  
CLERK OF THE COURT

1 **COMP**  
2 Ross C. Goodman  
3 Nevada Bar No. 7722  
4 **GOODMAN LAW GROUP, P.C.**  
5 ross@goodmanlawgroup.com  
6 520 S. Fourth St., 2<sup>nd</sup> Floor  
7 Las Vegas, Nevada 89101  
8 Telephone: (702) 383-5088  
9 Facsimile: (702) 385-5088  
10 Attorneys for Plaintiff

7 **DISTRICT COURT**  
8  
9 **CLARK COUNTY, NEVADA**

10 NICHOLAS DIAZ,  
11 Plaintiff,  
12 v.  
13 NEVADA STATE ATHLETIC  
14 COMMISSION,  
15 Defendant.

Case No.: A - 1 2 - 6 6 0 6 4 2 - C  
Dept. No.: X X X I I

**COMPLAINT**

**GOODMAN LAW GROUP**  
A Professional Corporation  
520 S. Fourth Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
(702) 383-5088

15 COMES NOW, Plaintiff Nicholas Diaz ("Diaz"), by and through his attorney, Ross C.  
16 Goodman Esq., of the Goodman Law Group, and hereby alleges against the above-named  
17 defendant as follows:

19 1. Plaintiff Diaz is a professional mixed martial artist resident in Stockton,  
20 California.

21 2. Defendant Nevada State Athletic Commission ("NSAC"), a commission within  
22 the State of Nevada's Department of Business and Industry, is vested with the sole direction,  
23 management, control and jurisdiction over all contests or exhibitions of unarmed combat to be  
24 conducted, held or given within the State of Nevada, including mixed martial arts contests.  
25  
26  
27  
28

1           3. On February 4, 2012, Diaz participated in a professional mixed martial arts  
2 contest at the Mandalay Bay Events Center in Las Vegas, Nevada (the "Contest"), which Contest  
3 was conducted under the direction, management, control and jurisdiction of the NSAC.

4           4. Prior to the event, Diaz applied to the NSAC for a license as a mixed martial  
5 artist, and the NSAC duly issued and approved such license before the Contest.

6           5. Following the Contest, the NSAC's Executive Director filed a complaint against  
7 Diaz, dated February 8, 2012 (the "Complaint").

8           6. In the Complaint, the NSAC alleged that a urine sample provided by Diaz  
9 immediately following the Contest reflected a positive result for the presence of marijuana  
10 metabolites, and that such metabolites were prohibited by NSAC regulation.

11           7. On or about February 9, 2012, the NSAC's Executive Director suspended Diaz's  
12 license under NRS 233B.127(3) and NRS 467.117(1) (the "Summary Suspension").

13           8. In reliance on representations that a hearing of the Complaint would be scheduled  
14 "in the near future" Diaz did not initially challenge the Summary Suspension.

15           9. On February 22, 2012 the NSAC resolved to continue the Summary Suspension  
16 pending a final determination of the Complaint.

17           10. Diaz filed a Reply to the Complaint and supporting affidavits on March 7, 2012.  
18 That reply and supporting affidavits stated that, *inter alia*:

- 19
- 20
- 21
- 22           a) Diaz is an authorized medicinal marijuana patient for treatment of attention  
23 deficit hyperactivity disorder ("ADHD");
- 24           b) marijuana metabolite is not a prohibited substance under NSAC's regulations;
- 25           c) the NSAC and the World Anti-Doping Agency prohibit the consumption of  
26 marijuana only "in competition";
- 27
- 28

1 d) Diaz's practice is to discontinue medical marijuana treatment eight days  
2 before any fight to eliminate the possibility of any behavioral and  
3 psychological effects associated with medicinal marijuana's active ingredient;  
4 and

5 e) Diaz has committed no violation of the NSAC's regulations.

6  
7 11. Following delivery of the Reply to the Complaint, the Attorney General's  
8 representative, Mr. Christopher Eccles, provided further assurances that the Complaint would be  
9 heard in April.

10 12. On March 29, 2012, the NSAC's Executive Director delivered to Diaz a revised  
11 Complaint (the "First Amended Complaint").

12 13. The First Amended Complaint made further allegations against Diaz including,  
13 *inter alia*, allegations that Diaz provided false or misleading information to the NSAC by  
14 indicating on a 'Pre-Fight Questionnaire' that (i) he does not have any serious medical illnesses,  
15 (ii) he had not taken or received any prescribed medications in the last two weeks before the  
16 Contest, and (iii) he had not taken or received any over the counter medication or products in the  
17 last two weeks before the Contest.

