an action to recover the possession of personal property valued more than
9 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
10 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
11 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
12 actions noted in NRS 18.020.

13
14
15 If the Legislature intended that costs be awarded for petitions for judicial review, the
16 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
17 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
18 reference petition for judicial review, but the legislature did not include more expansive phrases
19 in the wording of the statute such as “including but not limited to” or “in other actions where the
20 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
21 only the five cases specified, and the Court must follow the plain language of the statute. See
22 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
23 is significant that the Legislature did not include petitions for judicial review in the types of cases
24 for which a party may recover its costs. The Legislature is presumed to have knowledge of
25 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
26
27
28

1 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
2 57 Nev. 332, 366, 65 P.2d 133 (1937).

3 Chapter 233B of the NRS does not classify a petition for judicial review as a special
4 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
5 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
6 An aggrieved party seeking review of a district court's decision on a petition for judicial review
7 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
8 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
9 a "civil case."
10

11
12 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
13 a court to assess additional costs against a party unreasonably refusing to limit the record to be
14 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
15 contains no other mention of assessing costs against a party in a petition for judicial review and it
16 doesn't mention or make reference to NRS Chapter 18
17

18 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
19 most recent amendment occurring in 1995 where it added to subsection 4 the following language
20 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
21 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
22 the type of cases for which costs may be awarded, the Court may presume that the Legislature
23 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
24 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
25 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
26 doing and purposefully uses the specific language [it chooses].").
27
28

Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

3. **If Clear River's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority – nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.**

If Clear River's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority – nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.

Review of Clear River's Memo of Costs reveals that other than the initial filing fee, it is submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review claim since such a claim was limited to the record submitted by the Department of Taxation. The costs referenced in Clear River's Memo of Costs pertain to discovery and trial, not the Petition for Judicial Review. Thus, such costs should be denied if same are claimed in connection with the 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

III. CONCLUSION

Wherefore, as addressed above, Clear River's Memo of Costs should be denied and no costs assessed against Plaintiffs.

Dated this 11th day of August 2022.

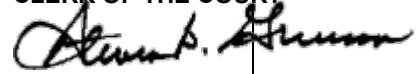
CLARK HILL, PLLC

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A. William Maupin (NSBN 1150)
3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169
Attorneys for TGIG Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August 2022, I served a true and correct copy of the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Tanya Bain
An Employee of Clark Hill



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GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada,
Nevada Pure, LLC, Medifarm, LLC, and
Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Requested
	)	Oral Argument Requested: Yes
)	

MOTION TO RETAX AND SETTLE COSTS
(re: the *Verified Memorandum of Costs and Disbursements* filed on August 8, 2022, by
CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, Inc., and
Commerce Park Medical, LLC)

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B (“Plaintiffs”), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding the *Verified Memorandum of Costs and Disbursements* filed on August 8, 2022 (“Memo of Costs”), by CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne

Medical, Inc., and Commerce Park Medical, LLC (collectively “Thrive”). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Thrive is simply not authorized as a matter of law to receive its costs under NRS 18.020.

This Motion is made and based upon the following points and authorities, the papers and pleadings on file herein, any attached exhibit, and any oral argument the court may allow.

POINTS & AUTHORITIES

I. INTRODUCTION

Thrive’s Memo of Costs notes a total of \$155,829.31 in claimed costs. As more fully referenced below, the Memo of Costs should be denied. NRS 18.110.

II. DISCUSSION

1. Thrive’s Memo of Costs should be denied because it is Plaintiffs, not Thrive, who fall within the definition of a “prevailing party” for purposes of an award of costs.

“[S]tatutes permitting recovery of costs, being in derogation of the common law, must be strictly construed.” Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting Calcagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418, 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v. Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S. Laboratories, Inc., the Nevada Supreme Court held that “a district court’s decision regarding an award of costs will not be overturned absent a finding that the district court abused its discretion.” 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999)).

A party prevails “if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” Valley Elec. Ass’n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d

40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”).

The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part) and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not Thrive, who fall within the definition of a “prevailing party” for purposes of an award of costs. Accordingly, because Thrive is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request for costs should be denied.

2. If Thrive’s Memo of Costs is filed in connection with the Findings of Fact, Conclusion of Law and Permanent Injunction e-filed and e-served on September 16, 2020, it should be denied because it does not fall within the parameters of NRS 18.020.

Alternatively, if Thrive’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

NRS 18.020 Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. [1911 CPA § 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725; 1981, 470; 1985, 1503, 1622; 1995, 2793)

1 A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not
2 within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does
3 not provide authority for Thrive to seek an award of costs.

4 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
5 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
6 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
7 costs in the following five actions: (1) an action for the recovery of real property or a possessory
8 right thereto; (2) an action to recover the possession of personal property valued more than
9 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
10 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
11 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
12 actions noted in NRS 18.020.

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15 If the Legislature intended that costs be awarded for petitions for judicial review, the
16 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
17 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
18 reference petition for judicial review, but the legislature did not include more expansive phrases
19 in the wording of the statute such as “including but not limited to” or “in other actions where the
20 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
21 only the five cases specified, and the Court must follow the plain language of the statute. See
22 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
23 is significant that the Legislature did not include petitions for judicial review in the types of cases
24 for which a party may recover its costs. The Legislature is presumed to have knowledge of
25 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
26
27
28

1 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
2 57 Nev. 332, 366, 65 P.2d 133 (1937).

3 Chapter 233B of the NRS does not classify a petition for judicial review as a special
4 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
5 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
6 An aggrieved party seeking review of a district court's decision on a petition for judicial review
7 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
8 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
9 a "civil case."
10

11
12 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
13 a court to assess additional costs against a party unreasonably refusing to limit the record to be
14 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
15 contains no other mention of assessing costs against a party in a petition for judicial review and it
16 doesn't mention or make reference to NRS Chapter 18
17

18 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
19 most recent amendment occurring in 1995 where it added to subsection 4 the following language
20 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
21 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
22 the type of cases for which costs may be awarded, the Court may presume that the Legislature
23 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
24 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
25 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
26 doing and purposefully uses the specific language [it chooses].").
27
28

Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

3. If Thrive's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority – nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.

If Thrive's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority – nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.

Review of Thrive's Memo of Costs reveals that other than the initial filing fee, it is submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review claim since such a claim was limited to the record submitted by the Department of Taxation. The costs referenced in Thrive's Memo of Costs pertain to discovery and trial, not the Petition for Judicial Review. Thus, such costs should be denied if same are claimed in connection with the 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

III. **CONCLUSION**

Wherefore, as addressed above, Thrive's Memo of Costs should be denied and no costs assessed against Plaintiffs.

Dated this 11th day of August 2022.

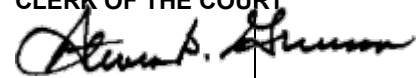
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August 2022, I served a true and correct copy of the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
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**MOTION TO RETAX AND SETTLE COSTS
(re: the *Verified Memorandum of Costs* filed
by Deep Roots Harvest, Inc. on August 8, 2022)**

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B (“Plaintiffs”), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding the *Verified Memorandum of Costs* filed on August 8, 2022 (“Memo of Costs”), by Deep Roots Harvest, Inc. (“Deep Roots”). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Deep Roots is simply not authorized as a matter of law to receive its

costs under NRS 18.020.

This Motion is made and based upon the following points and authorities, the papers and pleadings on file herein, any attached exhibit, and any oral argument the court may allow.

POINTS & AUTHORITIES

I. **INTRODUCTION**

Deep Roots' Memo of Costs notes a total of \$44,250.67 in claimed costs. As more fully referenced below, the Memo of Costs should be denied. NRS 18.110.

II. **DISCUSSION**

1. Deep Roots' Memo of Costs should be denied because it is Plaintiffs, not Deep Roots, who fall within the definition of a "prevailing party" for purposes of an award of costs.

"[S]tatutes permitting recovery of costs, being in derogation of the common law, must be strictly construed." Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418, 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v. Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S. Laboratories, Inc., the Nevada Supreme Court held that "a district court's decision regarding an award of costs will not be overturned absent a finding that the district court abused its discretion." 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999)).

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2. If Deep Roots’ Memo of Costs is filed in connection with the Findings of Fact, Conclusion of Law and Permanent Injunction e-filed and e-served on September 16, 2020, it should be denied because it does not fall within the parameters of NRS 18.020.

Alternatively, if Deep Roots’ Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

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4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
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12 actions noted in NRS 18.020.
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15 If the Legislature intended that costs be awarded for petitions for judicial review, the
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17 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
18 reference petition for judicial review, but the legislature did not include more expansive phrases
19 in the wording of the statute such as “including but not limited to” or “in other actions where the
20 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
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19 most recent amendment occurring in 1995 where it added to subsection 4 the following language
20 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
21 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
22 the type of cases for which costs may be awarded, the Court may presume that the Legislature
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25 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
26 doing and purposefully uses the specific language [it chooses].").
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Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

3. If Deep Roots' Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority – nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.

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Review of Deep Roots' Memo of Costs reveals that other than the initial filing fee, it is submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review claim since such a claim was limited to the record submitted by the Department of Taxation. The costs referenced in Deep Roots' Memo of Costs pertain to discovery and trial, not the Petition for Judicial Review. Thus, such costs should be denied if same are claimed in connection with the 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

III.
CONCLUSION

Wherefore, as addressed above, Deep Roots' Memo of Costs should be denied, and no costs assessed against Plaintiffs.

Dated this 11th day of August 2022.

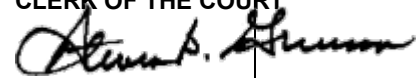
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August 2022, I served a true and correct copy of the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Tanya Bain
An Employee of Clark Hill



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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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)	Oral Argument Requested: Yes
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MOTION TO RETAX AND SETTLE COSTS
(re: Lone Mountain Partners LLC's Memorandum of Costs Pursuant to NRS 18.110
filed on August 9, 2022)

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B ("Plaintiffs"), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding *Lone Mountain Partners LLC's Memorandum of Costs Pursuant to NRS 18.110* filed on August 9, 2022 ("Memo of Costs"). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Defendant/Intervenor, Lone Mountain Partners, LLC ("LMP"), is

1 simply not authorized as a matter of law to receive its costs under NRS 18.020.

2 This Motion is made and based upon the following points and authorities, the papers and
3 pleadings on file herein, any attached exhibit, and any oral argument the court may allow.
4

5 **POINTS & AUTHORITIES**

6 **I.** 7 **INTRODUCTION**

8 LMP's Memo of Costs notes a total of \$71,431.72 in claimed costs. As more fully
9 referenced below, the Memo of Costs should be denied. NRS 18.110.

10 **II.** 11 **DISCUSSION**

12 **1. LMP's Memo of Costs should be denied because it is Plaintiffs, not LMP, who fall** 13 **within the definition of a "prevailing party" for purposes of an award of costs.**

14 "[S]tatutes permitting recovery of costs, being in derogation of the common law, must be
15 strictly construed." Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting
16 Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418,
17 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v.
18 Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S.
19 Laboratories, Inc., the Nevada Supreme Court held that "a district court's decision regarding an
20 award of costs will not be overturned absent a finding that the district court abused its
21 discretion." 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v.
22 I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev.
23 236, 240, 984 P.2d 172, 174 (1999)).

24 A party prevails "if it succeeds on any significant issue in litigation which achieves some
25 of the benefit it sought in bringing suit." Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106
26 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not
27 succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d
28 40 (1983) (observing that "a plaintiff [can be] deemed 'prevailing' even though he succeeded on
only some of his claims for relief").

The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part) and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not LMP, who fall within the definition of a “prevailing party” for purposes of an award of costs. Accordingly, because LMP is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request for costs should be denied.

2. If LMP’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020, it should be denied because it does not fall within the parameters of NRS 18.020.

Alternatively, if LMP’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

NRS 18.020 Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. [1911 CPA § 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725; 1981, 470; 1985, 1503, 1622; 1995, 2793)

A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does not provide authority for LMP to seek an award of costs.

1 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
2 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
3 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
4 costs in the following five actions: (1) an action for the recovery of real property or a possessory
5 right thereto; (2) an action to recover the possession of personal property valued more than
6 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
7 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
8 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
9 actions noted in NRS 18.020.
10
11

12 If the Legislature intended that costs be awarded for petitions for judicial review, the
13 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
14 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
15 reference petition for judicial review, but the legislature did not include more expansive phrases
16 in the wording of the statute such as “including but not limited to” or “in other actions where the
17 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
18 only the five cases specified, and the Court must follow the plain language of the statute. See
19 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
20 is significant that the Legislature did not include petitions for judicial review in the types of cases
21 for which a party may recover its costs. The Legislature is presumed to have knowledge of
22 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
23 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
24 57 Nev. 332, 366, 65 P.2d 133 (1937).
25
26
27
28

Chapter 233B of the NRS does not classify a petition for judicial review as a special proceeding. NRS 233B.130 provides that judicial review in a district court is available to any party who is aggrieved by a final decision from an administrative proceeding in a contested case. An aggrieved party seeking review of a district court's decision on a petition for judicial review may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is a "civil case."

NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows a court to assess additional costs against a party unreasonably refusing to limit the record to be transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B contains no other mention of assessing costs against a party in a petition for judicial review and it doesn't mention or make reference to NRS Chapter 18

NRS 18.020, which was enacted in 1911, has been amended six times since then, with the most recent amendment occurring in 1995 where it added to subsection 4 the following language "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794. By amending NRS 18.020 multiple times and not including petitions for judicial review as one of the type of cases for which costs may be awarded, the Court may presume that the Legislature intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is doing and purposefully uses the specific language [it chooses].").

Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

3. **If LMP's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority -- nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.**

If LMP's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority -- nearly all -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.

Review of LMP's Memo of Costs reveals that other than the initial filing fee, it is submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review claim since such a claim was limited to the record submitted by the Department of Taxation. The costs referenced in LMP's Memo of Costs pertain to discovery and trial, not the Petition for Judicial Review. Thus, such costs should be denied if same are claimed in connection with the 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

III. CONCLUSION

Wherefore, as addressed above, LMP's Memo of Costs should be denied and no costs assessed against Plaintiffs.

Dated this 11th day of August 2022.

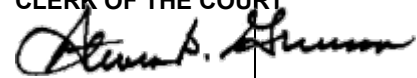
CLARK HILL, PLLC

By /s/ Mark S. Dzarnoski, Esq.
John A. Hunt, Esq. (NSBN 1888)
Dominic P. Gentile, Esq. (NSBN 1923)
Mark S. Dzarnoski, Esq. (NSBN 3398)
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Las Vegas, Nevada 89169
Attorneys for TGIG Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August 2022, I served a true and correct copy of the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Tanya Bain
An Employee of Clark Hill



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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Requested
	)	Oral Argument Requested: Yes
)	

MOTION TO RETAX AND SETTLE COSTS
(re: Nevada Organic Remedies, LLC's Memorandum of Costs filed on August 9, 2022)

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B ("Plaintiffs"), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding *Nevada Organic Remedies, LLC's Memorandum of Costs* filed on August 9, 2022 ("Memo of Costs"). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Defendant/Intervenor/Counterclaimant, Nevada Organic Remedies, LLC ("NOR"), is

1 simply not authorized as a matter of law to receive its costs under NRS 18.020.

2 This Motion is made and based upon the following points and authorities, the papers and
3 pleadings on file herein, any attached exhibit, and any oral argument the court may allow.
4

5 **POINTS & AUTHORITIES**

6 **I.** 7 **INTRODUCTION**

8 NOR's Memo of Costs notes a total of \$22,068.92 in claimed costs. As more fully
9 referenced below, the Memo of Costs should be denied. NRS 18.110.

10 **II.** 11 **DISCUSSION**

12 **1. NOR's Memo of Costs should be denied because it is Plaintiffs, not NOR, who fall** 13 **within the definition of a "prevailing party" for purposes of an award of costs.**

14 "[S]tatutes permitting recovery of costs, being in derogation of the common law, must be
15 strictly construed." Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting
16 Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418,
17 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v.
18 Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S.
19 Laboratories, Inc., the Nevada Supreme Court held that "a district court's decision regarding an
20 award of costs will not be overturned absent a finding that the district court abused its
21 discretion." 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v.
22 I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev.
23 236, 240, 984 P.2d 172, 174 (1999)).

24 A party prevails "if it succeeds on any significant issue in litigation which achieves some
25 of the benefit it sought in bringing suit." Valley Elec. Ass'n v. Overfield, 121 Nev. 7, 10, 106
26 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not
27 succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d
28 40 (1983) (observing that "a plaintiff [can be] deemed 'prevailing' even though he succeeded on
only some of his claims for relief").

The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part) and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not NOR, who fall within the definition of a “prevailing party” for purposes of an award of costs. Accordingly, because NOR is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request for costs should be denied.

2. If NOR’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020, it should be denied because it does not fall within the parameters of NRS 18.020.

Alternatively, if NOR’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

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2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. [1911 CPA § 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725; 1981, 470; 1985, 1503, 1622; 1995, 2793)

A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does not provide authority for NOR to seek an award of costs.

1 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
2 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
3 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
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5 right thereto; (2) an action to recover the possession of personal property valued more than
6 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
7 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
8 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
9 actions noted in NRS 18.020.
10
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12 If the Legislature intended that costs be awarded for petitions for judicial review, the
13 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
14 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
15 reference petition for judicial review, but the legislature did not include more expansive phrases
16 in the wording of the statute such as “including but not limited to” or “in other actions where the
17 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
18 only the five cases specified, and the Court must follow the plain language of the statute. See
19 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
20 is significant that the Legislature did not include petitions for judicial review in the types of cases
21 for which a party may recover its costs. The Legislature is presumed to have knowledge of
22 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
23 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
24 57 Nev. 332, 366, 65 P.2d 133 (1937).
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Chapter 233B of the NRS does not classify a petition for judicial review as a special proceeding. NRS 233B.130 provides that judicial review in a district court is available to any party who is aggrieved by a final decision from an administrative proceeding in a contested case. An aggrieved party seeking review of a district court's decision on a petition for judicial review may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is a "civil case."

NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows a court to assess additional costs against a party unreasonably refusing to limit the record to be transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B contains no other mention of assessing costs against a party in a petition for judicial review and it doesn't mention or make reference to NRS Chapter 18

NRS 18.020, which was enacted in 1911, has been amended six times since then, with the most recent amendment occurring in 1995 where it added to subsection 4 the following language "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794. By amending NRS 18.020 multiple times and not including petitions for judicial review as one of the type of cases for which costs may be awarded, the Court may presume that the Legislature intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is doing and purposefully uses the specific language [it chooses].").

Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

1 **3. If NOR's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming,**
2 **arguendo, it falls within the parameters of NRS 18.020, the Memo of Costs should**
3 **still be denied because the vast majority -- nearly all -- of the claimed costs have**
4 **nothing to do with the Petition for Judicial Review claim.**

5 If NOR's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it
6 falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the
7 vast majority -- nearly all -- of the claimed costs have nothing to do with the Petition for Judicial
8 Review claim.

9 Review of NOR's Memo of Costs reveals that other than the initial filing fee, it is
10 submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review
11 claim since such a claim was limited to the record submitted by the Department of Taxation. The
12 costs referenced in NOR's Memo of Costs pertain to discovery and trial, not the Petition for
13 Judicial Review. Thus, such costs should be denied if same are claimed in connection with the
14 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

15 **III.**
16 **CONCLUSION**

17 Wherefore, as addressed above, NOR's Memo of Costs should be denied and no costs
18 assessed against Plaintiffs.

19 Dated this 11th day of August 2022.

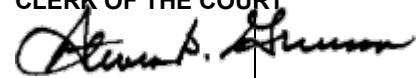
20 **CLARK HILL, PLLC**

21 By /s/ Mark S. Dzarnoski, Esq.
22 John A. Hunt, Esq. (NSBN 1888)
23 Dominic P. Gentile, Esq. (NSBN 1923)
24 Mark S. Dzarnoski, Esq. (NSBN 3398)
25 A. William Maupin (NSBN 1150)
26 3800 Howard Hughes Pkwy., #500
27 Las Vegas, Nevada 89169
28 Attorneys for TGIG Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August 2022, I served a true and correct copy of the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Tanya Bain
An Employee of Clark Hill



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Attorneys for TGIG Plaintiffs in case no. A-786962

**DISTRICT COURT
CLARK COUNTY, NEVADA**

	)	Case No. A-19-787004-B
)	
	)	Consolidated with: A-785818
	)	A-786357
In Re: D.O.T. Litigation,	)	A-786962
	)	A-787035
	)	A-787540
	)	A-787726
	)	A-801416
	)	Dept. No. 31
)	
	)	Hearing Requested
	)	Oral Argument Requested: Yes
)	

MOTION TO RETAX AND SETTLE COSTS
(re: Memorandum of Costs and Disbursements
of Wellness Connection of Nevada, LLC filed on August 9, 2022)

TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV, LLC,, Plaintiffs in Case A-19-786962-B (“Plaintiffs”), by and through counsel, the law firm CLARK HILL, PLLC, hereby submit their Motion to Retax and Settle Costs, pursuant to NRS 18.110(4), regarding the *Memorandum of Costs and Disbursements of Wellness Connection of Nevada, LLC* filed on August 9, 2022 (“Memo of Costs”). In addition, as more fully addressed bellowed, by this Motion, Plaintiffs contend Defendant, Wellness Connection of Nevada, LLC (“Wellness

Connection”), is simply not authorized as a matter of law to receive its costs under NRS 18.020.

This Motion is made and based upon the following points and authorities, the papers and pleadings on file herein, any attached exhibit, and any oral argument the court may allow.

POINTS & AUTHORITIES

I. INTRODUCTION

Wellness Connection’s Memo of Costs notes a total of \$55,301.48 in claimed costs. As more fully referenced below, the Memo of Costs should be denied. NRS 18.110.

II. DISCUSSION

1. Wellness Connection’s Memo of Costs should be denied because it is Plaintiffs, not Wellness Connection, who fall within the definition of a “prevailing party” for purposes of an award of costs.

“[S]tatutes permitting recovery of costs, being in derogation of the common law, must be strictly construed.” Bergmann v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993) (quoting Calcagagno v. Personalcare Health Management, 207 Ill. App. 3d 493, 152 Ill. Dec. 412, 418, 565 N.E.2d 1330, 1336 (Ill. App. 4th Dist. 1991) (citing Commissioners of Lincoln Park v. Schmidt, 395 Ill. 316, 69 N.E. 2d 869 (Ill. 1946))). In Village Builders 96, L.P. v. U.S. Laboratories, Inc., the Nevada Supreme Court held that “a district court’s decision regarding an award of costs will not be overturned absent a finding that the district court abused its discretion.” 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 172 (2002); Parodi v. Budetti, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999)).

A party prevails “if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” Valley Elec. Ass’n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. See Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d

40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”).

The Findings of Fact, Conclusions of Law and Permanent Injunction, dated September 3, 2020 (“9-3-2020 FFCL&PI”) granted the claim for declaratory relief, equal protection (in part) and injunctive relief. Accordingly, because of such rulings, it is Plaintiffs, not Wellness Connection, who fall within the definition of a “prevailing party” for purposes of an award of costs. Accordingly, because Wellness Connection is not a “prevailing party” in connection with the 9-3-2020 FFCL&PI, its request for costs should be denied.

2. If Wellness Connection’s Memo of Costs is filed in connection with the Findings of Fact, Conclusion of Law and Permanent Injunction e-filed and e-served on September 16, 2020, it should be denied because it does not fall within the parameters of NRS 18.020.

Alternatively, if Wellness Connection’s Memo of Costs is filed in connection with the *Findings of Fact, Conclusion of Law and Permanent Injunction* e-filed and e-served on September 16, 2020 (9-16-2020 FFCL&PI”) which denied the Petition of Judicial Review, then the Memo of Costs should be denied because the 9-16-2020 FFCL&PI’s denial of the Petition for Judicial Review is not one of the types of cases in which costs would be allowed to a prevailing party, pursuant to NRS 18.020, which provides:

NRS 18.020 Cases in which costs allowed prevailing party. Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.
2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.
5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. [1911 CPA § 435; RL § 5377; NCL § 8924] — (NRS A 1969, 435; 1977, 774; 1979, 65, 1725; 1981, 470; 1985, 1503, 1622; 1995, 2793)

1 A Petition for Judicial Review, which is the subject of the 9-16-2020 FFCL&PI, is not
2 within any of the five (5) category of cases listed at NRS 18.020 and, therefore, the same does
3 not provide authority for Wellness Connection to seek an award of costs.

