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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,) Case No.: A-19-787004-B
)
) Dept. No: XI
)
)
) 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
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EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER WITH NOTICE AND MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME

1 COME NOW, THC NEVADA, LLC (“THC NV”), by and through its counsel, Amy L.
2 Sugden, and HERBAL CHOICE, INC. (hereinafter HERBAL CHOICE) by and through their
3 Counsel, SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submit this *ex parte*
4 application for temporary restraining order with notice, and motion for preliminary injunction to
5 prevent certain parties from attempting to enter into a partial settlement to redistribute privileged
6 marijuana dispensary licenses from certain Intervenors to certain Plaintiffs, among other material
7 terms. THC NV and HERBAL CHOICE will suffer irreparable injury if a Temporary Restraining
8 Order (“TRO”) and/or Preliminary Injunction does not issue to prevent this redistribution of licenses
9 and the parties attempt to strong arm THC NV, HERBAL CHOICE and remaining Plaintiffs into a
10 dismissal of their claims.
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12
13 This Application is brought under NRS 33.010(1)-(3), NRCF 65(b)(1), and is based upon the
14 Memorandum of Points and Authorities below, the Declarations of Amy L. Sugden and Sigal Chattah,
15 the evidentiary support attached hereto, the pleadings and papers on file, and any argument that the
16 Court may entertain on this matter.
17

18 DATED this 28th day of July 2020

19
20 SIGAL CHATTAH, ESQ

AMY L. SUGDEN, ESQ.

21 /s/ Sigal Chattah
22 Sigal Chattah
23 Nevada Bar No. 8264
24 5875 S. Rainbow Blvd #203
25 Las Vegas, NV 89118
26 *Attorney for Plaintiff*
27 *Herbal Choice, Inc.*

/s/ Amy L. Sugden
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Attorney for Plaintiff
THC Nevada, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The basis for the entry of the temporary restraining order is to prevent certain parties from colluding and attempting to enter into a stealth partial settlement to be ratified by the Nevada Tax Commission, to the detriment of THC NV, HERBAL CHOICE and others who have not been included in the settlement. Now the purported settlement, by the Settling Parties is going to be submitted to the Nevada Tax Commission on July 31, 2020 at 2:00p.m. for approval.¹ Seemingly, settling Plaintiffs are attempting to bypass any Motion for Good Faith Settlement to be filed with the Court, get their administrative approval and *force this Court to submit to the Nevada Tax Commission's approval* of a bad faith, collusively procured partial settlement.

It is significant to note that both THC NV and HERBAL CHOICE have no idea what has been resolved and what is to be submitted before the Nevada Tax Commission on Friday; perhaps the Settling Parties would be so kind as to share same with THC NV, HERBAL CHOICE and this Court prior to submitting to the Nevada Tax Commission.

While undersigned Plaintiffs' understand that the Nevada Tax Commission is simply the administrative body and any final approval must be issued by this Court through a Motion for Good Faith; as explained *infra*, the Settling Parties should not even be allowed to proceed in front of the Nevada Tax Commission based on their continuous collusion and bad faith in procuring such a settlement and their deliberate exclusion of others in the process.

On or about July 16, 2020, William Kemp, on behalf of LivFree Wellness, LLC, and MM Development Company, Inc., (hereinafter collectively referred to as "Planet 13") stood before this Court and announced that a partial – and eventually possible global – settlement had been obtained between certain parties ("Partial Settlement"). It is significant to note that at no time during the purported secret and collusive negotiations were THC NV, HERBAL CHOICE or other Plaintiffs

¹¹ See 7/31/2020 Agenda attached hereto as Exhibit "1"

1 included in any of the discussions. A partial settlement agreement was circulated amongst the
2 negotiating parties, deliberately and intentionally omitting the above noted Plaintiffs from any
3 discussions.

4 Since that time and on a daily basis throughout the course of this trial, counsel for certain
5 parties have been huddling around the courtroom and cloistering outside in the hallways of the South
6 Hall at the Las Vegas Convention Center, to strategically organize a secret settlement that is designed
7 to purposely harm the remaining parties who are not party to the settlement, including THC NV and
8 HERBAL CHOICE. It has been and continues to be said settling Plaintiffs' position that if a majority
9 of Plaintiffs settle, than the smaller Plaintiffs could not carry this trial and would be forced to take
10 smaller nuisance fee type settlements.

11 It is clear that while settling Plaintiffs are negotiating significantly impactful settlements for
12 their Clients, which would dispose of a majority of the Plaintiff parties to this action, there is a
13 deliberate and intentional agenda to disregard and injure Plaintiffs THC NV and HERBAL CHOICE,
14 INC. These secret collusive and injurious negotiations are specifically what the Supreme Court
15 decision of *In re MGM Grand Hotel Fire Litigation*² sought to prevent as delineated more *infra*.