18 14. On March 29, 2012, April 2, 2012, and April 3, 2012, Diaz, through his attorneys,  
19 sent further requests to Mr. Eccles and the NSAC's Executive Director requesting a firm date for  
20 the hearing of the complaint. No response to this correspondence was provided.

21 22  
23 15. On April 11, 2012, Diaz through his attorneys delivered to Mr. Eccles and the  
24 NSAC's executive director:

25 a) Diaz's filed reply to the First Amended Complaint on behalf of Diaz (the  
26 "Reply to FAC"); and

27  
28

1 b) correspondence (i) enclosing Physician's Statements that constituted the  
2 requisite written documentation that qualified Diaz to use medical marijuana  
3 pursuant to California Health & Safety Code 11362.5, (ii) objecting to the  
4 production of any further medical records on grounds of relevance and  
5 privilege, and (iii) requesting confirmation that the disciplinary action against  
6 Diaz would be formally added to the April 24, 2012 agenda.  
7

8 16. In the Reply to FAC Diaz stated, *inter alia*:

- 9 a) the First Amended Complaint does not allege any facts supporting that Diaz  
10 violated any NSAC rule;  
11 b) marijuana metabolite is not a drug or injection that has not been approved by  
12 the NSAC under NAC 467.850;  
13 c) all answers provided by Diaz on the Pre-Fight Questionnaire were "true and  
14 accurate to the best of [Diaz's] ability", and therefore met the standard  
15 required by the NSAC;  
16 d) Diaz does not believe that ADHD is a "serious medical illness";  
17 e) Diaz does not believe that medical marijuana is a "prescribed medication" and  
18 that this belief is consistent with federal law; and  
19 f) Diaz does not believe that medical marijuana is an "over the counter"  
20 medication.  
21  
22

23 17. On April 13, 2012, Diaz, through his attorneys, demanded that the hearing of the  
24 NSAC's complaint be set down for the April 24, 2012 NSAC meeting or else the complaint  
25 would be deemed to be abandoned.  
26  
27  
28

1           18. On April 16, 2012, Mr. Eccles delivered to Diaz's counsel correspondence again  
2 demanding a copy of Diaz's medical marijuana card and declining to commit to a date for the  
3 disciplinary hearing.

4           19. On April 18, 2012 the NSAC published the agenda for its April 24, 2012 meeting.  
5 The requested disciplinary hearing relating to Diaz's suspension was not on the agenda.  
6

7           20. Despite repeated requests, neither Diaz nor his attorneys have received any  
8 correspondence concerning the date on or by which the hearing of the NSAC's complaint will  
9 proceed.

10           21. Diaz's license has, in effect, been suspended indefinitely, in the absence of any  
11 adverse findings having been made against him by the NSAC.

12           22. Under NRS 233B.127, which applies to all revocations, suspensions, annulments  
13 and withdrawals of licenses (including licenses issued by the NSAC), "[p]roceedings relating to  
14 the order of summary suspension must be instituted and determined within 45 days after the date  
15 of the [suspension] unless the agency and the licensee mutually agree in writing to a longer  
16 period" (NRS 233B.127(3)).  
17

18           23. The Summary Suspension of Diaz's license was a suspension made pending  
19 proceedings for revocation or other action. The Summary Suspension was continued "until [the  
20 Commission] makes a final determination" of the complaint, which must be within 45 days  
21 under NRS 233B.127(3). The NSAC has not yet set the matter for hearing. Accordingly, the  
22 Summary Suspension has lapsed and must be set aside, and the NSAC must not proceed with the  
23 matters raised in the complaint as the NSAC has lost statutory jurisdiction to proceed with the  
24 complaint.  
25  
26  
27  
28

1           24. Under NRS 467.117(1) a summary or temporary suspension may be made only  
2 where “the action is “necessary to protect the public welfare and the best interests of the sports  
3 regulated” [emphasis added].

4           25. The NSAC has made no finding that a summary or temporary suspension of  
5 Diaz’s license is necessary to protect the public welfare.

6           26. Even had the NSAC made such a finding, which is denied, there would be no  
7 reasonable basis for making such a finding and there was no evidentiary basis before the NSAC  
8 at its February 22, 2012 meeting upon which such a finding could have reasonable been made.