4 In Nevada, costs of suit are only recoverable if they are authorized by statute or court
5 rule. Sun Realty v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 774, 776, 542
6 P.2d 1072, 1074 (1975). As noted above, NRS 18.020 allows the prevailing party to receive its
7 costs in the following five actions: (1) an action for the recovery of real property or a possessory
8 right thereto; (2) an action to recover the possession of personal property valued more than
9 \$2,500; (3) an action to recover money or damages of more than \$2,500; (4) a special
10 proceeding; and (5) an action involving title or boundaries of real estate, the legality of any tax,
11 assessment, toll, or municipal fine. Obviously, a petition for judicial review is not one of the five
12 actions noted in NRS 18.020.
13
14

15 If the Legislature intended that costs be awarded for petitions for judicial review, the
16 Legislature would have so expressly stated. Smith v. Crown Financial Services of America, 111
17 Nev. 277, 286, 890 P.2d 769, 775 (1995). Not only does the plain language of NRS 18.020 not
18 reference petition for judicial review, but the legislature did not include more expansive phrases
19 in the wording of the statute such as “including but not limited to” or “in other actions where the
20 Court deems appropriate. Thus, the plain language of NRS 18.020 limits recovery of costs to
21 only the five cases specified, and the Court must follow the plain language of the statute. See
22 Harris Associates v. Clark County Sch. Dist., 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). It
23 is significant that the Legislature did not include petitions for judicial review in the types of cases
24 for which a party may recover its costs. The Legislature is presumed to have knowledge of
25 existing statutes related to the same subject, i.e., NRS Chapter 233B. See City of Boulder v.
26
27
28

1 General Sales Drivers, 101 Nev. 117, 119, 694 P.2d 498 (1985); Ronnow v. City of Las Vegas,
2 57 Nev. 332, 366, 65 P.2d 133 (1937).

3 Chapter 233B of the NRS does not classify a petition for judicial review as a special
4 proceeding. NRS 233B.130 provides that judicial review in a district court is available to any
5 party who is aggrieved by a final decision from an administrative proceeding in a contested case.
6 An aggrieved party seeking review of a district court's decision on a petition for judicial review
7 may appeal which "shall be taken as in other civil cases." NRS 233B.150. NRS Chapter 233B
8 lacks any indication a petition for judicial review is a special proceeding. Rather, it indicates it is
9 a "civil case."
10

11
12 NRS 233B.131 is the only section of Chapter 233B which addresses costs in that it allows
13 a court to assess additional costs against a party unreasonably refusing to limit the record to be
14 transmitted to the reviewing court in for a petition for judicial review. NRS Chapter 233B
15 contains no other mention of assessing costs against a party in a petition for judicial review and it
16 doesn't mention or make reference to NRS Chapter 18
17

18 NRS 18.020, which was enacted in 1911, has been amended six times since then, with the
19 most recent amendment occurring in 1995 where it added to subsection 4 the following language
20 "except a special proceeding conducted pursuant to NRS 306.040." 1995 Stat. of Nev., at 2794.
21 By amending NRS 18.020 multiple times and not including petitions for judicial review as one of
22 the type of cases for which costs may be awarded, the Court may presume that the Legislature
23 intended only to include those types of cases specified in NRS 18.020. See Williams v. Clark
24 County Dist. Attorney, 118 Nev. 473, 487-88, 50 P.3d 536, 545 (2002) (Rose, J., concurring and
25 dissenting in part) ("[W]e have often said that the legislature is presumed to know what it is
26 doing and purposefully uses the specific language [it chooses].").
27
28

Therefore, the Memo of Costs should be denied because petitions for judicial review are not special proceedings for purposes of NRS 18.020.

3. **If Wellness Connection's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.**

If Wellness Connection's Memo of Costs pertains to the 9-16-2020 FFCL&PI and assuming, *arguendo*, it falls within the parameters of NRS 18.020, the Memo of Costs should still be denied because the vast majority -- of the claimed costs have nothing to do with the Petition for Judicial Review claim.

Review of Wellness Connection's Memo of Costs reveals that other than the initial filing fee, it is submitted that the claimed costs cannot be deemed to relate to the Petition for Judicial Review claim since such a claim was limited to the record submitted by the Department of Taxation. The costs referenced in Wellness Connection's Memo of Costs pertain to discovery and trial, not the Petition for Judicial Review. Thus, such costs should be denied if same are claimed in connection with the 9-16-2020 FFCL&PI which addressed the Petition for Judicial Review claim.

III. CONCLUSION

Wherefore, as addressed above, Wellness Connection's Memo of Costs should be denied and no costs assessed against Plaintiffs.

Dated this 11th day of August 2022.

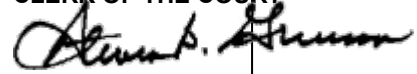
CLARK HILL, PLLC

By /s/ Mark S. Dzarnoski, Esq.
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Dominic P. Gentile, Esq. (NSBN 1923)
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August 2022, I served a true and correct copy of the foregoing via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Tanya Bain
An Employee of Clark Hill



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12 *Attorneys for Natural Medicine L.L.C.*

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

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

16 **Consolidated with:**

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

24 **Dept. No.** XXXI

25 **HEARING REQUESTED**

26 **MOTION TO RETAX AND SETTLE COSTS REGARDING DEEP ROOTS**
27 **HARVEST, INC.'S MEMORANDUM OF COSTS**

28 Plaintiffs, MM DEVELOPMENT COMPANY, INC. D/B/A/ PLANET 13
29 (“MM”) and LIVFREE WELLNESS, LLC D/B/A THE DISPENSARY (“LivFree”),
30 by and through their counsel of record, Will Kemp, Esq. and Nathanael R. Rulis, Esq.,
31 of the law firm of Kemp Jones, LLP; and QUALCAN LLC (“Qualcan”) by and through
32 its counsel of undersigned counsel of record, Peter Christiansen, Esq. and Whitney
33 Barrett, Esq., of the law firm Christiansen Trial Lawyers; and Plaintiff-in-Intervention
34 NATURAL MEDICINE, L.L.C. (“Natural Medicine”) by and through its counsel of

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record, Jeffery A. Bendavid Esq. and Stephanie J. Smith, Esq. of Bendavid Law, and Plaintiff NEVADA WELLNESS CENTER, LLC (“NWC”), by and through its counsel of record Theodore Parker, III, Esq. of Parker Nelson & Associates CHTD. (MM, Livfree, Qualcan, Natural Medicine, and NWC are collectively referred to herein as “Settling Plaintiffs”), hereby move this court to retax and settle the costs set forth in Defendant Deep Roots Harvest, Inc. (“Deep Roots”) Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing of this matter. Dated this 11th day of August, 2022.

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION.**

Deep Roots cannot recover the costs claimed in the Memorandum against the Settling Plaintiffs. Deep Roots cannot recover costs because it is neither a prevailing party in this action against the Settling Plaintiffs nor does Deep Roots have a statutory right to recover its costs. Even if the Memorandum is considered, none of the claimed costs were reasonably, necessarily, and actually incurred as to the Settling Plaintiffs' petitions for judicial review, or other phases. As a result, Settling Plaintiffs request that this Court award no costs to Deep Roots from Settling Plaintiffs.

II. RELEVANT FACTUAL BACKGROUND.**A. The Proceedings and Settlement.**

This matter was commenced on January 4, 2019. Even though several parties were named as defendants, they were added only to comply with statutory mandate. NRS 233B.130(2)(a); *Washoe Cnty. v. Otto*, 128 424 (2012). The primary and substantive causes of action were asserted against only the Nevada Department of Taxation (the "Department"). Namely, the causes of action for violation of substantive due process, violation of procedural due process, violation of equal protection, and petition for writ of mandamus were asserted exclusively against the Department.¹ Several Parties also intervened in subsequent months and years, with the final date to intervene occurring in February 2020, prior to the consolidation of all matters into the present above-captioned litigation.

¹ Each Settling Plaintiff had their own claims, for instance Natural Medicine asserted only declaratory relief, petition for judicial review and then writ claims, whereas NWC had equal protection and due process claims.

1 Prior to the commencement of the trial phases in this matter, Settling Plaintiffs
2 prevailed on several issues before the Court, including summary judgment that (i) the
3 Department acted beyond the scope of its authority by replacing the requirement for a
4 background check on each prospective owner with the 5 percent or greater standard in
5 NAC 453D.255(1)² and (ii) that MM and LivFree’s appeals are to be heard arising
6 from the denial of their licensure of their applications in the September 2018 retail
7 licensure application competition.³

9 The consolidated trial in these proceedings began on July 13, 2020.
10 Importantly, the proceedings were conducted in a series of three phases where only
11 certain claims would be examined and determined in each phase. The First Phase
12 addressed only the petition for judicial review (the “First Phase Claim”), the Second
13 Phase addressed the equal protection, due process, declaratory relief, and permanent
14 injunction claims (the “Second Phase Claims”), and the Third Phase would address
15 writ of mandamus claims (the “Third Phase Claim”).⁴
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22

23 ² See Order Regarding Plaintiff Nevada Wellness Center, LLC’s Motion for Summary
24 Judgment on First Claim for Relief (“Order Granting Summary Judgment”), at 6:4-8,
dated Aug. 15, 2020, on file herein. Natural Medicine’s joinder to this motion was
filed on March 18, 2020.

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

28 ⁴ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second
Phase preceded the First Phase.

During the Second Phase of the proceedings, the Settling Plaintiffs settled with certain Defendants.⁵ The Second Phase concluded with a decision issued by the Court on September 3, 2020.⁶ Therein, the Court granted declaratory relief.⁷

Before beginning the next phase (*i.e.*, the First Phase), the Court limited the evidence and record that could be considered for that phase to only the administrative record pursuant to the requirements of NRS 233B.135(1)(b).⁸ More specifically, the Court determined that evidence related to a claim for judicial review is to be restricted to the administrative record because it contains all relevant evidence that resulted in the Department's analysis of the plaintiffs' applications.⁹ The Court proceeded with and completed the First Phase thereafter. The Third Phase which was limited to only certain plaintiffs' claims is still pending before this Court.

B. The Memorandum of Costs.

On August 8, 2022, Deep Roots filed the Memorandum four days after the First Phase Judgment was entered.¹⁰ In the Memorandum, Deep Roots impermissibly claims a total of \$44,250.67 in total costs that is comprised of: \$1,102.49 in various "Clerks' Fees"; \$16,553.45 in reporters' fees for depositions that includes both

⁵ Natural Medicine entered into a subsequent settlement agreement on August 17, 2020 which was approved on August 27, 2020 by the NV Tax Commission.

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

⁷ *Id.* at 29:3.

⁸ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16, 2020 (the "First Phase Judgment").

⁹ *Id.*

¹⁰ See First Phase Judgment and Second Phase Judgment, respectively.

1 reporting and videotaping; \$235.00 in process server fees; \$4,718.00 in photocopies at
2 20 cents per page; \$292.43 in long distance telephone charges; \$106.63 in unidentified
3 postage fees; \$13,355.24 in travel and lodging; \$1,339.28 in unnecessary
4 “Miscellaneous Fees”, \$1,472.93 in unidentified Legal Research that does not identify
5 any topics or how they related to instant case or claims; \$5,075.22 for a trial technician.
6

7 **III. LEGAL STANDARD AND ARGUMENT.**

8 **A. Legal Standard.**

9 Even though trial courts have discretion to determine allowable costs, the
10 Nevada Supreme Court requires that “statutes permitting the recovery of costs are to
11 be strictly construed because they are in derogation of the common law.” *Bobby*
12 *Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352,
13 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543
14 (1994). The trial court’s discretion should also “be sparingly exercised when
15 considering whether or not to allow expenses not specifically allowed by statute and
16 precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993).
17 Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient
18 support for the court to conclude that each taxed cost was reasonable, necessary, and
19 actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261,
20 277-78, 112 P.3d 1082, 1093 (2005).
21

22 In addition, the plain language of a statute governs the manner in which it is
23 applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River*
24 *Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station,*
25 *Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W.*
26 *Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).
27
28

B. Deep Roots Cannot Recover the Claimed Costs.

1. Deep Roots is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Deep Roots cannot recover against the Settling Plaintiffs because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party* against any adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered.*” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

The Settling Plaintiffs’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Notwithstanding, the Court entered summary judgment in favor of the Settling Plaintiffs.¹¹ Consequently, the Second Phase Claims did not proceed to judgment in favor of Deep Roots, and there is no court order declaring any party as the prevailing party as to those claims.

Further, pursuant to NRS 18.020, Deep Roots does not fall within any of the identified categories to recover its costs. See NRS 18.020. NRS 18.020, specifically states that costs to prevailing parties are awarded “against any adverse party against whom judgment is rendered...” Here there is no judgment entered against any of the Settling Plaintiffs. Indeed, with no actual judgment against Settling Plaintiffs for either the Second Phase Claims or the First Phase Claim, Deep Roots cannot recover its claimed costs.

¹¹ See Order Granting Summary Judgment; see also FFCL re Summary Judgment.