16 As such, THC NV and HERBAL CHOICE, **being offered no part in such settlement**
17 **negotiations or even being advised they were going on**, has no choice but to compel the Court to
18 enjoin any enforcement of this covert Partial Settlement and maintain the status quo until there is a
19 full and fair opportunity for this Court to conduct a hearing to determine whether or not to issue a
20 preliminary injunction regarding the same and/or consider the merits of the Partial Settlement pursuant
21 to a properly brought motion for good faith settlement.

22 Undersigned Parties further request this Court preclude introduction of this covert and
23 injurious settlement as an item on the Nevada Tax Commission's Consent Agenda scheduled to occur
24 on July 31, 2020.

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² 570 F. Supp. 913, 927 (D.Nev.1983).

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II.

STATEMENT OF FACTS

1. The Nevada Legislature passed a number of bills during the 2017 legislative session concerning the licensing, regulation, and operation of recreational marijuana establishments in the State of Nevada.

2. One of those bills, Assembly Bill 422, transferred responsibility for the registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of Public and Behavioral Health to the State of Nevada Department of Taxation (the “Department”).

3. This legislation was approved by the voters at the General Election of 2016 as Initiative Petition, Ballot Question No. 2, entitled the “Regulation and Taxation of Marijuana Act,” (the “Ballot Initiative”).

4. It was enacted by the Nevada Legislature and is codified at NRS Chapter 453D.

5. After the enactment of NRS Chapter 453D, on May 8, 2017, the Department enacted temporary regulations pertaining to the issues of retail marijuana licenses (“Temporary Regulations”).

6. On or around December 16, 2017, the Department issued a Notice of Intent to Adopt Permanent Regulations Pursuant to the Mandates of NRS 453D.200(1).

7. On or around January 16, 2018, the Department held a public hearing on the proposed permanent regulations, which was attended by numerous members of the public and marijuana business industry.

8. In early 2018, the Department adopted regulations governing the issuance, suspension, or revocation of retail marijuana licenses in LCB File No. R092-17, which were codified in NAC Chapter 453D (the “Regulations”).

9. On July 6, 2018, the Department made available the application package for non-Early Start Program applicants on the Department website and via a Department list serve email.

10. The Department required that the applications be returned in complete form between September 7 and September 20, 2018.

1 11. The applications were to be submitted to the Department from September 7, 2018, to
2 September, 20, 2018.

3 12. The Department received applications exceeding the number of awardable licenses,
4 and it utilized the regulations to engage in a competitive bidding process, which gave rise to the present
5 dispute.

6 13. In total, 127 applicants applied for retail marijuana licenses in the 17 jurisdictions.

7 14. On December 5, 2018, the Department awarded conditional retail marijuana licenses.

8 15. The Department issued 61 recreation marijuana retail store conditional licenses to 17
9 applicants.

10 16. In other words, only 13% of the applicants were awarded at least one retail marijuana
11 license.

12 17. After the expiration of the Early Start Program during the period specified by the
13 Department, THC NV submitted three separate applications that contained the same substantive
14 information for issuance of retail marijuana license at different localities.

15 18. Specifically, THC NV submitted applications in the following jurisdictions:

PLAINTIFF	JURISDICTION
THC NEVADA LLC	Clark County – North Las Vegas
	Clark County – Las Vegas
	Washoe County - Reno
HERBAL CHOICE, INC.	Clark County- Las Vegas
	Clark County- City of Las Vegas
	Clark County- City of North Las Vegas

19 19. HERBAL CHOICE also submitted their three applications on or about September 7-
20, 2018.

1 20. On or around December 5, 2018, each of THC NV’s and HERBAL CHOICE
2 applications were denied by identical written notices issued by the Department.

3 21. After receiving the denial notices from the Department, THC NV challenged its scores
4 at meetings held by the Department on or around January 10, 2019.

5 22. The Department refused to consider THC NV’s challenges.

6 23. On January 4, 2019, THC NV and HERBAL CHOICE *as part of* the ETW Plaintiffs
7 filed its Complaint against the Department, Case No. A-19-787004-B.

8 24. Thereafter, THC NV and HERBAL CHOICE *as part of* the ETW Plaintiffs filed and
9 served their Third Amended Complaint against Cheyenne Medical, LLC; Circle S Farms, LLC; Clear
10 River, LLC; Commerce Park Medical L.L.C.; Deep Roots Medical LLC; Essence Henderson, LLC,
11 Essence Tropicana, LLC; Eureka Newgen Farms LLC; Green Therapeutics LLC; Greenmart; Helping
12 Hands Wellness Center, Inc.; Lone Mountain Partners, LLC; Nevada Organic Remedies LLC; Polaris
13 Wellness Center L.L.C.; Pure Tonic Concentrates LLC; TRNVP098; Wellness Connection of Nevada,
14 LLC (collectively, the “Successful Applicants”) and the Department (together with the Successful
15 Applicants, the “Defendants”).

16 25. In their Complaint, THC NV and HERBAL CHOICE *as part of* ETW Plaintiffs
17 asserted the following claims against the Department and the Successful Applicants: (1) Violation of
18 Substantive Due Process against the Department, (2) Violation of Procedural Due Process against the
19 Department, (3) Equal Protection Violation against the Department; (4) Declaratory Judgment against
20 all the Defendants, (5) Petition for Judicial Review against all of the Defendants, and (6) Petition for
21 Writ of Mandamus against the Department.

