



July 31, 2020

Nevada Tax Commission
C/O Director Melanie Young
Chairman James DeVold
1550 College Parkway, Suite 115
Carson City, NV 89706

Re: Department of Taxation Litigation, Case No. A-19-787004-B, Proposed Settlement

Dear Chairman DeVold:

I am David Goldwater, a partner in Inyo Fine Cannabis Dispensary. We have a single dispensary with a medical and adult use license in unincorporated Clark County. We are a plaintiff in the above referenced case. I urge you and your fellow commissioners, in the strongest possible terms, to reject this proposed settlement on behalf of the State and to rededicate your efforts to a resolution that includes ALL parties affected by the Marijuana Division's unfair process.

The very nature of this litigation is that the process of evaluating and awarding the new recreational licenses was unfair. There is a trove of documents and sworn testimony that strongly suggest the process was, indeed, unfair. In fact, as you know, this case is in the middle of a trial where Judge Gonzalez is poised to decide this very issue. The settlement before you does not bring fairness to this process. It exacerbates the inequity caused by the unfair process. The basis of the settlement is to reallocate the licenses obtained unjustly to some (not all) plaintiffs based not on merit, but as part of a litigation strategy. It is akin to allowing bank robbers to get out of their crime by paying a fine with the proceeds of the bank robbery. Let Judge Gonzalez decide the issue of fairness without a settlement that divides the plaintiffs with a payoff from ill-gotten gains.

That this proposal is a litigation strategy and not a settlement is abundantly clear because the agreement does not settle the case. The remaining plaintiffs can and will proceed with all the claims against the State. The settling parties have no ability to resolve these claims without the consent of the remaining plaintiffs. There is, therefore, no direct benefit to the State to enter into this agreement with only a few of the plaintiffs. In fact, as proposed, the partial settlement substantially impedes any ability for the State to resolve the case. All of the licenses that might be used as part of a true global settlement are allocated to this group of plaintiffs leaving the remaining plaintiffs with no reasonable alternatives for relief. In your March 9, 2020 meeting when Chairman DeVold was empowered to negotiate a settlement with ALL the parties, I rose in public comment to support the concept of settlement, but warned, "Any strategic settlement that continues to award or give advantages to the larger companies is a threat to the smaller companies, a threat to the cannabis market and to the consumers as a whole. For example, if the state were to encourage settlements only between the larger entities that are plaintiffs in the litigation, it would be a very effective litigation strategy, but not the best market strategy or not best for the state and/or players in the market." This proposed agreement does exactly what I hoped the State would avoid. I am acutely aware of how tiring and draining this litigation is. We have committed substantial resources to the pursuit of justice in this matter because we feel so strongly that we were treated unfairly. We are small and our resources are quite scarce compared to most all the plaintiffs in this case. But we believe in our position. The only conceivable benefit to the State by adopting this settlement is to engage in a strategy of attrition to end the litigation. Please do not be a party to that misplaced motivation.

The settlement agreement requires the state to commit to things that are factually false and/or violate state law. Paragraph 2 of the agreement, for example, appears to require the State to issue a brand-new conditional license, in violation of the statutory caps set forth in 463D.210 and 678B.260. Additionally, paragraph 7, requires the State to issue a determination to the court that the Settling Defendants have “provided the information necessary in their respective applications to allow [the State] to conduct all necessary background checks and related actions....” This is factually false, and the State has already confirmed under oath that it did not have, nor did they seek, such information. It is a major point of the litigation. Certain provisions of the agreement require the State to grant advantages and privileges to the settling parties to which no other licensees have access. For example, paragraph 16 requires the State to expedite final inspections for *only* the settling parties. Paragraph 18 grants *only* the settling parties an automatic extension of the statutorily mandated deadlines for obtaining final inspection. These are outrageous concessions and further evidence the State favors some over others in an unfair manner.

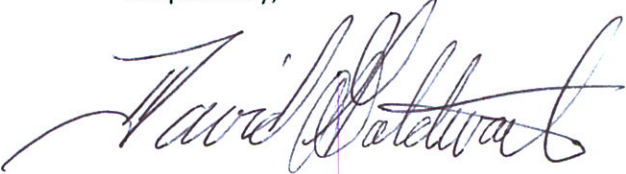
There are several alternative ways in which to award licenses. The State of Washington, for example, avoided the perception of political influence by using a randomized lottery system to issue a limited number of licenses. Other states allow for unlimited licenses so that anyone that wants a license can get it. Nevada wisely chose a merit-based system of awarding a limited number of licenses. This assures we will have the most qualified operators in an efficient market that is of maximum benefit to Nevada citizens. The plaintiffs involved in the settlement were not chosen to be parties to this agreement based on merit. If we were to hypothetically assume the scoring were fair (I do not believe it was) there are plaintiffs that are a party to this settlement agreement who scored much lower than some of the plaintiffs who are not included in the settlement. I am unaware of exactly how plaintiffs were chosen to be a party to this settlement. Mr. Chairman, I publicly offered to work with you and the State on how we might settle this litigation. I was never offered a license in Southern Nevada to settle as other plaintiffs were. I was never offered any of the other considerations contained in this settlement agreement. Why? This settlement does not adhere to Nevada’s merit-based system. The parties to this agreement arrogantly assume they have the right to decide who gets a license based on no objective criteria whatsoever. This is singularly offensive not only to the excluded parties, but to the spirit of Nevada’s allegedly merit-based process.

Our Governor, as well as many other officials, have referred to Nevada’s regulatory structure for cannabis as the “Gold Standard” of regulation for the industry. I believe that prior to this round of licensing, our regulatory structure, enforcement, and monitoring were the best in country. If this settlement is allowed to stand, what does this mean for not only this competitive process, but for all competitive processes involving the State? Are a privileged few allowed to communicate with decision-makers during the competitive process? Are applicants to expect evaluators to inconsistently score separate applications? Can Division heads unilaterally expunge the records of applicants prior to application? Are favored applicants allowed information regarding scoring that other applicants are denied? Can obvious deficiencies in some applications be overlooked based on a decision by a division boss rather than the letter of the law? The answer to all of these questions will be “Yes” if this settlement stands and all the plaintiffs are not treated fairly. As long as the booty of the endeavor is substantial enough, you can cheat the system and then settle the case with that same booty. That is not the “Gold Standard” of regulation. We are all tired of this litigation and we are all drained of significant resources.

But that should not discourage us in our quest for fairness. If we want to remain the “Gold Standard,” we must be willing to continue to do the work to assure all the parties were treated fairly in this process. Settling the case with some plaintiffs for the purpose of expeditiousness falls far short of the “Gold Standard.”

In summary, I respectfully ask you reevaluate this partial settlement with a few plaintiffs. The settlement exacerbates the very nature of case—was the process fair to all? By settling with some as a litigation strategy, we may not get the benefit of a Judge’s full consideration. Th is settlement contains elements that are not consistent with Nevada law and exacerbate the perception that there is special treatment for some people. The settlement agreement violates the spirit of Nevada’s merit-based system of awarding licenses by including plaintiffs favored by those who were favored by the process. Finally, if Nevada is to remain the “Gold Standard” of regulation in the cannabis industry, we must have a process that is transparent and fair to all. Thank you for your consideration.

Respectfully,



David Goldwater

- Cc: Commissioner Sharon Rigby
- Commissioner Craig Witt
- Commissioner George Kelesis
- Commissioner Dr. Ann Bersi
- Commissioner Randy Brown
- Commissioner Francine Lipman
- Commissioner Anthony Wren