C. The Claimed Costs are not Reasonable and Necessary.

Deep Roots cannot recover any of the claimed costs because they were not reasonably, necessarily, and actually incurred as part of the First Phase Claim. Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and evidence for the First Phase to include only the administrative record.¹² This necessarily excluded from the record all court filings, Westlaw legal research, photocopies, deposition and transcripts, documents delivered by runner, witness testimony, trial exhibits, trial transcripts, and any trial administrative services; which comprise all of Deep Roots's claimed costs. Indeed, the record consisted of only the plaintiffs' applications and related information that was before the Department when it evaluated the applicants and awarded the licenses.

Because the record for the First Phase Claim was restricted and did not include any of the evidence related to Deep Roots's claimed costs, the claimed costs were not reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary, and actually incurred for the First Phase Claim, they cannot be recovered in connection with the First Phase Judgment.

Moreover, even if the Court were to consider any of these claimed costs, Deep Roots includes requests for unnecessary, unreasonable and excessive costs for vaguely documented, and unnecessary client representative travel and meals. Additionally, in the legal research fees there appears to be only a vague description of "Deep Roots Harvest" included, and legal research fees incurred even after trial for Phases 1 and 2 were completed. The Miscellaneous Fees appear to be Deep Roots trying to recover

¹² See First Phase Judgment, at 11:4-9.

1 costs to appear at mediation which is not a recoverable category. Indeed, closer
2 scrutiny of Exhibit 7 regarding travel costs includes other non-necessary expenses
3 including airfare of approximately \$577 per ticket for a simple roundtrip from Reno to
4 Las Vegas and back, grocery store charges, and even charges at what appear to be bars
5 at airports. Under NRS 18 et seq. the Court has discretion in allowing costs and should
6 not permit these, and further not apportion any costs to Settling Plaintiffs.
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IV. CONCLUSION.

Based on the foregoing, Settling Plaintiffs respectfully request that this Court grant this Motion to Retax and Settle Costs in its entirety and award Deep Roots no costs.

DATED this 11th day of August, 2022.

KEMP JONES, LLP

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/s/ Whitney Barrett, Esq.

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/s/ Theodore Parker, III, Esq.

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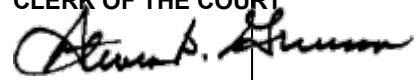
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DISTRICT COURT
CLARK COUNTY, NEVADA

Case No. A-19-787004-B

Consolidated with:

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

Dept. No. XXXI

**MOTION TO RETAX AND SETTLE COSTS REGARDING CLEAR RIVER
LLC'S MEMORANDUM OF COSTS**

Plaintiffs, MM DEVELOPMENT COMPANY, INC. D/B/A/ PLANET 13
("MM") and LIVFREE WELLNESS, LLC D/B/A THE DISPENSARY ("LivFree"),
by and through their counsel of record, Will Kemp, Esq. and Nathanael R. Rulis, Esq.,
of the law firm of Kemp Jones, LLP; and QUALCAN, LLC ("Qualcan") by and
through its counsel of undersigned counsel of record, Peter Christiansen, Esq. and
Whitney Barrett, Esq., of the law firm Christiansen Trial Lawyers; and Plaintiff-in-
Intervention NATURAL MEDICINE, L.L.C. ("Natural Medicine") by and through its

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counsel of record, Jeffery A. Bendavid Esq. and Stephanie J. Smith, Esq. of Bendavid Law, and Plaintiff NEVADA WELLNESS CENTER, LLC (“NWC”) by and through its counsel of record Theodore Parker, III, Esq. of Parker Nelson & Associates CHTD. (MM, Livfree, Qualcan, Natural Medicine, and NWC are collectively referred to herein as “Settling Plaintiffs”), hereby move this court to retax and settle the costs set forth in Defendant Clear River LLC (“Clear River”) Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 11th of August, 2022

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Attorneys for Qualcan LLC

**PARKER NELSON &
ASSOCIATES, CHTD.**

/s/ Theodore Parker, III, Esq.
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Nevada Bar No. 12727
2460 Professional Ct., Suite 200
Las Vegas, NV 89128
Attorneys for Nevada Wellness Center

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Clear River cannot recover the costs claimed in the Memorandum against the
4 Settling Plaintiffs. Clear River cannot recover costs because it is neither a prevailing
5 party in this action against the Settling Plaintiffs nor does Clear River have a statutory
6 right to recover its costs. Even if the Memorandum is considered, none of the claimed
7 costs were reasonably, necessarily, and actually incurred as to the Settling Plaintiffs'
8 petitions for judicial review, or other phases. As a result, Settling Plaintiffs request
9 that this Court award no costs to Clear River from Settling Plaintiffs.
10

11 **II. RELEVANT FACTUAL BACKGROUND.**

12 **A. The Proceedings and Settlement.**

13 This matter was commenced on January 4, 2019. Even though several parties
14 were named as defendants, they were added only to comply with statutory mandate.
15 NRS 233B.130(2)(a); *Washoe Cnty. v. Otto*, 128 424 (2012). The primary and
16 substantive causes of action were asserted against only the Nevada Department of
17 Taxation (the "Department"). Namely, the causes of action for violation of substantive
18 due process, violation of procedural due process, violation of equal protection, and
19 petition for writ of mandamus were asserted exclusively against the Department.¹
20 Several Parties also intervened in subsequent months and years, with the final date to
21 intervene occurring in February 2020, prior to the consolidation of all matters into the
22 present above-captioned litigation.
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2 prevailed on several issues before the Court, including summary judgment that (i) the
3 Department acted beyond the scope of its authority by replacing the requirement for a
4 background check on each prospective owner with the 5 percent or greater standard in
5 NAC 453D.255(1)² and (ii) that MM and LivFree’s appeals are to be heard arising
6 from the denial of their licensure of their applications in the September 2018 retail
7 licensure application competition.³

9 The consolidated trial in these proceedings began on July 13, 2020.
10 Importantly, the proceedings were conducted in a series of three phases where only
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12 addressed only the petition for judicial review (the “First Phase Claim”), the Second
13 Phase addressed the equal protection, due process, declaratory relief, and permanent
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filed on March 18, 2020.

25 ³ See Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in
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27 Summary Judgment or for Writ of Mandamus (“FFCL re Summary Judgment”), at
3:10-14, dated July 11, 2020, on file herein.

28 ⁴ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second
Phase preceded the First Phase.

1 During the Second Phase of the proceedings, the Settling Plaintiffs settled
 2 with certain Defendants.⁵ The Second Phase concluded with a decision issued by the
 3 Court on September 3, 2020.⁶ Therein, the Court granted declaratory relief.⁷

4 Before beginning the next phase (*i.e.*, the First Phase), the Court limited the
 5 evidence and record that could be considered for that phase to only the administrative
 6 record pursuant to the requirements of NRS 233B.135(1)(b).⁸ More specifically, the
 7 Court determined that evidence related to a claim for judicial review is to be restricted
 8 to the administrative record because it contains all relevant evidence that resulted in
 9 the Department's analysis of the plaintiffs' applications.⁹ The Court proceeded with
 10 and completed the First Phase thereafter. The Third Phase of trial has not yet occurred
 11 and is limited to specific parties with remaining Phase Three claims.

14 **B. The Memorandum of Costs.**

15 On August 8, 2022, Clear River filed the Memorandum, approximately four
 16 days after the First Phase and Second Phase were certified.¹⁰ In the Memorandum,
 17 Clear River impermissibly claims a total of \$37,194.47 in total costs that is comprised
 18 of: \$10,588.80 in photocopies; \$3,074.18 in various court filing fees; \$6,291.37 in
 19

21 _____
 22 ⁵ Natural Medicine entered into a subsequent settlement agreement on August 17,
 2020 which was approved on August 27, 2020 by the NV Tax Commission.

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

26 ⁷ *Id.* at 29:3.

27 ⁸ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16,
 2020 (the "First Phase Judgment").

28 ⁹ *Id.*

¹⁰ See First Phase Judgment and Second Phase Judgment, respectively.

Westlaw Research Fees; \$1,555.00 in parking costs; \$485.00 in runner services and document delivery; \$7,344.03 for transcripts; \$36.03 for postage; \$3,212.50 for jury to verdict trial services; and \$4,612.56 for advance resolution management.¹¹

III. LEGAL STANDARD AND ARGUMENT.

A. Legal Standard.

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly exercised when considering whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005).

In addition, the plain language of a statute governs the manner in which it is applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).

¹¹ See Clear River Mem. Of Costs, Aug. 8, 2022.

B. Clear River Cannot Recover the Claimed Costs.

1. Clear River is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Clear River cannot recover against the Settling Plaintiffs because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party* against any adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered.*” See NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

The Settling Plaintiffs’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Notwithstanding, the Court entered summary judgment in favor of the Settling Plaintiffs.¹² Consequently, the Second Phase Claims did not proceed to judgment in favor of Clear River, and there is no court order declaring any party as the prevailing party as to those claims. Further, pursuant to NRS 18.020, Clear River does not fall within any of the identified categories to recover its costs. See NRS 18.020. NRS 18.020, specifically states that costs to prevailing parties are awarded “against any adverse party against whom judgment is rendered...” Here there is no judgment entered against any of the Settling Plaintiffs. Indeed, with no actual judgment against Settling Plaintiffs for either the Second Phase Claims or the First Phase Claim.

Indeed, with no judgment against Settling Plaintiffs for either the Second

¹² See Order Granting Summary Judgment; see also FFCL re Summary Judgment.

1 Phase Claims or the First Phase Claim, Clear River simply cannot recover its claimed
2 costs.

3 **C. The Claimed Costs are not Reasonable and Necessary.**

4 Clear River cannot recover any of the claimed costs because they were not
5 reasonably, necessarily, and actually incurred as part of the First Phase Claim.
6 Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and
7 evidence for the First Phase to include only the administrative record.¹³ This
8 necessarily excluded from the record all court filings, Westlaw legal research,
9 photocopies, deposition and transcripts, documents delivered by runner, witness
10 testimony, trial exhibits, trial transcripts, and any trial administrative services; which
11 comprise all of Clear River's claimed costs. Indeed, the record consisted of only the
12 plaintiffs' applications and related information that was before the Department when
13 it evaluated the applicants and awarded the licenses.
14

15 Because the record for the First Phase Claim was restricted and did not include
16 any of the evidence related to Clear River's claimed costs, the claimed costs were not
17 reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs
18 that were not reasonable, necessary, and actually incurred for the First Phase Claim,
19 they cannot be recovered in connection with the First Phase Judgment.
20

21 Moreover, even if the Court were to consider any of these claimed costs,
22 which it should not assess against Settling Plaintiffs, Clear River includes requests for
23 unnecessary, unreasonable and excessive costs for: \$10,588.80 in unidentified
24 photocopies; \$3,074.18 in various court filing fees; \$6,291.37 in unidentified Westlaw
25
26
27
28

¹³ See First Phase Judgment, at 11:4-9.

1 Research Fees; \$1,555.00 in parking costs for their own counsel to attend various court
2 hearings; \$485.00 in runner services and document delivery; \$7,344.03 for transcripts;
3 \$36.03 for postage; \$3,212.50 for jury to verdict trial services; and \$4,612.56 for
4 Advanced Resolution Management.
5

6 Here, Clear River provides a scant 17 pages of documentation of its purported
7 costs. It provides no documentation for its purported “photocopy fees” or how the
8 listed fees relate whatsoever to the instant action. Indeed there is no log provided by
9 Clear River to substantiate any of these “photocopy” charges at 30 cents per page.
10 Clear River provides no documentation of its actual research such as topics or how any
11 such research related to the instant action or even directly to Clear River. Further, the
12 mediation fees are not a reasonable allowable cost to recover. There also appears to be
13 no documentation whatsoever of the purported “postage” expended by Clear River.
14 Indeed, all of these costs must be stricken as a matter of course for Clear River’s failure
15 to provide any documentation whatsoever.
16

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

IV. CONCLUSION.

Based on the foregoing, Settling Plaintiffs respectfully request that this Court grant this Motion to Retax and Settle Costs in its entirety and award Clear River no costs.

DATED this 11th day of August, 2022.

KEMP JONES, LLP

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/s/ Whitney Barrett, Esq.