9           27. Insofar as the Summary Suspension of Diaz’s license was made on the basis of  
10 NRS 467.117, the suspension was effected wholly absent statutory jurisdiction, and must be set  
11 aside.  
12

13           28. The Due Process Clause requires that a statutory provision permitting a temporary  
14 suspension pending final determination requires a promptly convened final hearing to determine  
15 the merits of a disciplinary complaint.

16           29. Over two months have transpired since the Summary Suspension of Diaz’s  
17 license was effected by the NSAC. The NSAC has still not convened a hearing. Nor has a  
18 hearing been scheduled. Accordingly, the NSAC’s application of NRS 233B.127 and/or NRS  
19 467.117 is an unconstitutional deprivation of Diaz’s due process rights.  
20

21           30. Further, the NSAC’s action taken on February 22, 2012 was procedurally  
22 ineffective under NRS 467.  
23

24           31. Under NRS 467.113(4), in connection with the adjudication rendered at any such  
25 disciplinary hearing, the NSAC “shall file a written report of its findings, adjudication and order  
26 in the record of the proceedings and send a copy to the accused”.

27           32. In connection with the February 22, 2012 NSAC meeting:  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- a) The NSAC has filed no written report in connection with its findings (if any);
- b) The NSAC has filed no written report in connection with its adjudication of the request for a continuation of the suspension; and
- c) the NSAC has filed no written report of its order effecting a continuation of the suspension of Diaz's license pending final determination of the Complaint.

33. Accordingly, (i) the NSAC has not complied with the requirements of NRS 467 in connection with February 22, 2012 meeting. By virtue of such failure of compliance, the February 22, 2012 meeting was wholly ineffective to continue the Summary Suspension.

**FIRST CLAIM FOR RELIEF**  
**(Preliminary and Permanent Injunctive Relief)**

34. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 33 and incorporates them by reference.

35. Defendant has wrongfully and unlawfully suspended Diaz's license:

- a) in violation of NRS 233B.127(3), by failing to determine the proceedings relating to the order of summary suspension within 45 days after the date of the suspension;
- b) in violation of NRS 467.117(1), by suspending Diaz's license in the absence of any finding that such suspension is necessary for the protection of the public welfare and without any evidence supporting any such finding;
- c) in violation of Diaz's due process rights, by suspending Diaz's license pending final determination of a complaint but failing to promptly convene a final hearing to determine the merits of that complaint; and

1 d) by purporting to extend the ten (10) day suspension under NRS 467.117(1)  
2 without complying with NRS 467.113(4).

3 36. The NSAC's wrongful and unlawful Summary Suspension of Diaz has caused  
4 and will continue to cause irreparable harm to Diaz.

5 37. Defendants should be enjoined from further wrongfully and unlawfully  
6 continuing the Summary Suspension and Diaz accordingly seeks a stay of the Summary  
7 Suspension.

8 38. Defendant should be enjoined from further wrongfully and unlawfully proceeding  
9 with the disciplinary proceedings commenced against Diaz and Diaz accordingly seeks a stay of  
10 such proceedings.

11  
12 **SECOND CLAIM FOR RELIEF**  
13 **(Declaratory Relief)**

14 39. Plaintiff repeats the allegations contained in Paragraphs 1 through 38 and  
15 incorporates them by reference.

16 40. Plaintiff seeks declaratory relief under NRS 30.040 to obtain a final determination  
17 of his rights under NRS 233B and NRS 467.

18 ///  
19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///



GOODMAN LAW GROUP  
A Professional Corporation  
520 S. Fourth Street, 2nd Floor  
Las Vegas, Nevada 89101  
(702) 383-5088

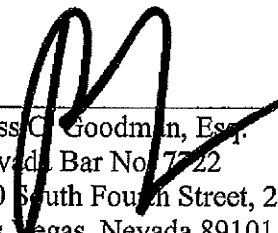
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WHEREFORE, plaintiff prays for judgment against defendant as follows:

1. Judgment in favor of plaintiff against defendant;
2. For injunctive and declaratory relief; and
3. For such other and further relief as the Court deems just and appropriate.

DATED this 24 day of April, 2012.

GOODMAN LAW GROUP, P.C.

  
\_\_\_\_\_  
Ross C. Goodman, Esq.  
Nevada Bar No. 7722  
520 South Fourth Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff Nick Diaz