22 26. Upon demand and part and parcel of this Court’s Order’s grant of the Preliminary
23 Injunction, both THC NV and HERBAL CHOICE posted surety bonds in in excess of \$300,000.00
24 respectively.

25 27. On or about May 20, 2020, HERBAL CHOICE substituted its counsel of record herein
26 so that undersigned Counsel Sigal Chattah, replaced the firm of Brownstein Hyatt Farber Schreck,
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1 LLC.

2 28. On or about June 24, 2020, THC NV substituted its counsel of record herein so that the
3 undersigned counsel, Amy L. Sugden, replaced the firm of Brownstein Hyatt Farber Schreck, LLC.

4 29. It is significant to note that neither THC NV nor HERBAL CHOICE ever signed
5 conflict waivers during the course of representation by Brownstein Hyatt, and it became clear that a
6 conflict and preferential treatment of certain Plaintiffs were made prior to said substitutions during the
7 course of former Counsels representation of these Plaintiffs.

8 30. Trial was set to begin on July 13, 2020 pursuant to the Amended Trial Protocol No. 2.

9 31. On or about July 16, 2020, William Kemp, Esq. counsel for Planet 13, pronounced a
10 partial or even possible global settlement had been reached.

11 32. Upon information and belief, the Plaintiffs involved in the Partial Settlement include:
12 Planet 13; ETW Plaintiffs; Nevada Wellness Center (“NWC”), and Qualcan, LLC (collectively
13 “Partial Settlement Plaintiffs”).

14 33. Neither THC NV nor HERBAL CHOICE were offered an opportunity to participate
15 in the Partial Settlement, nor to date has been provided any proposed settlement agreement regarding
16 the same by the Partial Settlement Plaintiffs.

17 34. Upon information and belief, THC NV and HERBAL CHOICE understand that the
18 Partial Settlement contemplates the redistribution of certain dispensary licenses from certain
19 Successful Applicants to Partial Settlement Plaintiffs in addition to other material terms and
20 conditions, such of which include the exchange of additional monies.

21 35. Upon information and belief, the Partial Settlement Plaintiffs *purposely excluded* THC
22 NV, HERBAL CHOICE and other Plaintiffs from participation and opportunity to be a part of the
23 Partial Settlement in order to strategically gain an advantage to gain access and control of the limited
24 dispensary licenses available.

25 36. Upon information and belief, the Partial Settlement includes a provision to further
26 eliminate the purposely excluded remaining Plaintiffs, including THC NV and HERBAL CHOICE,
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1 by specifically providing for the Partial Settlement Plaintiffs to seek injunctive ***relief to limit the***
2 ***remedies available to the excluded remaining Plaintiffs*** (i.e., in an attempt prevent a complete do-
3 over of the application process sought by the remaining Plaintiffs).

4 37. Such collusively deviant acts by settling parties would essentially paralyze Plaintiffs
5 from seeking the redress from this Court that they are rightfully entitled to and have been litigating
6 over the course of two years.

7 38. Notwithstanding same, Plaintiffs THC NV and HERBAL CHOICE have secured their
8 vested interests in this matter by each surrendering in excess of \$300,000.00 USD held during this
9 litigation.

10 39. As such, THC NV and HERBAL CHOICE seek to enjoin any party from the execution,
11 finalization and/or any attempts to perform pursuant to the Partial Settlement Agreement.

12 40. THC NV and HERBAL CHOICE face the threat of irreparable harm to their ability to
13 pursue its claims in this action to full fruition as a result of the Partial Settlement Agreement which is
14 believed to include collusion at best, fraud and/or tortious conduct at worst, to injure the interest of
15 the non-settling defendants. *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 927 (D. Nev.
16 1983).

17 41. Now, Settling Parties seek to have this Partial Settlement placed on the Nevada Tax
18 Commissions Consent Agenda for July 31, 2020 at 2:00p.m for final approval by said administrative
19 body.

20 42. This Court should preclude any such purported settlement, procured in bad faith and
21 deliberately injurious to Plaintiffs that have not been offered to participate, from being introduced to
22 the Nevada Tax Commission, and further advise the Commission of these injurious acts these parties
23 have engaged in.

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III.
LEGAL ARGUMENT

A. THC NV and HERBAL CHOICE are Entitled to a Temporary Restraining Order on an Ex Parte Basis.

THC NV and HERBAL CHOICE entitled to a temporary restraining order without notice under NRCP 65(b) because irreparable harm will result if an order from this Court is not issued immediately to preserve the status quo. A temporary restraining order without notice is proper if “(1) it clearly appears from specific facts shown by [declaration], or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.” NRCP 65(b). Here, both factors are satisfied:

1. Parties to Partial Settlement Agreement Will Not Suffer Immediate, Irreparable Harm, but Plaintiffs THC NV and HERBAL CHOICE Will Be Greatly and Irreparably Harmed Absent Maintaining the Status Quo.