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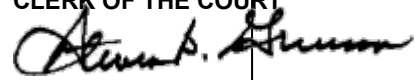
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No. A-19-787004-B

Consolidated with:

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

Dept. No. XXXI

HEARING REQUESTED

MOTION TO RETAX AND SETTLE COSTS REGARDING CPCMC HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, CHEYENNE MEDICAL, LLC and COMMERCE PARK MEDICAL, LLC

Plaintiffs, MM DEVELOPMENT COMPANY, INC. D/B/A/ PLANET 13 (“MM”) and LIVFREE WELLNESS, LLC D/B/A THE DISPENSARY (“LivFree”), by and through their counsel of record, Will Kemp, Esq. and Nathanael R. Rulis, Esq., of the law firm of Kemp Jones, LLP; and QUALCAN, LLC (“Qualcan”) by and through its counsel of undersigned counsel of record, Peter Christiansen, Esq. and Whitney Barrett, Esq., of the law firm Christiansen Trial Lawyers; and Plaintiff-in-Intervention NATURAL MEDICINE, L.L.C. (“Natural Medicine”) by and through its

BendavidLaw

702.385.6114
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

counsel of record, Jeffery A. Bendavid Esq. and Stephanie J. Smith, Esq. of Bendavid Law, and Plaintiff NEVADA WELLNESS CENTER, LLC (“NWC”) by and through its counsel of record Theodore Parker, III, Esq. of Parker Nelson & Associates CHTD. (MM, Livfree, Qualcan, Natural Medicine, and NWC are collectively referred to herein as “Settling Plaintiffs”), hereby move this court to retax and settle the costs set forth in Defendant CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, CHEYENNE MEDICAL, LLC and COMMERCE PARK MEDICAL, LLC (collectively, “Thrive”) Memorandum of Costs filed August 8, 2022 (the “Memorandum”). This Motion is made pursuant to NRS 18.110, and is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any arguments by counsel on the hearing on this matter.

Dated this 11th of August, 2022

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION.**

Thrive cannot recover the costs claimed in the Memorandum against the Settling Plaintiffs. Most Notably Thrive cannot recover costs because it was one of the settling defendant parties, and entered into an agreement not to seek any attorneys' fees or costs against any of the parties to that agreement or against subsequent settling parties. Further, Thrive cannot recover costs because it is neither a prevailing party in this action against the Settling Plaintiffs nor does Thrive have a statutory right to recover its costs. Even if the Memorandum is considered, none of the claimed costs were reasonably, necessarily, and actually incurred as to the Settling Plaintiffs' petitions for judicial review, or other phases. As a result, Settling Plaintiffs request that this Court award no costs to Thrive from Settling Plaintiffs.

II. RELEVANT FACTUAL BACKGROUND.**A. The Proceedings and Settlement.**

This matter was commenced on January 4, 2019. Even though several parties were named as defendants, they were added only to comply with statutory mandate. NRS 233B.130(2)(a); *Washoe Cnty. v. Otto*, 128 424 (2012). The primary and substantive causes of action were asserted against only the Nevada Department of Taxation (the "Department"). Namely, the causes of action for violation of substantive due process, violation of procedural due process, violation of equal protection, and petition for writ of mandamus were asserted exclusively against the Department.¹ Several Parties also intervened in subsequent months and years, with the final date to

¹ Each Settling Plaintiff had their own claims, for instance, Natural Medicine asserted only declaratory relief, petition for judicial review and then writ claims, whereas NWC had equal protection and due process claims.

1 intervene occurring in February 2020, prior to the consolidation of all matters into the
2 present above-captioned litigation.

3 Prior to the commencement of the trial phases in this matter, Settling Plaintiffs
4 prevailed on several issues before the Court, including summary judgment that (i) the
5 Department acted beyond the scope of its authority by replacing the requirement for a
6 background check on each prospective owner with the 5 percent or greater standard in
7 NAC 453D.255(1)² and (ii) that MM and LivFree's appeals are to be heard arising
8 from the denial of their licensure of their applications in the September 2018 retail
9 licensure application competition.³
10

11 The consolidated trial in these proceedings began on July 13, 2020.
12 Importantly, the proceedings were conducted in a series of three phases where only
13 certain claims would be examined and determined in each phase. The First Phase
14 addressed only the petition for judicial review (the "First Phase Claim"), the Second
15 Phase addressed the equal protection, due process, declaratory relief, and permanent
16 injunction claims (the "Second Phase Claims"), and the Third Phase would address
17 writ of mandamus claims (the "Third Phase Claim").⁴
18
19
20
21
22

23 ² See Order Regarding Plaintiff Nevada Wellness Center, LLC's Motion for Summary
24 Judgment on First Claim for Relief ("Order Granting Summary Judgment"), at 6:4-8,
dated Aug. 15, 2020, on file herein. Natural Medicine's joinder to this motion was
filed on March 18, 2020.

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

28 ⁴ See Amended Trial Protocol No. 2, dated July 2, 2020, on file herein. The Second
Phase preceded the First Phase.

1 During the Second Phase of the proceedings, the Settling Plaintiffs, except for
 2 Natural Medicine settled with certain Defendants, including Thrive.⁵ However,
 3 Natural Medicine entered into a Future Settlement, and thereby became a Settling
 4 Party. The Second Phase concluded with a decision issued by the Court on September
 5 3, 2020.⁶ Therein, the Court granted declaratory relief.⁷

7 Before beginning the next phase (*i.e.*, the First Phase), the Court limited the
 8 evidence and record that could be considered for that phase to only the administrative
 9 record pursuant to the requirements of NRS 233B.135(1)(b).⁸ More specifically, the
 10 Court determined that evidence related to a claim for judicial review is to be restricted
 11 to the administrative record because it contains all relevant evidence that resulted in
 12 the Department's analysis of the plaintiffs' applications.⁹ The Court proceeded with
 13 and completed the First Phase thereafter. The Third Phase of trial has not yet occurred
 14 and is limited to specific parties with remaining Phase Three claims.

16 **B. The Memorandum of Costs.**

17 On August 8, 2022, Thrive filed the Memorandum, approximately four days
 18 after the First Phase and Second Phase were certified.¹⁰ In the Memorandum, Thrive
 19

21 _____
 22 ⁵ Natural Medicine entered into a subsequent settlement agreement on August 17,
 2020 which was approved on August 27, 2020 by the NV Tax Commission.

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

26 ⁷ *Id.* at 29:3.

27 ⁸ See Findings of Fact, Conclusion of Law and Permanent Inj., at 11:4-9, Sept. 16,
 2020 (the "First Phase Judgment").

28 ⁹ *Id.*

¹⁰ See First Phase Judgment and Second Phase Judgment, respectively.

impermissibly claims a total of \$155,829.31 in total costs that is comprised of: Arbitrators/Mediators \$4,153.00, Color Copies/Prints \$5,283.85, Copies/Prints \$8,623.65, Court Fees \$5,028.95, Delivery Services/Courier (Special) \$2,012.70, Delivery Services/Courier (Standard) \$260.00, Deposition/Court Transcripts \$117,601.97, Experts \$235.00, Litigation Support Vendors \$7,035.57, Local Travel/Parking \$830.00, Meals \$144.50, Pacer \$52.20, Postage \$16.74, Private Investigators \$705.00, Subpoena/Process Fee \$860.00, Westlaw \$2,932.00, and Witness Fee \$54.18.¹¹ Many of these fees are not in recoverable categories, nor were they demonstrated to be necessary to the litigation.

III. LEGAL STANDARD AND ARGUMENT.

A. Legal Standard.

Even though trial courts have discretion to determine allowable costs, the Nevada Supreme Court requires that “statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law.” *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). The trial court’s discretion should also “be sparingly exercised when considering whether or not to allow expenses not specifically allowed by statute and precedent.” *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Notwithstanding the court’s discretion, the party seeking costs “must provide sufficient support for the court to conclude that each taxed cost was reasonable, necessary, and

¹¹ See Thrive Mem. Of Costs, Aug. 8, 2022.

1 actually incurred.” *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261,
 2 277-78, 112 P.3d 1082, 1093 (2005).

3 In addition, the plain language of a statute governs the manner in which it is
 4 applied according to the language’s ordinary meaning. *A.F. Const. Co. v. Virgin River*
 5 *Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002); *Arguello v. Sunset Station,*
 6 *Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011); *Waste Mgmt. of Nevada, Inc. v. W.*
 7 *Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019).

9 **B. Thrive Has Already Agreed Not to Seek Costs Against the Settling Plaintiffs**
 10 **Pursuant to the July 28, 2020 Settlement Agreement.**

11 Thrive signed a Settlement Agreement dated July 28, 2020, which was
 12 subsequently approved by the Cannabis Control Board and signed by the State of
 13 Nevada Department of Taxation (“DOT”). See Exhibit 1, attached hereto. This
 14 Settlement Agreement specifically provides as follows:

15
 16 The parties want to compromise and settle the Disputes in
 17 the Lawsuit by dismissing the claims in the Lawsuit by and
 18 between the Settling Parties, each Settling Party to
 19 bear its own costs and attorneys’ fees, and to exchange
 20 mutual releases as provided in this Agreement

21 Ex. 1, Recital C, p. 1.

22 Additionally, the Settlement Agreement goes on to state the following:

23 If any Settling Party settles any other matter related to the Lawsuit
 24 (each, a “Future Settlement”), every other Settling Party shall be
 25 included as released parties in such Future Settlement on the same
 26 release terms and conditions as set forth herein; provided, however,
 27 that any Settling Party receiving such release shall bear its own costs
 28 and attorneys’ fees with respect thereto as provided in this Agreement.

29 Ex. 1, ¶14, p. 5.

30 LivFree, MM, Qualcan, NWC and Thrive were all signatories to the July 28,
 2020 Settlement Agreement along with the DOT. Natural Medicine entered into a

subsequent Settlement Agreement with the DOT, and which included terms in which Natural Medicine would contribute to some of the terms of the July 28, 2020 Settlement Agreement, thereby making it part of a Future Settlement. *See* Exhibit 2, attached hereto. By the plain language of the July 28, 2020 Settlement Agreement, Thrive has agreed not to seek any costs or fees against the signatories to that settlement and any future settling parties, who agree to bear their own costs and fees. As such, there can be no costs awarded to Thrive against the Settling Plaintiffs.

C. Thrive Cannot Recover the Claimed Costs.

1. Thrive is Neither a Prevailing Party nor Statutorily Permitted to Recover its Costs.

Further, in addition to the fact that Thrive has already waived its ability to seek fees and costs against Settling Plaintiffs, Thrive cannot recover against the Settling Plaintiffs because it is not a prevailing party in this matter. NRS Chapter 18 plainly states that costs are allowed only “*to the prevailing party* against any adverse party against whom judgment is rendered,” and only to “the party *in whose favor judgment is rendered.*” *See* NRS 18.020, 18. 110(1). Indeed, the Nevada Supreme Court persistently holds that a party cannot be considered a prevailing party where the matter does not proceed to judgment. *Northern Nevada Homes, LLC v. GL Construction, Inc.*, 134 Nev. 498, 500, 422 P 3d 1234, 1237 (2018); *Works v. Kuhn*, 103 Nev. 65, 68, 732 P.2d 1373, 1376 (1987).

The Settling Plaintiffs’ First Phase Claims and Second Phase Claims were not litigated, they were settled. Notwithstanding, the Court entered summary judgment in favor of the Settling Plaintiffs.¹² Consequently, the Second Phase Claims did not

¹² *See* Order Granting Summary Judgment; *see also* FFCL re Summary Judgment.

1 proceed to judgment in favor of Thrive, and there is no court order declaring any party
2 as the prevailing party as to those claims. Further, pursuant to NRS 18.020, Thrive
3 does not fall within any of the identified categories to recover its costs, and it also
4 settled. See NRS 18.020. NRS 18.020, specifically states that costs to prevailing
5 parties are awarded “against any adverse party against whom judgment is rendered...”
6 Here there is no judgment entered against any of the Settling Plaintiffs. Indeed, with
7 no actual judgment against Settling Plaintiffs for either the Second Phase Claims or the
8 First Phase Claim. Indeed, with no judgment against Settling Plaintiffs for either the
9 Second Phase Claims or the First Phase Claim, Thrive simply cannot otherwise recover
10 any claimed costs.
11

12
13 **D. The Claimed Costs are not Reasonable and Necessary.**

14 Thrive cannot recover any of the claimed costs because they were not
15 reasonably, necessarily, and actually incurred as part of the First Phase Claim.
16 Following the mandate of NRS 233B.135(1)(b), the Court restricted the record and
17 evidence for the First Phase to include only the administrative record.¹³ This
18 necessarily excluded from the record all court filings, Westlaw legal research,
19 photocopies, deposition and transcripts, documents delivered by runner, witness
20 testimony, trial exhibits, trial transcripts, and any trial administrative services; which
21 comprise all of Thrive’s claimed costs. Indeed, the record consisted of only the
22 plaintiffs’ applications and related information that was before the Department when
23 it evaluated the applicants and awarded the licenses.
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¹³ See First Phase Judgment, at 11:4-9.

Because the record for the First Phase Claim was restricted and did not include any of the evidence related to Thrive's claimed costs, the claimed costs were not reasonably, necessarily, and actually incurred as to the First Phase Claim. As costs that were not reasonable, necessary, and actually incurred for the First Phase Claim, they cannot be recovered in connection with the First Phase, or at all by Thrive.