An injunction is needed to prevent certain parties to this complex litigation from improperly and prematurely attempting to redistribute the licenses that are the subject matter of this suit by presenting the settlement to the Nevada Tax Commission on July 31, 2020. *See Exhibit 1.* Conversely, there is no immediate need to jam the partial redistribution of certain licenses when the entire process is sought to be invalidated by the Non-Settling Plaintiffs.

If certain limited parties, are allowed to redistribute licenses pursuant to the Partial Settlement Agreement without obtaining prior Court approval, but rather by sneaking to the Nevada Tax Commission to push through the limited parties self-serving redistribution of select licenses at issue

1 herein, THC NV and HERBAL CHOICE will be further deprived of due process. Specifically, the
2 Partial Settlement Agreement is believed to have a provision that provides for the settling Plaintiffs to
3 in turn seek a preliminary injunction against Non-Participating Intervenor/Defendants as well as
4 threaten to seek costs and fees to prevent the remaining Plaintiffs who are moving forward to finish
5 trial.
6

7 **2. Parties to the Partial Settlement Should Not Be Heard Before Entry of the TRO**

8 NRCP 65(b) provides that in addition to setting forth the specific facts in an affidavit clearly
9 showing that immediate and irreparable injury, loss or damage will occur before the adverse party can
10 be heard, in opposition that the movant’s attorney certify “the efforts, if any, which have been made
11 to give the notice and the reasons supporting the claim that notice should not be required”. The
12 undersigned counsel certifies herein that notice should not be required given the short time frame in
13 which the threat of the Partial Settlement Agreement is set to go into effect. Assuming this Court
14 believes Notice shall be given, all Parties have been served with the foregoing pleading (so as to not
15 replicate the same egregious and clandestine behavior of the parties to the Partial Settlement).
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18 Moreover, undersigned counsel certifies that THC NV and HERBAL CHOICE undertook
19 numerous actions since that learning about the Partial Settlement to become apprised of such
20 agreement and participate in good faith with the Partial Settlement, but both have been stonewalled.

21 *See Declarations of Amy L. Sugden and Sigal Chattah set forth herein.*

22
23 It is quite apparent that since THC NV and HERBAL CHOICE substituted counsel for trial
24 purposes and separated from the ETW Plaintiffs, this has been used against THC NV and HERBAL
25 CHOICE so that they would be forced out of the Partial Settlement Agreement.

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1 THC NV and HERBAL CHOICE further submits that it has not consented to any such waiver
2 from its former counsel, Brownstein Hyatt Farber Schreck, that alleviates its ethical obligations set
3 forth in Nevada Rules of Professional Conduct 1.9 (Duties to Former Clients).³

4 Thus, not only are THC NV and HERBAL CHOICE at risk of being locked out of this
5 litigation, it is being done so by their former counsel, which should give this Court great concern in
6 contemplating any allowance of the Partial Settlement.

7 As such, THC NV and HERBAL CHOICE have been left with no choice but to obtain
8 protection from the Court in obtaining a TRO to preserve the status quo. Thus, the Court should enter
9 the temporary restraining order, a proposed form of which is attached as Exhibit “2”.

10
11 **B. THC NV and Herbal Choice are Entitled to a Preliminary Injunction.**

12 A preliminary injunction “is extraordinary relief” and the factors met to obtain this relief must
13 be “articulated in specific terms”. *Dep’t of Conservation & Natural Res. v. Foley*, 121 Nev. 77, 80,
14 109 P.3d 760, 762, (2005). A party can only receive a preliminary injunction “when the movant shows
15 a likelihood of success on the merits and a reasonable probability that the nonmovant's conduct will
16 cause irreparable harm if allowed to continue.” *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound*
17 *Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). The party seeking a preliminary injunction must
18 show “by the complaint or affidavit that the commission or continuance of some act, during the
19 litigation, would produce great or irreparable injury to the plaintiff.” *Dixon v. Thatcher*, 103 Nev. 414,
20 415-416, 742 P.2d 1029, 1030, (1987). Finally, the Court may also weigh “the public interest and the
21 relative hardships of the parties in deciding whether to grant a preliminary injunction.” *Clark County*

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³ On or about July 16, 2020, the undersigned counsel emailed a request to Adam Bult and Maximillien Fetaz requesting a copy of their attorney client representation agreement with THC NV, including any joint representation type agreements with the other Plaintiff to which no response was provided. Thus, it is counsels understanding there is no such waiver of any potential conflicts that has been obtained.

1 *Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719, (1996) quoting *Ellis v. McDaniel*,
2 95 Nev. 455, 459, 596 P.2d 222, 224-25 (1979). THC NV and HERBAL CHOICE are
3 entitled to a preliminary injunction because, as provided above, irreparable harm will occur, there is
4 a reasonable likelihood of success on its merits, the potential hardships weigh in THC NV and
5 HERBAL CHOICE's favor and the public interest favors the injunction.
6

7 **1. THC NV and HERBAL CHOICE are Likely to Succeed on the Merits**

8
9 First and foremost, this Court has already found in its Facts and Conclusions of Law Granting
10 Preliminary Injunction Issued on August 23, 2019 the following pertinent issues:

11 (1) The State's determination that it was not reasonable to require industry to provide
12 every owner of a prospective licensee violated Article 19, Section 3 of the Nevada
13 Constitution. This determination was not based on a rational basis.