IV. CONCLUSION.

Based on the foregoing, Settling Plaintiffs respectfully request that this Court grant this Motion to Retax and Settle Costs in its entirety and award Thrive no costs.

DATED this 11th day of August, 2022.

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/s/ Nathanael Rulis, Esq.

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Exhibit “1”

7/28/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of July __, 2020 (the “Effective Date”) (this “Agreement”), among LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”), MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”); Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan, LLC, a Nevada limited liability company (“Qualcan”) (collectively, “Settling Plaintiffs” or individually, a “Settling Plaintiff”); Lone Mountain Partners, LLC, a Nevada limited liability company (“Lone Mountain”); Nevada Organic Remedies, LLC, a Nevada limited liability company (“NOR”); Greenmart of Nevada NLV, LLC, a Nevada limited liability company (“GreenMart”); Helping Hands Wellness Center, Inc., a Nevada corporation (“Helping Hands”); CPCM Holdings, LLC, a Nevada limited liability company, Cheyenne Medical, LLC, a Nevada limited liability company, and Commerce Park Medical, LLC, a Nevada limited liability company (collectively “Thrive”); and the State of Nevada, Department of Taxation (“DOT”) (collectively “Settling Defendants” or individually, a “Settling Defendant”).

RECITALS

- A. LivFree, MM, ETW Plaintiffs, NWC, Qualcan, Lone Mountain, NOR, GreenMart, Helping Hands, Thrive, and the DOT (collectively the “Settling Parties” and individually, a “Settling Party”) are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the “Lawsuit”).
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the “Disputes”).
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys’ fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFERS AND ISSUANCES OF LICENSES

1. The Settling Defendants hereby assign (subject to DOT and/or Cannabis Compliance Board (“CCB”) approval) all rights, interest and title in the various Nevada retail marijuana dispensary conditional licenses (the “Conditionally Approved Licenses”) to other entities as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 5-8 hereof, shall first be fulfilled:

- Lone Mountain hereby assigns 1 City of Las Vegas conditional license to Qualcan;
- Lone Mountain hereby assigns 1 Washoe County – City of Reno conditional license, 1 Lincoln County conditional license, 1 Esmerelda conditional license, and 1 Eureka County conditional license to ETW Plaintiffs;

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- Helping Hands hereby assigns 1 Unincorporated Clark County conditional license to LivFree;
- NOR hereby assigns 1 Unincorporated Clark County conditional license to MM;
- NOR hereby assigns 1 Carson City conditional license to Qualcan;
- GreenMart hereby assigns 1 Unincorporated Clark County conditional license to NWC;
- Thrive hereby assigns 1 Clark County – City of Henderson conditional license (RD266) to ETW Management or a related-entity designee; and
- Lone Mountain hereby assigns 1 Douglas County conditional license to Thrive¹.

2. LivFree Henderson. To fully resolve the potential MM and LivFree appeals, the DOT and/or CCB agrees to issue a conditional Henderson license to LivFree and LivFree agrees that it will hold such license in abeyance (the “Limited Henderson License”) until such time as both of the following two conditions are satisfied and provided that no Settling Party has exercised the “put option” described below: (1) the Henderson moratorium and/or restriction on the opening of additional adult-use cannabis establishments (the “Henderson Moratorium”) is lifted; AND (2) the issuance of a final inspection certificate for this Henderson license does not require the DOT and/or CCB to exceed the current cap for Clark County licenses (presently 80 licenses) or any adjusted cap for Clark County licenses. Nothing herein shall be construed to excuse or eliminate any and all requirements or duties that LivFree is or maybe required to fulfill under state or local law pertaining to the Henderson conditional license in the event that conditions precedent 1 and 2 are fulfilled. Nothing in this Paragraph 2 shall prevent any Settling Parties issued conditional licenses in the City of Henderson from perfecting those conditional licenses if the Henderson Moratorium is lifted.

LivFree expressly does not commit to undertake any efforts to eliminate the existing Henderson Moratorium and, in fact, expressly reserves the right to undertake lobbying efforts to preserve any Henderson Moratorium, provided, however, that LivFree shall not seek any legal action to prevent the Henderson Moratorium from being lifted or seeking its continuance. Further, LivFree shall not engage in any tortious interference with any Settling Parties’ ability to perfect any Henderson license and/or to receive the issuance of a final inspection certificate from both the City of Henderson and the State of Nevada (CCB). LivFree agrees that the existing Henderson Moratorium applies to the Henderson conditional license issued to LivFree hereunder (but does not apply to LivFree’s existing operational Henderson dispensary license). To assist the DOT and/or CCB in reducing any potential issues with the current cap for Clark County licenses, LivFree agrees that, for a period of 5 years (the “Option Period”) following execution of this Agreement, it will pay \$250,000, or any other price on which the parties are able to agree, to purchase one Henderson conditional licenses. No such Settling Defendant shall have any obligation whatsoever to sell LivFree any such Henderson conditional licenses and nothing in this Agreement should be construed as any indication that the DOT and/or CCB is suggesting that any Settling Defendant should exercise this “put option.” However, LivFree agrees that any Settling Defendant, at their respective option (not obligation) and in their sole and unfettered discretion,

¹ Lone Mountain agrees that, subject to agreement to final terms by all parties to the Lawsuit, it will contribute its remaining Lander County, Mineral County, and White Pine County conditional licenses to a Global Settlement.

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shall have a “put option” to sell to LivFree, and LivFree shall have the obligation to purchase, one such license from any Settling Defendant, whichever decides to exercise the option first (if at all), for \$250,000, or any other price on which the parties are able to agree, during the Option Period.

Nothing in this Paragraph 2 shall be construed to (a) prevent or limit any Settling Defendant’s ability to operate the conditional Henderson licenses during the Option Period, (b) prevent or limit any Settling Defendant’s ability to sell, assign, or otherwise transfer any Henderson conditional licenses during the Option Period to any other party at any time and upon any such terms as such Settling Defendant may agree, and (c) apply to any other licenses held by any affiliate of any Settling Defendant. Further, LivFree and DOT and/or CCB agree that the grant of any “put option” pursuant to this Paragraph 2 shall not constitute the creation of an “interest” (ownership or otherwise) in the Henderson conditional licenses for LivFree.

If LivFree acquires one of the conditional licenses through the exercise of the “put option”, LivFree agrees that it will surrender either the Limited Henderson License or the license acquired through the “put option” (at LivFree’s discretion to determine which of those options it will choose) to allow the DOT and/or CCB to reduce the existing or any future cap on total Clark County licenses. In no event shall LivFree have two additional Henderson conditional licenses by getting one directly or indirectly through this settlement (or any further settlement of the Lawsuit) and another through an exercise of the “put option”, in addition to the already existing LivFree Henderson license.

In the event that the pre-condition of lifting the Henderson moratorium occurs and LivFree is not able to exercise in good faith the “put option”, LivFree agrees to remain solely responsible for any and all local government and county approvals necessary for the CCB to reallocate a license which was not applied for during the September 2018 retail marijuana store competition.

3. All licensees described in this Agreement must be in good standing.
4. No license transfer pursuant to this Agreement can create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

DISSOLUTION OF BOND AND INJUNCTION

5. As a condition and term of this settlement, within 2 business days of the execution of this Agreement by all Parties, Settling Plaintiffs shall file a motion for a return of the cash bond that they have posted and seek an order shortening time. Contemporaneously, Settling Plaintiffs will withdraw the pending Motion for Case Terminating Sanctions filed against the DOT seeking to strike its Answer to the Lawsuit.
6. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process GreenMart’s previously submitted Change of Ownership request for transfer of interests and/or ownership (“CHOW”) .
7. As a condition and term of this settlement, DOT will notify the Court and will file an appropriate Motion on OST in the Lawsuit informing the Court that it has determined that Lone Mountain, NOR, GreenMart, and Helping Hands (each, a “Tier 3 Party”) have satisfied the DOT that each such Settling Defendant provided the information necessary in their respective applications to allow the DOT and/or CCB to conduct all necessary background checks and related actions and that Lone Mountain, NOR, GreenMart, and Helping Hands are being reassigned to Tier 2 status in the Lawsuit for purposes of the Preliminary Injunction or any other injunction that may be issued in the Lawsuit or any related proceedings. The Motion to be filed by DOT will

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indicate the DOT's approval of the applications of the previously designated Tier 3 Defendant Intervenor and that final inspections may be completed for any establishments owned by Lone Mountain, NOR, GreenMart, and Helping Hands. All Parties will join in the DOT's Motion. The reassignment of the settling Tier 3 parties into Tier 2, is a material condition of this Agreement and a material condition and requirement for the assignments contained in Paragraph 1. In the event that a Tier 3 Party is prevented or precluded reassignment to Tier 2 or otherwise remains enjoined from perfecting its conditional licenses for any reason, whether by a court, another party to the Lawsuit, any third party, or otherwise, the assignments of conditional licenses identified in Paragraph 1 shall be void and of no effect, with title to the licenses identified in Paragraph 1 to remain with the transferring party and this Agreement shall be terminated without any further force or effect. In such instance, the DOT and/or CCB (or successor entity, as appropriate) and the proposed assignee shall perform all actions and execute all documents to ensure that such licenses remain with the affected transferring party.

TIMING OF TRANSFERS

8. As a condition and term of this settlement, after the conditions precedent in Paragraphs 5-7 are met, the CCB agrees to make a good faith effort to expedite any and all CHOW requests for the transfer of licenses from existing licensee to another existing licensee as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process all CHOWs after submission thereof. For purposes of approving the transfers, LivFree, MM, ETW Plaintiffs, NWC, Qualcan, and Thrive were previously and are currently approved by the DOT as owners and operators of medical and retail marijuana dispensary licenses in the state of Nevada. In compliance with NRS/NAC 453D, these parties have operated retail marijuana dispensaries without any suspensions or revocations of those licenses. Any delays in approvals of the CHOWs due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

9. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 are met, the parties will execute mutual releases in the form attached hereto as Exhibit B, with each party to bear its own costs and attorneys' fees.

10. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 are met, Settling Plaintiffs shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. MM Development/LivFree action (Case No. A-18-785818-W);²
- b. In Re: DOT Litigation (A-19-787004-B);
- c. Nevada Wellness Center action (A-19-787540-W);³
- d. Qualcan action (A-19-801416-B).

Settling Plaintiffs will dismiss the Dismissed Claims with prejudice against each Settling Party hereto, as applicable, and without costs or fees to or from any such Settling Party, Settling

² However, MM will not dismiss its counterclaims against D.H. Flamingo in the associated cases.

³ NWC's claims against Defendant Jorge Pupo will remain and not be dismissed as a result of this settlement.

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Defendants reserve their rights to seek fees and costs from any Non-Settling Plaintiff (as defined below) in the Lawsuit.

11. LivFree/MM agree to stipulate with the DOT to dismiss the pending writ petition regarding the cell phone of Rino Tenorio (Supreme Court Case No. 79825).

12. MM Development, Nevada Wellness Center, and Liv Free agree to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

CONTINUED PARTICIPATION BY SETTling PLAINTIFFS

13. Further, upon the execution of this Agreement, the Settling Plaintiffs will file a Motion to Intervene as Defendants/Intervenors in the Lawsuit and participate in the Lawsuit in good faith and shall use best efforts to defend against the Lawsuit.

14. If any Settling Party settles any other matter related to the Lawsuit (each, a “Future Settlement”), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys’ fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

15. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process:

- a. a CHOW to be filed by Helping Hands;
- b. any CHOW submitted by NOR with respect to its licenses as the expedited handling of such CHOW requests may be necessary under the pending Companies’ Creditors’ Arrangement Act proceeding involving NOR’s parent company;
- c. a CHOW to be submitted by Lone Mountain; and
- d. any CHOW to be submitted by MM with respect to the transfer of cultivation and production licenses (medical and recreational) from West Coast Development Nevada, LLC.

16. DOT and/or CCB further agrees to perform final inspections on an expedited time period – within 5 business days of the request for inspection – for the new locations for the conditional licenses for the NOR proposed dispensary in Reno, NV and the MM proposed dispensary in Unincorporated Clark County, and any and all of Thrive’s conditional licenses to be designated by Thrive.

17. DOT and/or CCB agrees to, in good faith, expedite the processing of Thrive’s pending Change of Location Request for its Unincorporated Clark County license (RD263).