14
15 (2) The adoption of NAC 4533.255(1), as it applies to the application process is an
16 unconstitutional modification of BQ2.

17 (3) The failure of the State to carry out the mandatory provision of NRS 453D.200(6) is
18 fatal to the application process. The State's decision to adopt regulations in direct
19 violation of BQ2's mandatory application requirements is violative of Article 19, Section
20 2(3) of the Nevada Constitution.
21

22 (4) The State's late decision to delete the physical address requirement on some
23 application forms while not modifying those portions of the application that were
24 dependent on a physical location (i.e., floor plan, community impact, security plan, and
25 the sink locations) after the repeated communications by an applicant's agent; not
26 effectively communicating the revision; and, leaving the original version of the
27 application on the website, is evidence of conduct that is a serious issue.
28

1 (5) The State’s inclusion of the diversity category was implemented in a way that created
2 a process which was partial and subject to manipulation by applicants.

3 *Id.*

4 Further, THC NV and HERBAL CHOICE are likely to ultimately proceed on the underlying
5 merits of its action against the State on the following claims:

- 7 (1) Violation of Substantive Due Process against the Department;
- 8 (2) Violation of Procedural Due Process against the Department;
- 9 (3) Equal Protection Violation against the Department;
- 10 (4) Declaratory Judgment against all the Defendants;
- 11 (5) Petition for Judicial Review against all of the Defendants; and
- 12 (6) Petition for Writ of Mandamus against the Department

13
14 Given the number and extent of such claims at issue, for brevity’s sake, THC NV and HERBAL
15 CHOICE hereby incorporate by reference Plaintiffs’ July 14, 2020 Proposed Findings of Fact and
16 Conclusions of Law, on file herein to demonstrate that it is likely to prevail on the merits, which will
17 ultimate find that the recreational dispensary application process in its entirety was flawed.

18
19 This Court has heard over six (6) day of testimony which further confirm that the State had
20 designed and implemented a completely arbitrary and capricious application system (by doing such
21 things as not verifying any physical locations of applicants; by not verifying the accuracy or veracity
22 of resumes; by not requiring funds to be “unconditionally committed”; by not verifying the identity of
23 applicants (in particular when there was a trust and/or LLC at issue) among several other disturbing
24 flaws).

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1 **2. There is a Reasonable Probability of Irreparable Harm to THC NV and HERBAL**
2 **CHOICE.**

3 There is a reasonable probability of irreparable harm for which compensatory damages would
4 be inadequate, as discussed above in Section III(A)(I) above, which THC NV incorporates by
5 reference into this section. *See Danberg Holdings*, 120 Nev. at 142-43, 971 P.2d at 319-20 (**affirming**
6 **an injunction prohibiting Danberg Holdings from entering a settlement agreement with another**
7 **party because of “irreparable harm and inadequacy of legal remedies” to the plaintiff that would**
8 **result**) (emphasis added).
9

10 **3. The Relative Hardships Favor THC NV and HERBAL CHOICE**

11 Although the Court is not required to consider this factor, the relative hardships of the parties
12 also weigh in THC NV and HERBAL CHOICE’s favor. *See Clark Cty. Sch. Dist. v. Buchanan*, 12
13 Nev. at 1150, 924 P.2d at 719. There is no legitimate immediate need to approve the Partial Settlement
14 on this severely truncated timeline.
15

16 The only reason the settling parties are attempting to do so is to injury non settling Parties by
17 forcing them to accept a nuisance type settlement. Settling Plaintiffs ***and Defendants*** should not
18 benefit from such collusive and deviant behavior. It is clear by these Parties’ actions that there has
19 not been a scintilla of good faith in their negotiation process and said process has been riddled with
20 cunningly disingenuous attempts to in THC NV and HERBAL CHOICE from resolving this matter
21 on the merits.
22

23 As stated above, the Partial Settlement, which has not been provided to THC NV nor HERBAL
24 CHOICE, is believed to contain certain language that is specifically targeted to “take out” the
25 remaining parties and force them to dismiss their claims.
26

27 Instead of sanctioning such collusion, the parties should proceed to a hearing on a preliminary
28 injunction on this matter pursuant so that this Court can then decide if more permanent relief should

1 issue until this litigation is resolved, which will ultimately reconcile the recreational dispensary
2 application process on its merits. This Court should find that any negotiation which does not include
3 all Plaintiffs in a global type negotiation, is automatically implicit of bad faith.

4 An injunction, if granted, would preserve the status quo of the licenses at issue so that they
5 cannot be used as a sword against the remaining parties.

6
7 **4. If the Court Does Grant an Injunction the Bond, if Any, Should Be Nominal.**

8 NRCP 65(c) requires that security be given before a temporary restraining order and/or
9 preliminary injunction can issue. The sum of the security is left to the discretion of the court and is for
10 the payment of such costs and damages as may be incurred or suffered by any party found to be
11 wrongfully restrained or enjoined. *Id.* As an injunction in this matter would mean the status quo is
12 maintained and the Partial Settlement is held in abeyance until there is a final ruling on the merits of
13 the claims at issue. THC NV and HERBAL CHOICE already have posted Three Hundred Thousand
14 Dollars (\$300,00.00), respectively as a result of the August 23, 2019 Preliminary Injunction and has
15 substantial monies at risk. Therefore, any additional bond to simply the status should be minimal and
16 not be in excess \$500.00.

17
18
19 Both THC NV and HERBAL CHOICE simply want what is equitable, to be included in the
20 negotiations of a settlement. There should be no cost to secure such fairness in the legal process which
21 is **mandated** as to be included in a global resolution of this matter.

22 The fact that two Plaintiffs have been deliberately ignored, as if non-existent, in a proceeding
23 that they have spent the past two years, litigating, paying attorneys fees and complying with Court
24 Orders, not to mention a presence at trial, is a despicable demonstration of perpetuating the collusion
25 that this very trial is about, but now the betrayal is by Plaintiffs' own former counsel and Co-Plaintiffs.
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IV.
CONCLUSION

For the foregoing reasons, the Court should find that Plaintiff THC NV and HERBAL CHOICE have met its burden for a temporary restraining order and ultimately a preliminary injunction in this matter must issue preventing any execution, enforcement and/or application any Partial Settlement until such time this matter is concluded herein, and enter a temporary restraining order in the form attached as Exhibit “2”.

DATED this 28th day of July 2020.

SIGAL CHATTAH, ESQ.

AMY L. SUGDEN, ESQ.

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8 amy@sugdenlaw.com
9 *Attorney for THC Nevada, LLC*

10 **DECLARATION OF AMY L. SUGDEN, ESQ. IN SUPPORT OF APPLICATION FOR**
11 **TEMPORARY RESTRAINING ORDER**

12 I, AMY L. SUGDEN, declare as follows:

- 13 1. I am a licensed attorney in the State of Nevada since 2005 and a member of
14 good standing with the State Bar of Nevada.
- 15 2. I am Counsel for Plaintiff THC Nevada, LLC, in the matter sub judice, and
16 substituted former Counsel of Brownstein Hyatt Farber Schreck on or about
17 June 24, 2020.
- 18 3. This Declaration is made in support of an Application for the Temporary
19 Restraining Order on an Order Shortening Time.
- 20 4. On or about July 17, 2020, I emailed THC NV's former counsel to request a
21 copy of the attorney client representation agreement with THC NV as well as
22 any other type of agreements related to joint representation of the ETW
23 Plaintiffs.
- 24 5. To date, I have no received any response.
- 25 6. Additionally, I have inquired of my client, THC NV, to determine if any
26 waiver of conflicts has been obtained by former counsel, to which my client is
27 unaware exists.
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7. As a result of disparate treatment between the Plaintiffs, it became clear that the less Plaintiffs in the ETW group, the easier to effectuate a settlement with Defendants in this matter, as the ultimate goal was a transfer of licenses in a resolution of all matters.
8. Accordingly, THC NV made an attempt was to be included in the participation of settlement negotiations which were immediately rejected.
9. Thereafter, it was brought to my attention that on July 15, a partial settlement agreement was being circulated including Planet 13; ETW Plaintiffs; Nevada Wellness Center, and Qualcan, LLC.
10. While it is clear that individual groups of Plaintiffs have no obligation to procure any resolution for all Plaintiffs, the deliberate collusion against the Plaintiffs that were never allowed to participate in the negotiations is a vile exhibition of corruption that not only plagues the case itself, but also the attempt to resolve it.
11. This Court has been privy to the continued entry and exit of numerous Plaintiffs' Counsels from the Courtroom during this trial, deceitfully and secretly attempting to negotiate terms in the hallway of the South Hall, while THC NV has not even been invited to even accept any offer.
12. It is not only Plaintiffs attempt to partially dispose of the Parties to this matter, it is also their intent to preclude and injure non settling Plaintiffs from litigating the matters on the merit, by forcing them to settle for nuisance value fees under the threat of attorneys fees and costs.