18. DOT and/or CCB agrees that all parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including

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but not limited to the City of Henderson, Douglas County, and the City of Reno), DOT and/or CCB agrees to extend the deadline for any Settling Party to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

19. LivFree agrees to reimburse Helping Hands for its expenses, through January 31, 2020 totaling \$890,000, related to building out the designated location at 8605 S. Eastern Ave., Las Vegas, NV 89123 for the Unincorporated Clark County license. Payment of the \$890,000 by LivFree is contingent upon approval of a special use permit ("SUP") for this location by the Clark County Commission and will be made no later than 10 business days after final approval of the SUP. LivFree will submit the application for the SUP in good faith no later than forty-five (45) days following the Effective Date or 45 days after the conclusion of trial, whichever is later. Helping Hands makes no representations or warranties regarding the SUP for the Eastern location. If Clark County does not approve the SUP for such location on or before March 31, 2021, LivFree may request a SUP at a different location and would not be required to pay Helping Hands \$890,000.

20. LivFree agrees to assume the lease, attached hereto as Exhibit A, for the premises located at 8605 S. Eastern Ave., Las Vegas, NV 89123 upon receipt of an estoppel certificate executed by the landlord. Assumption of the lease by LivFree is contingent upon approval of a SUP for this location by the Clark County Commission and will be made no later than 10 business days after final approval of the SUP. Helping Hands will remain liable for lease payments until LivFree assumes the lease and LivFree will have no liability on the lease if the SUP is not approved.

21. LivFree agrees to pay to Thrive the amount of \$400,000 and Helping Hands agrees to pay to Thrive the amount of \$100,000 upon approval of the transfer of the Thrive conditional license as set forth in paragraph 1 of this Agreement. LivFree and Helping Hands agree to cooperate with Thrive to report the payment set out in this Paragraph in the most tax-advantaged way to Thrive and its affiliates.

REPRESENTATIONS AND WARRANTIES

22. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

23. Lone Mountain represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes and Lone Mountain shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Lone Mountain conditional licenses being transferred for only up to the time when the license transfer is completed. Lone Mountain is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license Lone Mountain transfers hereunder. The designated assignee of the Lone Mountain conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by Lone Mountain). Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

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24. NOR represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes or any persons claiming to have an interest in the conditional license being transferred and NOR shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any person or entity claiming an ownership interest in any of the NOR conditional licenses. NOR is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license NOR transfers hereunder. The designated plaintiff assignee of any NOR conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by NOR). NOR represents and warrants that any pending legal proceedings involving its Parent Company in Canada do not affect its ability to transfer the above licenses. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

25. GreenMart represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes and GreenMart shall indemnify, defend and hold the Settling Party to which GreenMart's Clark County license is transferred hereunder (i.e, NWC) harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Greenmart conditional licenses being transferred for only up to the time when the license transfer is completed. GreenMart is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license GreenMart transfers hereunder. The designated plaintiff assignee of the GreenMart conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by GreenMart). Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

26. Helping Hands represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes or any persons claiming to have an interest in the conditional license being transferred and Helping Hands shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any person or entity claiming an ownership interest in any of the Helping Hands conditional licenses. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

27. Thrive represents and warrants that it has full and complete control to assign the conditional license it was awarded, that there are no ownership disputes and Thrive shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Thrive conditional license being transferred for only up to the time when the license transfer is completed. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

28. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

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29. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

30. The CCB agrees to recommend an industry funded study to the Cannabis Advisory Commission, a duly authorized public body pursuant to NRS 678A.300 and NRS 678A.310, to gather information and make recommendations to the CCB on the following matters: (1) what are reasonable additional actions, if any, can be taken to deter black-market sales; (2) analysis of adequacy of number and commercial need for additional marijuana licenses, if any, to serve the citizens of Nevada, including consideration of minority access to licensure, (3) recommendations of changes, if any, relating to state and local fees and taxation of the marijuana industry, and (4) analysis of adequacy of safeguards to protect minors.

31. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

32. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit (“Global Settlement”) consistent with this Agreement.

33. Non-Transferability. For a period of 2 years from July 1, 2020, no license transferred to a Settling Plaintiff herein may be transferred to any entity without prior written approval of the party giving up the designated license in this Agreement. This prohibition on transfers shall not apply to good faith corporate mergers, buyouts and/or acquisitions, which shall not be utilized for purposes of circumventing this paragraph. For this same period of time, LivFree and MM or related entities will not obtain ownership of any GreenMart licenses transferred herein. This non-transferability provision shall not be circumvented by, including but not limited to, any consulting, management or licensing/IP agreement, or by other means. Specifically excepted from this prohibition is a transfer from a Settling Party to an additional plaintiff in the Lawsuit (“a Non-settling Plaintiff”) provided that any such transfer is only utilized towards a global or more inclusive resolution of the Lawsuit (e.g., a transfer of a rural license from an ETW Plaintiff to a Non-settling plaintiffs such as Rural Remedies if Rural Remedies and NWC give complete releases approved by the State), subject to the consent of the Settling Defendant who transferred the license pursuant to this Agreement , which shall not be unreasonably withheld.

34. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

Despite the assignment of rural county licenses to certain Settling Parties, all parties hereto expressly reserve their right to vigorously oppose any legislative action regarding the relocation of such licenses to different jurisdictions. MM, LivFree, Qualcan, Thrive, and others have

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expressly informed the Settling Parties that they are vehemently opposed to any such transfer. In the event of such transfer, MM, LivFree, Qualcan, Thrive and others expressly reserve their rights to file a declaratory relief action to prevent such relocation and/or seek other appropriate legal remedies.

35. Location of Adult-Use Establishments. The Parties agree that the physical address of any adult-use cannabis establishment utilizing any of the conditional licenses transferred pursuant to Paragraph 1 of this Agreement may not be within 1,500 feet of any adult-use cannabis establishment that existed as of the Effective Date of this Agreement. Nothing in this paragraph applies to any other licenses held by any parties or any entity that already has a special use permit.

GENERAL PROVISIONS

36. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

37. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

38. Mediation. If any of the Parties breaches or terminates this Agreement but one of the other Parties disputes the basis for that breach or termination, the Parties agree that in the first instance, they shall attempt to resolve such dispute through mediation with the Honorable Jennifer Togliatti (Retired) at Advanced Resolution Management (“ARM”) (or, if she is not available, a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

39. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

40. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

41. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

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42. Partial Invalidity. Except with respect to Paragraph 7, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

43. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

44. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Clark County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

45. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

46. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

47. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

48. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or"

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are used in the inclusive sense of “and/or”.

[Signatures on following pages]


7/27/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.



<p>LIVFREE WELLNESS, LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Will Kemp</u></p> <p>Title: <u>Attorney-In-Fact</u></p>	<p>MM DEVELOPMENT COMPANY, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ETW MANAGEMENT GROUP LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>	<p>GLOBAL HARMONY LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>
<p>ZION GARDENS LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>	<p>JUST QUALITY LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>
<p>LIBRA WELLNESS CENTER, LLC</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>	<p>ROMBOUGH REAL ESTATE, INC.</p> <p>By: <u>[Signature]</u></p> <p>Print Name: <u>Adam K Burt</u></p> <p>Title: <u>owner</u></p>


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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

<p>LIVFREE WELLNESS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>MM DEVELOPMENT COMPANY, INC.</p> <p>By:  _____</p> <p>Print Name: Leighton Koehler</p> <p>Title: General Counsel</p>
<p>ETW MANAGEMENT GROUP LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>GLOBAL HARMONY LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ZION GARDENS LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>JUST QUALITY, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LIBRA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>ROMBOUGH REAL ESTATE, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>


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NEVADA WELLNESS CENTER, LLC By: <u></u> Print Name: <u>Theodore Pantaleo</u> Title: <u>ATTY</u>	QUALCAN, LLC By: <u></u> Print Name: <u>Peter S. Christensen</u> Title: <u>Attorney</u>
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By:  _____ Print Name: <u>George Archos</u> Title: <u>Manager</u>	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

7/27/2020

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: <u>Raymond C. Whitaker III</u> Print Name: <u>Raymond C. Whitaker III</u> Title: <u>Authorized Person</u>
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: <u></u> Print Name: Elizabeth Stavola Title: Manager	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

7/27/2020

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: <u>Mares J</u> Print Name: <u>Kearis Turtogian</u> Title: <u>PRESIDENT</u>
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

7/28/2020

2A.App.403

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By:  _____ Print Name: _____ Title: _____



STATE OF NEVADA, DEPARTMENT OF
TAXATIONBy: Melanie YPrint Name: Melanie YoungTitle: Executive Director

Exhibit A

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Exhibit A contains confidential lease terms for
Helping Hands/LivFree Unincorporated Clark
County Location*

* Confidential terms will be disclosed to Cannabis Compliance Board to the extent the CCB requires.

Exhibit B

Mutual Release

This Mutual Release (the “Release”) is entered into as _____, 2020 (the “Effective Date”), among LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”), MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”); Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan, LLC, a Nevada limited liability company (“Qualcan”) (collectively, “Settling Plaintiffs” or individually, a “Settling Plaintiff”); Lone Mountain Partners, LLC, a Nevada limited liability company (“Lone Mountain”); Nevada Organic Remedies, LLC, a Nevada limited liability company (“NOR”); Greenmart of Nevada NLV, LLC, a Nevada limited liability company (“GreenMart”); Helping Hands Wellness Center, Inc., a Nevada corporation (“Helping Hands”); CPCM Holdings, LLC, a Nevada limited liability company, Cheyenne Medical, LLC, a Nevada limited liability company, and Commerce Park Medical, LLC, a Nevada limited liability company (collectively “Thrive”); and the State of Nevada, Department of Taxation (“DOT”) (collectively “Settling Defendants” or individually, a “Settling Defendant”).

WHEREAS, the Settling Plaintiffs and the Settling Defendants (each individually, a “Party” and collectively, the “Parties”) entered that certain Settlement Agreement entered into as of July __, 2020 (the “Settlement Agreement”); and

WHEREAS, the Parties desire to execute this Release in accordance with the terms and conditions of this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Company and Vendor hereby agree as follows:

1. Except for such rights, claims or obligations as may be created by the Settlement Agreement, LivFree, MM, ETW Plaintiffs, NWC, and Qualcan, forever, fully and unconditionally release and discharge:

Lone Mountain, NOR, Greenmart, Helping Hands, Thrive and the DOT, their past, present, and future subsidiaries, parents, affiliates, partners, joint venturers, heirs, successors, assigns, contractors, subcontractors, officers, directors, shareholders, members, managers, employees, accountants, agents, representatives, attorneys, insurers, successors and assigns (in their individual and representative capacities),

from any and all claims, demands, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, liens, costs, expenses, attorneys’ fees, indemnities, subrogations (contractual or equitable) or duties, of any nature, character or description whatsoever, whether known or unknown, at law or in equity, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, asserted or unasserted,

arising out of or related to, directly or indirectly, the Lawsuit and the Disputes, as defined in the corresponding Settlement Agreement.

2. Except for such rights, claims or obligations as may be created by the Settlement Agreement, Lone Mountain, NOR, Greenmart, Helping Hands, Thrive and the DOT, forever, fully and unconditionally releases and discharges:

LivFree, MM, ETW Plaintiffs, NWC, and Qualcan, their past, present, and future subsidiaries, parents, affiliates, partners, joint venturers, heirs, successors, assigns, contractors, subcontractors, officers, directors, shareholders, members, managers, employees, accountants, agents, representatives, attorneys, insurers, successors and assigns (in their individual and representative capacities),

from any and all claims, demands, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, liens, costs, expenses, attorneys' fees, indemnities, subrogations (contractual or equitable) or duties, of any nature, character or description whatsoever, whether known or unknown, at law or in equity, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, asserted or unasserted,

arising out of or related to, directly or indirectly, the Lawsuit and the Disputes, as defined in the corresponding Settlement Agreement.

3. Each Party jointly and severally acknowledges that they may later discover material facts in addition to, or different from, those which they now know, suspect or believe to be true with respect to the Disputes, the Lawsuit or the negotiation, execution or performance of this Agreement. Each party further acknowledges that there may be future events, circumstances or occurrences materially different from those they know or believe likely to occur. It is the intention of the parties to fully, finally and forever settle and release all claims and differences relating to the Disputes or the Lawsuit. The releases provided in this Agreement shall remain in full force and effect notwithstanding the discovery or existence of any such additional or different facts or occurrence of any such future events, circumstances or conditions.
4. Each Party affirms that it has not filed with any governmental agency or court any type of action or report against any of the other Party other than the Lawsuit, and currently knows of no existing act or omission by any other Party that may constitute a claim or liability excluded from the releases set forth herein.
5. Effect of Release. In the event of any inconsistencies between this Release and the Settlement Agreement, the terms of this Release shall govern and control. Except as provided for herein, all other terms and conditions of the Settlement Agreement shall remain unchanged and the parties hereby reaffirm the terms and conditions of the Settlement Agreement. This Release may only be varied by a document, in writing, of even or subsequent date hereof, executed by the parties hereto.