1 SIGAL CHATTAH, ESQ.
2 Nevada Bar No.: 8264
3 CHATTAH LAW GROUP
4 5875 S. Rainbow Blvd #203
5 Las Vegas, Nevada 89118
6 Tel: (702) 360-6200
7 Fax: (702) 643-6292
8 Chattahlaw@gmail.com
9 *Counsel for Plaintiffs*

10 **DECLARATION OF SIGAL CHATTAH, ESQ. IN SUPPORT OF APPLICATION**
11 **FOR TEMPORARY RESTRAINING ORDER**

12 I, SIGAL CHATTAH, declare as follows:

- 13 1. I am a licensed attorney in the State of Nevada since 2002 and a member of
14 good standing with the State Bar of Nevada.
- 15 2. I am Counsel for Plaintiff Herbal Choice, Inc. in the matter sub judice, and
16 substituted former Counsel of Brownstein Hyatt on or about May 20, 2020.
- 17 3. This Declaration is made in support of an Application for the Temporary
18 Restraining Order on an Order Shortening Time.
- 19 4. I was retained on this matter following a conflict that was relayed to Herbal
20 Choice and they were provided with the option of dismissing their claims with
21 return of their bond monies or finding new Counsel
- 22 5. Herbal Choice refused to dismiss their claims and chose to hire myself as
23 Counsel on this matter.
- 24 6. I was advised upon substitution, that at no time prior to representation of ETW
25 Plaintiffs or during the course of same, were HERBAL CHOICE presented
26 with a conflict waiver to be signed as part of a larger group of Plaintiffs
27 litigating and seeking the same ultimate result.
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7. As a result of disparate treatment between the Plaintiffs, it became clear that the less Plaintiffs in the ETW group, the easier to effectuate a settlement with Defendants in this matter, as the ultimate goal was a transfer of licenses in a resolution of all matters.

8. Accordingly, I made an attempt was to be included in the participation of settlement negotiations which were immediately rejected.

9. Thereafter, it was brought to my attention that on July 15, a partial settlement agreement was being circulated including Planet 13; ETW Plaintiffs; Nevada Wellness Center (“NWC”), and Qualcan, LLC.

10. While it is clear that individual groups of Plaintiffs have no obligation to procure any resolution for all Plaintiffs, the deliberate collusion against the Plaintiffs that were never allowed to participate in the negotiations is a vile exhibition of corruption that not only plagues the case itself, but also the attempt to resolve it.

11. This Court has been privy to the continued entry and exit of numerous Plaintiffs’ Counsels from the Courtroom during this trial, deceitfully and secretly attempting to negotiate terms in the hallway of the South Hall, while Herbal Choice has not even been invited to even accept any offer.

12. It is not only Plaintiffs attempt to partially dispose of the Parties to this matter, it is also their intent to preclude and injure non settling Plaintiffs from litigating the matters on the merit, by forcing them to settle for nuisance value fees under the threat of attorneys fees and costs.

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13. On July 31, 2020 at 2:00p.m., the Nevada Tax Commission will be conducting a hearing on its Consent Agenda on a partial settlement agreement that will not dispose of all matters of this case.

14. Further the Nevada Tax Commission must be advised that this Partial Settlement was not engaged in good faith, did not include all Plaintiffs, or was even remotely an attempt to globally resolve the matter.

15. It is clear that there was never an attempt to resolve the matter globally, and that the negotiations were targeted to deliberately and deceitfully exclude parties they deemed insignificant in the action.

16. These are the facts as I know them to be true.

17. Under NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

/s/ SIGAL CHATTAH
Declarant
SIGAL CHATTAH, ESQ.

EXHIBIT “1”

EXHIBIT “1”

NEVADA TAX COMMISSION MEETING
AGENDA

July 31, 2020
2:00 p.m.

In compliance with the Governor's Emergency Directive 006, dated March 22, 2020, this meeting will be conducted by means of electronic communication. The public may view the meeting by live stream on the Nevada Department of Taxation's YouTube channel at: <https://www.youtube.com/channel/UCwZMw0CLJAjXH1XFjYde18Q/feed> and may submit public comment as set forth below in the Public Comment section.

Note: Items on this agenda may be taken in a different order than listed.
Items may be combined for consideration by the Tax Commission.
Items may be pulled or removed from the agenda at any time.

- I. ****Public Comment.** Testimony will be accepted in writing or by telephone. In consideration of others, who may also wish to provide public comment, please avoid repetition, and limit your comments to no more than two (2) minutes. Please submit written testimony by email to tpadovano@tax.state.nv.us, by facsimile to (775) 684-2020; or by U.S. Mail addressed to the Nevada Tax Commission, 1550 E. College Parkway, Carson City, NV 89706. To dial in to provide testimony by telephone:
Dial: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
When prompted to provide a Webinar ID, please enter: 973 8235 5536, then press #
When prompted for a Participant ID, please enter #
Please call (775) 684-2100 to report technical difficulties.

II. **CONSENT CALENDAR¹:**

A. Consideration for Approval of the Recommended Settlement Agreement:

- 1. In re Department of Taxation Litigation, Case No. A-19-787004-B, pending in the Eighth Judicial District Court (consolidated with Case Nos.: 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) (for possible action)**

III. Next Meeting Date: August 17, 2020

- IV. ****Public Comment.** Testimony will be accepted in writing or by telephone. In consideration of others, who may also wish to provide public comment, please avoid repetition, and limit your comments to no more than two (2) minutes. Please submit written testimony by email to tpadovano@tax.state.nv.us, by facsimile to (775) 684-2020; or by U.S. Mail addressed to the Nevada Tax Commission, 1550 E. College Parkway, Carson City, NV 89706. To dial in to provide testimony by telephone:
Dial: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
When prompted to provide a Webinar ID, please enter: 973 8235 5536, then press #
When prompted for a Participant ID, please enter #
Please call (775) 684-2100 to report technical difficulties.

¹ The Commission will review all of the items on the consent calendar unless a member of the Commission, the Attorney General's Office, the Department or the public wishes to speak in regard to a certain issue, in which case the Commission may, in its discretion, pull the item from the consent calendar.

V. Adjourn.

Please contact Tina Padovano at (775) 684-2096 to request copies of the Nevada Tax Commission support materials. Please call (775) 684-2100 to report technical difficulties.

Members of the public who are disabled and require accommodations or assistance at this meeting are requested to notify the Department of Taxation at (775) 684-2096 as soon as possible.

Any appeal to the Nevada Tax Commission (the "Commission") concerning the liability of tax must be heard in open session. A taxpayer may request that a portion of the hearing be closed to the public so that the Commission can receive proprietary or confidential information pursuant to NRS 360.247. The request must be submitted to the Commission in writing and contain a list or summary of the information that the taxpayer believes is proprietary or confidential. It must also include a short statement explaining how the information qualifies as proprietary or confidential information pursuant to NRS 360.247. The submission must be made no later than fourteen (14) days prior to the date of the hearing. *All requests for closed hearings will be noted as such on the Commission's agenda.

Decisions of the Tax Commission and any information submitted in public session will become public and may be published. If a transcript of any hearing held before the Commission is desired by the petitioner or appellant, he/she may obtain a copy, at the party's expense, from the court reporter furnished by the Commission.

**This item is to receive public comment on any issue and any discussion of those items, provided that comment will be limited to areas relevant to and within the authority of the Nevada Tax Commission. No action will be taken on any items raised in the public comment period. At the discretion of the Chairman, public comment may be received prior to action on individual agenda items. Public Comment may not be limited based on viewpoint. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the board may refuse to consider public comment. See NRS 233B.126.

Notice of this meeting has been posted on the internet through the Department of Taxation's website at <https://tax.nv.gov/> and at <https://notice.nv.gov/>.

EXHIBIT “2”

EXHIBIT “2”

1 AMY L. SUGDEN, ESQ.
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3 Las Vegas, Nevada 89183
4 Telephone: (702) 307-1500
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5 amy@sugdenlaw.com
Attorney for THC Nevada, LLC

6 SIGAL CHATTAH, ESQ.
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8 5875 S. Rainbow Blvd. #203
Las Vegas, Nevada 89118
9 Tel.: (702) 360-6200
Fax: (702) 643-6292
10 Chattahlaw@gmail.com
Attorney for Plaintiff
11 *Herbal Choice, Inc.*

12 EIGHTH JUDICIAL DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 *****

15 In Re: D.O.T. Litigation,) Case No.: A-19-787004-B
16) Dept. No: XI
17)
18) CONSOLIDATED WITH:
19) A-18-785818-W
20) A-18-786357-W
21) A-19-786962-B
22) A-19-787035-C
23) A-19-787540-W
24) A-19-787726-C
25) A-19-801416-B
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26 **TEMPORARY RESTRAINING ORDER**

1 Having considered Plaintiff's THC NEVADA, LLC ("THC NV") and HERBAL CHOICE,
2 INC. ("Herbal Choice")'s *Ex Parte* Application for Temporary Restraining Order ("Application");
3 having considered the exhibits attached to the Application, including the Declarations of Amy L.
4 Sugden, Esq. and Sigah Chattah, Esq., and all the other papers on file; and good cause having been
5 shown:

6 **IT IS HEREBY ORDERED** that THC NV and Herbal Choice's Application is **GRANTED**.

7 **IT IS FURTHER ORDERED** that any parties to the Partial Settlement that is currently set to
8 be considered at the July 31, 2020 Nevada Tax Commission Meeting, including the Department of
9 Taxation, are temporarily restrained from the execution, finalization and/or any attempts to perform
10 pursuant to the Partial Settlement Agreement in any way until such time as the hearing on the Motion
11 for Preliminary Injunction is heard.

12 **IT IS FURTHER ORDERED** that the hearing on THC NV and Herbal Choice's Motion for
13 Preliminary Injunction shall be conducted on _____, at _____ a.m./p.m.,
14 with notice to all parties as required by Nevada law.

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1 IN SUPPORT OF THIS TEMPORARY RESTRAINING ORDER, and pursuant to NRCP
2 65(c), THC NV and Herbal Choice shall post a bond in the amount of \$_____.

3 **IT IS SO ORDERED.**

4 DATED: July , 2020.

5 TIME: _____:_____ .m.
6

7 _____

8 DISTRICT COURT JUDGE
9

10 Respectfully Submitted:

11 AMY L. SUGDEN
12

13 /s/ Amy L. Sugden

14 Amy L. Sugden
15 Nevada Bar No 9983
16 9728 Giles pie Street
17 Las Vegas, NV 89183

18 *Attorney for THC Nevada LLC*

19 SIGAL CHATTAH, ESQ.

20 /s/ Sigal Chattah

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