6. Counterparts. This Release may be executed in any number of counterparts, whether by original, copy, email or telecopy signature, each of which, when executed and delivered, will be deemed an original, but all of which together will constitute one binding agreement and instrument
7. Paragraphs 35 through 47 of the Settlement Agreement are hereby incorporated as if fully set forth herein and govern the interpretation of this Release.

[Signature Page Follows]

LIVFREE WELLNESS, LLC By: _____ Print Name: _____ Title: _____	MM DEVELOPMENT COMPANY, INC. By: _____ Print Name: _____ Title: _____
ETW MANAGEMENT GROUP LLC By: _____ Print Name: _____ Title: _____	GLOBAL HARMONY LLC By: _____ Print Name: _____ Title: _____
ZION GARDENS LLC By: _____ Print Name: _____ Title: _____	JUST QUALITY, LLC By: _____ Print Name: _____ Title: _____
LIBRA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	ROMBOUGH REAL ESTATE, INC. By: _____ Print Name: _____ Title: _____

NEVADA WELLNESS CENTER, LLC By: _____ Print Name: _____ Title: _____	QUALCAN, LLC By: _____ Print Name: _____ Title: _____
LONE MOUNTAIN PARTNERS, LLC By: _____ Print Name: _____ Title: _____	NEVADA ORGANIC REMEDIES, LLC By: _____ Print Name: _____ Title: _____
GREENMART OF NEVADA NLV, LLC By: _____ Print Name: _____ Title: _____	HELPING HANDS WELLNESS CENTER, INC. By: _____ Print Name: _____ Title: _____
	CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC By: _____ Print Name: _____ Title: _____

STATE OF NEVADA, DEPARTMENT OF
TAXATION

By: _____

Print Name: _____

Title: _____

Exhibit “2”

8/17/2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of August __, 2020 (the "Effective Date") (this "Agreement"), among Natural Medicine, LLC ("Natural Medicine") and the State of Nevada, Department of Taxation ("DOT").

RECITALS

- A. Natural Medicine and the DOT (collectively the "Settling Parties" and individually, a "Settling Party") are parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the "Lawsuit").
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the "Disputes").
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys' fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

RELEASES AND DISMISSALS

- 1. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 of the July 28, 2020 Settlement Agreement signed by the DOT and other parties to the Lawsuit are met, the Settling Parties will execute mutual releases in the form attached hereto as Exhibit A. Non-settling parties are not intended to benefit from the mutual releases in this or any subsequent litigation.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

- 2. Natural Medicine agrees to pay \$100,000 towards the Paragraph 21 obligation of the July 28, 2020 Settlement Agreement signed by the DOT and other parties to the Lawsuit. Natural Medicine agrees to make its payments to LivFree in four equal quarterly installments over the year following execution of this Agreement.
- 3. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process Natural Medicine's previously submitted transfer of ownership application with Medifarm, LLC.

REPRESENTATIONS AND WARRANTIES

- 4. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

8/17/2020

5. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.


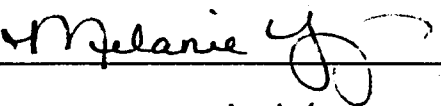
OTHER TERMS

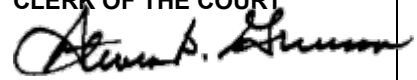
6. Paragraphs 29-42 of the July 28, 2020 Settlement Agreement signed by the DOT and other parties to the Lawsuit are hereby incorporated in to this Agreement as though set forth herein and the Parties agree to be bound by those same provisions.

[Signatures on following pages]

8/17/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

NATURAL MEDICINE, LLC	STATE OF NEVADA, DEPARTMENT OF TAXATION
By: 	By: 
Print Name: _____	Print Name: <u>Melanie Young</u>
Title: _____	Title: <u>Executive Director</u>



JOIN

CRAIG D. SLATER, ESQ.

Nevada Bar No. 8667

LUH & ASSOCIATES

8987 W. Flamingo Road, Suite 100

Las Vegas, NV 89147

T: (702) 367-8899 F: (702) 384-8899

cslater@luhlaw.com

CLARK NATURAL MEDICINAL SOLUTIONS LLC,

NYE NATURAL MEDICINAL SOLUTIONS LLC,

CLARK NMSD LLC. and INYO FINE CANNABIS DISPENSARY L.L.C

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

IN RE: D.O.T. LITIGATION

CASE NO.: A-19-787004-B

Consolidated with A-785818

A-786357

A-786962

A-787035

A-787540

A-787726

A-801416

DEPT. NO.: 31

CLARK NATURAL MEDICINAL SOLUTIONS LLC, NYE NATURAL MEDICINAL SOLUTIONS LLC CLARK NMSD LLC AND INYO FINE CANNABIS DISPENSARY L.L.C.'S OMNIBUS JOINDER AND SUPPLEMENT TO MOTIONS TO RETAX

COMES NOW, Plaintiffs CLARK NATURAL MEDICINAL SOLUTIONS LLC, NYE NATURAL MEDICINAL SOLUTIONS LLC, CLARK NMSD LLC and INYO FINE CANNABIS DISEPSARY L.L.C. by and through their counsel of record, CRAIG D. SLATER, ESQ. of the law firm LUH & ASSOCIATES, and hereby files this Omnibus Joinder to all Motions to Retax filed in this matter. Specifically, the moving parties hereby join in the arguments raised in the following Motions to Retax.

1) High Sierra Holistic's Motion to Retax re Thrive.

2) High Sierra Holistic's Motion to Retax re Deep Roots

- 3) High Sierra Holistic's Motion to Retax re Clear River
- 4) TGIG's Motion to Retax re Clear River
- 5) TGIG's Motion to Retax re Thrive
- 6) TGIG's Motion to Retax re Deep Roots
- 7) TGIG's Motion to Retax re Lone Mountain
- 8) TGIG's Motion to Retax re Nevada Organic Remedies
- 9) TGIG's Motion to Retax re Wellness Connection
- 10) Natural Medicine's Motion to Retax re Deep Root s Harvest
- 11) Natural Medicine's Motion to Retax re Clear River
- 12) Natural Medicine's Motion to Retax re Thrive

SUPPLEMENTAL ARGUMENT TO MOTIONS TO RETAX

In addition to joining the arguments identified above, Nuveda and Inyo would like to point out the fact that Nuveda and Inyo did not assert any constitutional claims that were heard during Phase 2. Nuveda and Inyo's operative pleading is their First Amended Complaint that was filed on September 6, 2019. The operative complaint asserted the following claims for relief: 1) Petition for Judicial Review; 2) Petition for Writ of Certiorari; 3) Petition for Writ of Mandamus; and 4) Petition for Writ of Prohibition. None of these claims were heard during the 5-week trial conducted in this matter as part of Phase 2.

As pointed out in the Motions to Retax, the Memorandum of Costs filed by the various parties fail to identify which costs were incurred during Phase 1 versus those incurred during Phase 2. In that respect, the Memorandums are fatally flawed as it relates to Nuveda and Inyo because Inyo and Nuveda did not participate in Phase 2 and only participated in Phase 1.

1 DATED this 12th day of **August, 2022.**

2 **LUH & ASSOCIATES**

3 */s/ Craig D. Slater*

4

CRAIG SLATER, ESQ.

5 Nevada Bar No. 8667

6 8987 W. Flamingo, Suite 100

7 Las Vegas, NV 89147

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LUH & ASSOCIATES and that on the 12th day of August, 2022, I served a true and correct copy of the **CLARK NATURAL MEDICINAL SOLUTIONS LLC, NYE NATURAL MEDICINAL SOLUTIONS LLC CLARK NMSD LLC AND INYO FINE CANNABIS DISPENSARY L.L.C.'S JOINDER AND SUPPLEMENT TO MOTIONS TO RETAX** by serving as follows:

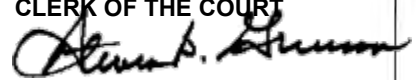
 X Through the Court Authorized electronic mail to all parties listed on the master service list pursuant to Administrative Order 14-2 and Rule 9 of NEFCR:

 depositing said document(s) with the U.S. Postal Service:

Addressed to the following person(s) at the address(es) listed below:

/s/ Elizabeth Kite

An Employee of Luh & Associates



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

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 In Re: DOT LITIGATION

17 Case No. A-19-787004-B

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

25 Dept. No. XI

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

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

32 ...

33 ...

34 ...

35 ...

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

2 Dated this 19th day of May 2023.

3 **BLACK & WADHAMS**

4
5 /s/ Rusty Graf

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

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CERTIFICATE OF SERVICE

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

/s/ Diane Meeter
An Employee of Black & Wadhams

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: DOT LITIGATION

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

Dept. No. XXXI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Based on the above findings,

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

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

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

IT IS SO ORDERED.

Dated this 19th day of May, 2023

Joanna S. Kishner

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

BLACK & WADHAMS

/s/ Rusty Graf

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1 Approved as to Form and Content

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Green Leaf Farms Holdings, LLC, Green
Therapeutics, LLC, Nevcan LLC and Red
Earth LLC's

9
10 SIGDENLAW

11 /s/ Amy Sugden

12 Amy Sugden Law
13 9728 Gillespie Street
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15 THC Nevada, LLC

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Natural Medicinal Solutions, LLC, Clark
NMSD, LLC and Inyo Fine Cannabis
Dispensary LLC.s

CERTIFICATE OF SERVICE

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

/s/ Diane Meeter

An Employee of Black & Wadhams

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Cc: Rusty Graf; Brigid Higgins; e61469820+matter1234564084@maildrop.clio.com
Subject: Re: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

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

Thanks,

Amy Sugden

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 Cc: Rusty Graf <rgraf@blackwadhams.law>, Brigid Higgins <bhiggins@blackwadhams.law>, e61469820+matter1234564084@maildrop.clio.com <e61469820+matter1234564084@maildrop.clio.com>
 Subject: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

Counsel:

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

Diane Meeter

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

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

Sincerely,

d: 720.536.4380
 o: 303.733.6353
 f: 303.865.5666

<<https://www.facebook.com/RamosInjuryFirm/>> <<https://instagram.com/ramoslawfirm>>
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Clarence Gamble
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Diane Meeter

From: Rich Williamson <rich@nvlawyers.com>
Sent: Thursday, May 18, 2023 8:50 AM
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Cc: Rusty Graf; Brigid Higgins; e61469820+matter1234564084@maildrop.clio.com; Briana Collings
Subject: RE: Proposed Clear River TGIG Order - Resubmitted Per Court Instruction of 5/17/23

You have my approval to affix my electronic signature.

Thanks,

Rich

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

Diane Meeter

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

Diane,

You have my permission to affix my e-signature.

Craig

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

Counsel:

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

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



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Diane Meeter

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

Agreed. You may affix my e-signature.

Nicolas Donath, Esq.

Attorney at Law
 N.R. Donath & Associates



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

Counsel:

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

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

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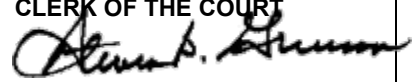
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1 **NOAS**

2 **CRAIG D. SLATER, ESQ.**

3 Nevada Bar No. 8667

4 **LUH & ASSOCIATES**

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6 Las Vegas, NV 89147

7 T: (702) 367-8899 F: (702) 384-8899

8 cslater@luhlaw.com

9 *CLARK NATURAL MEDICINAL SOLUTIONS LLC,*

10 *NYE NATURAL MEDICINAL SOLUTIONS LLC,*

11 *CLARK NMSD LLC. and INYO FINE CANNABIS DISPENSARY L.L.C*

12 in case No. A-19-787035-C

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 * * * * *

16 IN RE: D.O.T. LITIGATION

17 **CASE NO.:** A-19-787004-B

18 **Consolidated with** A-785818

19 A-786357

20 A-786962

21 A-787035

22 A-787540

23 A-787726

24 A-801416

25 **DEPT. NO.:** 31

26 **NOTICE OF APPEAL**

27 PLEASE TAKE NOTICE that CLARK NATURAL MEDICINAL SOLUTIONS LLC,
28 NYE NATURAL MEDICINAL SOLUTIONS LLC, CLARK NMSD LLC, and INYO FINE
CANNABIS DISEPSARY L.L.C., by and through their attorneys of record, LUH & ASSOCIATES,
hereby appeal from the following Orders and Notice of Entry of Orders:

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DATED this 12th day of June, 2023.

/s/ *Craig D. Slater*

CERTIFICATE OF SERVICE

/s/ Victoria Grant

An Employee of Luh & Associates